

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. N-HVC-293-2016 dtd. 04/04/2016.

Mrs. Neena Kaur GandhiComplainant

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 Manjit Singh

On behalf of the Respondent : 1. Shri D.N. Pawar, DEHVC
2. Shri J.L. Pawar, AEHVC
3. Shri S.V. Bhatkar, AAM, HVC
4. Shri P.S. Vyavahare, AO, HVC

Date of Hearing : 09/06/2016

Date of Order : 15/06/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

The complainant Mrs. Neena Kaur Gandhi, A1-112, Groun Floor, Plot -1A, Kalpak Estate, Shaikh Mistree Road, Antop Hill, Mumbai - 400 037 has come before the Forum for debiting claim amount of Rs. 16,117.85 for the period April to May 2010 and uncharged units for the month of October 2010 in the month of February 2015.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 05/02/2016 for High bill complaint due to debiting claim amount of Rs. 16,117.85 for the period 01/04/2010 to 01/10/2010 in the month of February 2015. The complainant has approached to CGRF in schedule 'A' dtd. 23/03/2016 (received by CGRF on 01/04/2016) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee regarding her grievance.

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

- 2.0 The complainant Smt. Neena Kaur Gandhi has come before the Forum regarding her dispute about debiting Rs. 16,117.85 towards the tariff difference between LT-II(a) tariff and LT-II(b) tariff for 4299 units for the period April, May 2010 and uncharged 878 units for the billing month October 2010 at LT-II(b) tariff pertaining to meter no. P082877, A/c no 202-029-577.
- 3.0 During vigilance inspection on 15/02/2010, it was observed that maximum demand found 22.75 kw against sanctioned load of 7.92 kw. The same was informed to the complainant vide letter dtd. 12/05/2010. It was further informed in this letter that, provisional assessment arising out of unauthorised use of electricity. Initially, claim was preferred for Rs. 1,44,959.00. This claim is revised to Rs. 61,225.00 and same was paid by the complainant on 02/07/2010.
- 4.0 The complainant's non TOD meter no. M087730 was replaced by TOD type meter no. P082877 on 25/05/2010. After replacement of this meter, it was observed that the consumer was not charged for tariff difference of LT-II(a) & LT-II(b) tariff for 4299 units for the period April 2010 to May 2010.
- 5.0 From the billing month October 2010, electricity bills were served with meter reading as 38501 instead of 39379 i.e. (39379 - 38501 =) 878 units were not charged under LT-II(b) tariff, hence necessary debit / credit was preferred resulted in net debit of Rs. 16,117.85. The same was informed to the complainant vide letter dtd. 10/02/2015, and debited in electricity bill of February 2015. This amount was paid by the complainant on 18/03/2015.

REASONS

- 6.0 We have heard the arguments of Shri Manjit Singh, representative of the complainant and for the Respondent BEST Undertaking Shri D.N. Pawar, DEHVC and Shri J.L. Pawar, AEHVC. Perused the documents filed by the complainant along with Schedule 'A' and the same have marked as Exhibit 'b' to 'f'. Perused the written statement filed by the Respondent BEST Undertaking along with documents marked as Exhibit 'A' to 'M'.
- 7.0 The representative of the complainant has vehemently submitted that the amount of Rs. 16,117.85 recovered by the Respondent BEST Undertaking in the month of March 2015 is barred by Section 56(2) of Electricity Act, 2003. The said amount has been claimed as tariff difference of LT-II(a) to LT-II(b) for 4299 units for the period of April and May 2010 and uncharged 878 units for billing month October 2010 with LT-II(b) tariff. Against this, representative of the Respondent BEST Undertaking has submitted that although they have recovered the penalty of Rs. 61,225.00 on 02/07/2010 for using 22.75 kw, although sanctioned load was 7.92 kw and due to insufficient staff

there is delay in claiming said difference of tariff. It is admitted fact that the Respondent BEST Undertaking has claimed an amount of Rs. 16,117.85 in the bill of February 2015 and the complainant has deposited it on 10/03/2015.

- 8.0 Having regard to the above said submission, it appears that the grievance of the complainant is that the amount claimed by the Respondent BEST Undertaking has difference of tariff LT-II(a) to LT-II(b) is barred by Section 56(2) of E.A., 2003 and therefore even though he has deposited the said amount under fear of disconnection of electricity, he is entitled to get the refund of said bill or to adjust the said bill in ensuing billing month. The representative of the Respondent BEST Undertaking has submitted that their case covers under ratio laid down in *M/s Rototex Polyester v/s Administration, Administrator Dadra Nagar Haveli, Electricity Department, Silvasa* and therefore their action of recovery is legal and proper.
- 9.0 We think it just and proper to reproduce provision of Section 56(2) of E.A., 2003.

56. Disconnection of supply in default of payment.

(1) xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx

(2) *Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.*

- 10.0 In view of the above said provisions, it appears that no sum due from any consumer under section 56(2) shall be recoverable after the period of two years from the date when such sum become due unless such sum has been shown continuously as recoverable as arrears of charges of electricity supplied and the Licensee shall not cut off the electricity. The word 'shall' denotes that the provision is mandatory and not discretionary. We have gone through the ruling in W.P. 7015 of 2008 of *M/s Rototex Polyester v/s Administration, Administrator Dadra Nagar Haveli, Electricity Department, Silvasa* in which it has been held that incase the consumer is not billed on account of clerical mistake such as the present case where the multiplication factor has changed from 500 to 1000, but due to oversight the department issued the bill with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. It means that if there is human error, in that case the limitation shall start from the date of issue of valid bill or notice. Such is not the case before us as the Respondent BEST Undertaking had knowledge of using more kw than that of sanctioned load on visit to the premises in the month of April 2010 and accordingly they have taken action under section 126 of E.A., 2003 and recovered the amount of Rs. 61,225.00. This fact itself goes to show that the Respondent BEST Undertaking had knowledge that they have to charge LT-II(b) tariff instead of LT-II(a) tariff. Under such circumstances, it was expected from the Respondent BEST

Undertaking, at least to prepare revise bill within two years and claim the same difference of amount from the complainant. That has not been done by the Respondent BEST Undertaking and they have come to the Forum with a lame excuse that department was having only three clerks for outstanding and amendment claims where all billing complaints are entertained, therefore there was delay to take necessary action regarding revision of tariff and uncharged units. This explanation given by the Respondent BEST Undertaking is not at all acceptable to the mind of prudent man.

- 11.0 For the above stated reasons, this Forum finds force in the submission of the complainant that the claim is barred by Section 56(2) of E.A., 2003. The next question which poses before the Forum is as to whether the complainant is entitled to get refund of the said amount as he has already paid the said amount on 18/03/2015 without any protest. On this point, we wish to observe that the Respondent BEST Undertaking has claimed the said amount in the bill for the month of February 2015 as tariff difference for the period April to May 2010 and uncharged unit of 878 for the month of October 2010 and the complainant in routine course and under fear of disconnection must have deposited the said amount. Thus, this circumstance does not preclude the complainant from getting the refund of the said amount or for praying the adjustment of said amount from bill of ensuing month as recovery of said amount by BEST was not legal i.e. barred by limitation.
- 12.0 Having regard to the above said discussion we find substance in the grievance of the complainant that amount of Rs. 16,117.85 as claimed by the Respondent BEST Undertaking is barred by limitation as per section 56(2) of E.A. Thus the complaint deserves to be allowed and we direct the Respondent BEST Undertaking to adjust the said amount of Rs. 16,117.85 in electricity bill of ensuing months.
- 13.0 Before parting to pass final order we wish to observe that the complainant himself has requested to adjourn the date of hearing of the case which was fixed in the first week of June and therefore there is delay in deciding this grievance. In result we pass the following order.

ORDER

1. The complaint no. N-HVC-293-2016 dtd. 04/04/2016 stands allowed as under.
2. The Respondent BEST Undertaking is hereby directed to adjust an amount of Rs. 16,117.85 as paid by the complainant on 18/03/2015 in electricity bill for the month of August 2016 and report the compliance within 30 days from the date of receipt of order.
3. 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