

**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-EA-266-2015 dtd. 06/08/2015.**

M/s Oscar Print & Allied Pvt. Ltd. ....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent

**Present**

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.S. Bansode, Member
2. Shri S.M. Mohite, Member CPO

On behalf of the Complainant : 1. Shri Bhavesh Kapadia

On behalf of the Respondent : 1. Shri D.N. Pawar, DE(HVC)  
2. Smt Madhuri Ugale, AE(HVC)  
3. Shri S.V. Bhatkar, AAM

Date of Hearing : 09/09/2015

Date of Order : 30/09/2015

**Judgment by Shri. Vinayak G. Indrale, Chairman**

The Director, M/s Oscar Print & Allied Pvt. Ltd., A-2/63, Shah & Nahar Industrial Lane, Lower Parel, Mumbai - 400 013 has come before the Forum for Recovery of outstanding claim of Rs. 4,33,852.26 towards power factor penalty charges for the period from 01/10/2011 to 01/08/2014 pertaining to a/c no. 202-004-113.

**Complainant has submitted in brief as under :**

The complainant has approached to IGR Cell on 15/05/2015 for Recovery of outstanding claim of Rs. 4,33,852.26 towards power factor penalty charges for the period from 01/10/2011 to 01/08/2014 pertaining to a/c no. 202-004-113. The complainant has approached to CGRF in schedule 'A' dtd. 31/07/2015 (received by CGRF on 04/08/2015) 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 Director, M/s Oscar Print & Allied Pvt. Ltd., has come before the Forum for Recovery of outstanding claim of Rs. 4,33,852.26 towards power factor penalty charges for the period from 01/10/2011 to 01/08/2014 pertaining to a/c no. 202-004-113.
- 3.0 The electric supply is given to the consumer for industrial purpose and applicable tariff is Industrial (below 20 kw) i.e. LT-IV tariff. During the scrutiny of the billing data, it was observed that, the consumer is not maintaining required Power Factor (PF) as per tariff schedule. This attracts Power Factor penalty, hence an amendment was preferred to the consumer amounting to Rs. 4,33,852.26 against penalty for not maintaining requisite power factor for the period 01/10/2011 to 01/08/2014 by carrying out necessary debit / credit. Net electricity bill in the month of March 2015 was Rs. 5,17,590.00 inclusive of current month bill.
- 4.0 Same was informed to the complainant vide letter dtd. 26/02/2015 and the said amount was debited in his electricity bill of March 2015. Vide letter dtd. 04/03/2015 and 26/03/2015, the complainant has disputed the debited amount of Rs. 4,33,852.26 in the electricity bill of March 2015.

**REASONS**

- 5.0 We have heard the arguments of Shri Bhavesh kapadia for the complainant and Shri D.N. Pawar, DECC(HVC), Smt. M. Ugale, AEHVC-4 and Shri S.V. Bhatkar, AAM for the Respondent BEST Undertaking. We have perused the documents placed on record by the complainant which consists of electricity bill issued by the Respondent BEST Undertaking. We have gone through the written submission filed by the Respondent BEST Undertaking and documents at Exhibit 'A' to 'L' filed along with the written submission.
- 6.0 The complainant has vehemently submitted that the action of the Respondent BEST Undertaking to pass debit note of Rs. 4, 33,852.26 for the period from 01/10/2011 to 01/08/2011 charging penalty for power factor is illegal and barred by limitation, therefore the Respondent has no right to claim the said penalty. The Respondent BEST Undertaking has submitted that initially the power factor has not been recorded in the bill and therefore it was not mentioned in the bills issued to the complainant. It is

further submitted that due to this irregularity on bill, power factor penalty is shown as 'NIL' and when the Respondent BEST Undertaking came to note this fact, they have obtained the CMRI and charge the power factor penalty.

- 7.0 The Respondent BEST Undertaking has further submitted that in view of ruling in M/s Rototex Polyester & Anr. the claim is not barred by limitation as limitation has started from the date of issuing the valid notice i.e. notice issued on 02/06/2015. Having regard to the above said submissions the question poses before the Forum is as to whether action of the Respondent BEST Undertaking of claiming power factor penalty is valid or not.
- 8.0 We have gone through the written submissions and documents filed by the Respondent BEST Undertaking and it appears that for the queries made by the complainant, the Respondent BEST Undertaking has given the detailed clarification as to why they are entitled to charge the power factor penalty. The Respondent BEST Undertaking has submitted that power factor penalty / incentive is to be imposed as well as given with a view to save the electricity. The complainant in written argument has submitted that the Respondent BEST Undertaking has never communicated to the consumer that there is need to maintain power factor / harmonics and now demand made is contrary to the Regulation 12.2 of MERC. In our opinion ignorance of law is not an excuse as when the complainant consumer is utilizing the electricity for industrial purpose then he must know the Regulation and have no right to claim the ignorance of the law. The complainant has relied upon Regulation 12.2 of MERC which runs as under.

*The Distribution Licensee may require the consumer, within a reasonable time period, which shall not be less than three months, to take such effective measures so as to raise the average power factor or control harmonics of his installation to a value not less than such norms, in accordance with Regulation 12.1 of MERC.*

- 9.0 In this Regulation word “**may**” has been used and therefore it is not mandatory on the part of the Respondent BEST Undertaking to inform the consumer to maintain the power factor. We have gone through the Para 17 of Terms and Conditions of supply which deals with power factor / harmonics. It is identical provision like that of Regulation 12.1 and 12.2 of MERC. We think it just and proper to reproduce Para 17 of Terms and Condition of Supply as under.

17.1 *It shall be obligatory for the consumer to maintain the average power factor of his load at levels prescribed by the Indian Electricity Rules, 1956 with such variations, if any, adopted by the Undertaking in accordance with Rule 27 of the Indian Electricity Rules, 1956 and in accordance with the relevant orders of the Commission. However, it shall be obligatory for the HT consumer and the LT consumer (Industrial and Commercial only) to control harmonics of his*

*load at levels prescribed by the IEEE STD 519-1992, and in accordance with the relevant Order of the Commission.*

*17.2 The Undertaking may require the consumer, within a reasonable time period, which shall not be less than three months, to take such effective measures so as to raise the average power factor or control harmonics of his installation to a value not less than such norms as mentioned above.*

*17.3 Undertaking shall penalty or provide incentives for low / high power factor and for harmonics, in accordance with relevant Orders of the Commission.*

- 10.0 If we read the above said Para 17, it is crystal clear that the Undertaking shall charge penalty or provide incentive for low/ high power factor and for harmonics in accordance with the relevant orders of the commission. Considering this provision the complainant's cannot plead the ignorance of the provision of MERC or Supply Code.
- 11.0 We have gone through the electricity bills produced by the complainant, the complainant has rightly submitted that the power factor penalty for the period from September 2011 to February 2012 is not permitted as the sanctioned load was less than 20 kw. We find substance in this contention as the sanctioned load to the complainant was less than 20kw, thus the action of the Respondent BEST Undertaking charging power factor penalty for the month of September 2011 to February 2012 is illegal and is liable to be set aside.
- 12.0 As regards charging of power factor penalty since March 2012 to August 2014, it appears that the tariff / duty for this period comes LT-IV(A)/F Rkvah MD and therefore action of the Respondent BEST Undertaking charging power factor penalty is justified as per tariff booklet of BEST w.e.f. 01/09/2010. The Respondent BEST Undertaking has submitted that inadvertently initially the concerned person has not recorded the reading of Rkvah unit and therefore power factor penalty / incentive is remained to be charged. It is submitted that on the basis of CMRI they have obtained the said reading and thereafter prepared the statement Exhibit 'A' and carved out the debit note of Rs. 4,33,852.26. We have already discussed about that action of the Respondent BEST Undertaking charging power factor penalty for October 2011 to February 2012 is illegal and so it is required to be deducted from the debit note. The said amount comes to Rs. 49,479.00. Thus it appears that the Respondent BEST Undertaking is only entitled to charge power factor penalty amounting to Rs. 3,84,573.00 to the complainant.
- 13.0 The complainant has vehemently submitted that the Respondent BEST Undertaking is claiming the power factor penalty for the period March 2012 to August 2014, in the month of June 2015 and therefore same is barred by limitation as per section 56 of Electricity Act, 2003. On this point the complainant has relied upon the judgment in Shri Awadesh Pandey's case in W.P. (L) No. 2221 of 2006 of Hon'ble Bombay High Court decided on 05/10/2006 and submitted that the claim is barred by limitations.

We have gone through the judgment passed by our Hon'ble High Court in case between *M/s Rototex Polyester & Anr. v/s Administrator, Administration of Dadra & Nagar Haveli, Silvassa in civil petition 705 of 2008* in which it has been laid down that the word "*due*" in this context would mean due and payable after a valid bill has been sent to the consumer. In the instant case the valid bill for the first time has been issued to the complainant on 24/02/2015 Exhibit 'B', so the limitation shall start from the said date and therefore in any case it could not be held that the claim of power factor penalty is barred by limitation. Here the Forum wish to observe that the view taken by our Hon'ble High Court in Shri Awadesh Pandey case is contrary to the view taken in the case of M/s Rototex Polyester & Anr. It is submitted by the Respondent BEST Undertaking that matter has been now referred to a Larger Bench in case of MSEDCL v/s Electricity Ombudsman reported in 2012 (III) AIC 822 (Bom). Since the bench has not yet formulated the said controversy is not set right.

- 14.0 In our opinion the ratio laid down in M/s Rototex Polyester & Anr. case being latest than that of Shri Awadesh Pandey case and the facts of the case before us is identical to the facts of M/s Rototex Polyester & Anr. and therefore we apply the ratio applied in M/s Rototex Polyester & Anr. case and held that power factor penalty as claimed by the Respondent BEST Undertaking is not barred by limitation as the limitations starts when the valid notice is issued to the complainant.
- 15.0 Having regard to the above said discussion, this Forum comes to the conclusion that the claim of the Respondent BEST Undertaking regarding demand of power factor penalty from the complainant is not barred by limitation. Here the Forum wish to observe that as per Para 17.3 of Terms and Conditions of Supply, the Undertaking shall charge penalty or provided incentive for low / high power factor and for harmonics in accordance with relevant orders of the Commission. This provision is made with a view to save the electricity and the consumer who opts for connection for industrial purpose must know that he is required to install the capacitor for maintaining the power factor. We have observed that the action of the Respondent BEST Undertaking claiming power factor for the month of October 2011 to February 2012 is illegal as power supply was below 20kw. Thus after deducting the power factor penalty for the above said period amount comes to Rs. 3,84,573.00. The Respondent BEST Undertaking is entitled to get the power factor penalty of Rs. 3, 84,573.00. Thus the complaint deserves to be partly allowed as under.

#### ORDER

1. The complaint No. N-EA-266-2015 dtd. 06/08/2015 stands partly allowed.
2. The Respondent BEST Undertaking is directed to issue revised bill for power factor penalty after deducting the power factor penalty charged for the month of October 2011 to February 2012.

3. The complainant is directed to pay the revised bill for power factor penalty issued by the Respondent BEST Undertaking within a one month from the date of receipt of the bill.
4. The Respondent BEST Undertaking is directed to comply with the order within one month from the date of receipt of the order and report the compliance thereon.
5. Copies of this order be given to both the parties.

(Shri S.S. Bansode)  
**Member**

(Shri S.M. Mohite)  
**Member**

(Shri V.G. Indrale)  
**Chairman**