

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai - 400 001
Telephone No. 22853561

Representation No. S-D-275-2015 dtd. 27/11/2015.

Murga Giran CHS LtdComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.Y. Gaikwad, Member
2. Shri S.M. Mohite, Member CPO

On behalf of the Complainant : 1. Shri Khalid Khatri

On behalf of the Respondent : 1. Shri H.V. Vagal, DECC(D)
2. Smt. S.S. Redkar, AAM CC(D)

Date of Hearing : 20/01/2016

Date of Order : 27/01/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

The Chairman, Murga Giran CHS Ltd., Ground Floor, Plot no. 166, Patthe Bapurao Marg, Mumbai Central, Mumbai - 400 008 has come before the Forum for Complaint regarding amendment bill for the period 15/05/2008 to 04/08/2008 pertaining to A/c no. 819-096-001*7.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 11/12/2013 for Complaint regarding amendment bill for the period 15/05/2008 to 04/08/2008 pertaining to A/c no. 819-096-001*7. The complainant has approached to CGRF in schedule 'A' dtd. 04/11/2015 (received by CGRF on 24/11/2015) as he was not satisfied by the remedy provided by the IGR Cell Distribution Licensee regarding his grievance.

**Respondent, BEST Undertaking in its written statement
in brief submitted as under :**

- 2.0 The complainant M/s Murga Giran CHS Ltd has came the Forum in respect of recovery of RS 2,33,373.50/- towards burnt meter amendment for the period 15/05/2008 to 04/08/2008 . The complainant has stated that , he had applied for change of name vide application No 4101579 and deposited Rs 17,000/- on 06/08/2009. During amendment period the electricity meter holder was M/s Lakadawala Developers Pvt Ltd.
- 3.0 Electricity supply was given to premises under reference in the name of M/S Lakadawala Developers Pvt Ltd. through meter number M074257 under A/c No 819-096-001. M/s Murga Giran CHS Ltd has applied for transfer of this account to it's name vide application number 4101579 on 06/08/2009 along with the undertaking letter to pay the arrears if any, etc. Accordingly the change of name was effected from 31/08/2009
- 4.0 Meter number M074257 was replaced by meter number M074608 for the reason meter burnt. An amendment of Rs 2,33,373.50/- was preferred for the period 15/05/2008 to 04/08/2008. The same has been informed to the complainant vide letter dated 18/10/2013. The complainant has disputed the same.
- 5.0 The BEST had explored the feasibility of transferring this amendment claim of Rs 2,33,373.50 from A/c 819-096-001 to another temporary account 110-090-101 of M/S Lakadawala Developers Pvt Ltd. This could not be materialised because A/C 110-090-101 has already outstanding. The Undertaking has sent the notice for debiting Rs 2,33,373.50 from A/c 819-096-001 to another account Number 678-587-071*4 of M/S Lakadawala Developers Pvt Ltd. In reply to this notice , M/S Lakadawala Developers Pvt Ltd has sent the notice stating that , the said site has been forcefully taken over by the society members of Murga Giran CHSL even though the construction was incomplete. They further given the copy of letter dated 08/04/2008 which was forwarded by the society stating that, the society has handed over the possession to the members on or before 15th April 2008, shall there after pay all their maintenance, municipal taxes assessments, out goings, maintenance charges etc from 1st June 2008.

REASONS

- 10.0 We have heard the arguments of the representative of the complainant Shri Khalid Khatri and the representative of the Respondent BEST Undertaking Shri H.V. Vagal, DECC(D) as well as Smt. S.S. Redkar, AAM CC(D) at length. Perused the documents enclosed by the complainant alongwith Annexure and documents filed by the

Respondent BEST Undertaking alongwith written statement marked at Exhibit 'A' to 'I'.

- 11.0 The representative of the complainant has vehemently submitted that the Respondent BEST Undertaking has passed debit note of Rs. 2,33,273.50 for the period May 2008 to August 2008 on 14/10/2013 and therefore it is barred by limitation as per Section 56(2) of E.A., 2003. He has further submitted that the amended bill for the above said period has been passed by considering the amended period for three months i.e. 03/09/2009 to 03/12/2009 and same is not as per MERC Regulation 15.4 and therefore the Respondent BEST Undertaking has no right to demand the bill under the said debit note by which the Respondent BEST Undertaking has added the amount of debit note in the month of November 2013. Against this Shri Vagal, DECC(D), representative of the Respondent BEST Undertaking has submitted that there was no reading for earlier three months of amended period, therefore they have taken average bill for three months for the period 03/09/2009 to 03/12/2009 i.e. on the basis of newly replaced meter. However, the Regulation 15.4 does not allow the Respondent BEST Undertaking to take the average bill for the billing period based on replaced meter.
- 12.0 Under such circumstances, the action of the Respondent BEST Undertaking to take base period on the basis of unit consumed by the replaced meter appears to be not in accordance with Regulation. We have gone through the record which the Respondent BEST Undertaking has filed along with written statement more particularly pg. 63/C on which calculation is given as to how and on what basis the Respondent BEST Undertaking has carved out the average bill for the period of 15/05/2008 to 04/08/2008. It is pertinent to note that the Respondent BEST Undertaking has not placed on record the units consumed by new replaced meter for the period from 03/09/2009 to 03/12/2009. When we asked the Respondent BEST Undertaking as to why they have not produced the record, they have submitted that the said record was put up before Audit Department, therefore they have not placed it on record. However, at the time of hearing they have placed on record the said documents showing base period as September 2009 to December 2009 but the fact remains that the said amendment has carried out on the basis of units consumed by replaced meter which is not as per Regulation and therefore it is required to be ignored. We wish to observe that MERC ought to have taken into consideration, such contingency and ought to have framed the Regulation in that regard. In the absence of such Regulation, the Respondent BEST Undertaking has no right to take base period for amendment on the basis of electricity consumed by replaced meter.
- 13.0 The representative of the complainant has submitted that on 17/02/2010, the Respondent BEST Undertaking has issued a letter to the complainant society informing them that their electricity bill will be suitably amended in due course and same will be intimated to them by special bill. The Respondent BEST Undertaking did not dispute the said letter which is at pg. 13 issued by them to the complainant. Thus the representative of the complainant has submitted that the debit note passed for the period from May 2008 to August 2008 based on electricity consumption by newly affixed meter for the period September 2009 to December 2009 is barred by limitation

as per Section 56(2) of E.A., 2003, therefore the Respondent BEST Undertaking has not right to recover it and pass debit note in that regard. We have carefully gone through the written statement filed by the Respondent BEST Undertaking and they did not utter a single word about the delay in passing the debit note. The record goes to show that the complainant from time to time has made representation to the Respondent BEST Undertaking requesting them to debit the said amount in the account of M/s Lakadawala Developers and finally the Respondent BEST Undertaking refused for that as already huge arrears were due towards M/s Lakadawala Developers. In fact there was no necessity for the Respondent BEST Undertaking to make any correspondence in that regard with the complainant society.

- 14.0 We have gone through the written statement filed by the Respondent BEST Undertaking and it appears that the Respondent BEST Undertaking has changed the name of the complainant society by replacing the name of M/s Lakadawala Developers from the said account. It is pertinent to note that while carrying out the change of name, the Respondent BEST Undertaking has every right to recover the earlier dues but no such efforts have been taken by the Respondent BEST Undertaking and therefore the BEST has suffered a loss near to the tune of Rs. 2,33,373.50. The concerned officer of BEST Undertaking was not diligent while carrying out the change of name, he ought to have recovered the said arrears from the complainant society while changing the name which has resulted into gross negligence on the part of employee who was dealing with the process of change of name. It is pertinent to note that the Respondent BEST Undertaking has taken undertaking of change of name at pg. 45/C but the said letter bears only stamp of the complainant society and does not bear signature of any of the officers of the complainant society.
- 15.0 Having regard to the above said circumstances, in any case it appears that the action of the Respondent BEST Undertaking demanding an amount of Rs. 2,33,373.50 on 18/10/2013 for the period from 15/05/2008 to 04/08/2008, is barred by limitation as per Section 56(2) of E.A., 2003 and so the Respondent BEST Undertaking has no right or authority to demand the above said amount by passing debit note approximately after six years that too without any reasonable explanation. In our opinion, this case does not come under purview of well known case of *M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli (U.T.), Division Bench of Bombay High Court (W.P. No. 7015 of 2008)* in which it has been held that if there is any arithmetic or human error in that case the limitation shall start from the date of valid issue of notice.
- 16.0 For the above said reason, we find substance in the complaint filed by the complainant as the claim under the debit note is barred by limitation. In result we pass the following order.

ORDER

1. The complaint No. S-D-275-2015 dtd. 27/11/2015 stands allowed as under.
2. The debit note passed by the Respondent BEST Undertaking for amount of Rs. 2,33,373.50 for the period from 15/05/2008 to 04/08/2008 on 18/10/2013 is hereby struck off.
3. The Respondent BEST Undertaking is hereby directed to report the compliance within one month from the date of receipt of the order.
4. Copies of this order be given to both the parties.

(Shri S.Y. Gaikwad)
Member

(Shri S.M. Mohite)
Member

(Shri V.G. Indrale)
Chairman