

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-182-2013 dtd. 28/01/2013

Mrs. Saloni JhaveriComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum : Chairman
Shri R U Ingule, Chairman

Member
1. Shri M P Thakkar, Member
2. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri Vivek Naik

On behalf of the Respondent : 1. Shri R.S. Kale

Date of Hearing : 26/02/2013

Date of Order : 19/03/2013

Judgment by Shri. R.U. Ingule, Chairman

Mrs. Saloni Jhaveri, R.No. 3, Madhu Industrial Estate, P. Budhkar Marg, Delasis Road, Mumbai - 400 013 has come before the Forum for her grievance regarding defective meter amendment for the period 24/10/2009 to 26/12/2009 pertaining to A/c no. 202-020-405.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 05/01/2012 for grievance regarding defective meter amendment for the period 24/10/2009 to 26/12/2009 pertaining to A/c no. 202-020-405. The complainant has approached to CGRF in schedule 'A' dtd. 09/01/2013 (received by CGRF on 24/01/2013) as no remedy is provided by the Distribution Licensee regarding her grievance. The complainant has requested the Forum to cancel the amendment bill.

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

2.0 Meter no. T000036 was installed on 30/09/2000 at consumer's premises i.e. 3rd flr., Madhu Industrial Estate, Pandurang Budhkar Marg, Mumbai-400013. The same was read on actual through CMRI (Common Meter Reading Instrument) till replacement. Being a non ToD meter, this meter was replaced by ToD compatible meter no. T082156 on 24/10/2009, in view of implementation of MERC Tariff Schedule. As the meter no. T082156 was newly installed, it was tested on 04/12/2009 and found stopped meter. No electrical energy was being recorded by the meter since all 3 phases CT secondary currents were "zero". The stopped meter no. T082156 was then replaced by meter no. T090481 on 26/12/2009 under intimation to the complainant duly acknowledged by the consumer's representative. Moreover, he had given undertaking letter, dated 26/12/2009 stating that

- i) She is fully convinced with the defect such as "All three phase current zero" defect of meter no. T 082156,
- ii) Consent for replacement of the meter
- iii) Undertake to pay amended bill whenever called upon by BEST Undertaking.

3.0 The amended bill was preferred on the basis of average monthly consumption 23885 kWh units recorded by old meter no. T000036 for the period 24/10/2009 to 26/12/2009 (date of replacement) resulting into net debit of Rs.6,00,766.44. The same was informed to the complainant vide our letter no. EA/Dept.7/R-1316(HD)/7075/2012 dated 17/10/2012 which was acknowledged by her on 25/10/2012 and the amount was debited in the consumer's monthly bill for the month of Nov.2012. The complainant disputed the same and registered a complaint in Annexure 'C', dated. 05/12/2012.

4.0 Reply to complaint under Annexure 'C' form was forwarded vide our letter dated. 21/12/2012 which is acknowledged by the complainant on 22/12/2012. The complainant was not satisfied with reply given by the Distribution Licensee regarding her grievance. She has registered a complaint in Annexure 'A' form dated. 09/01/2013 (Complaint no. N-EA-182-2013, dated 28/01/2013).

5.0 The amendment claim was informed to the complainant vide our letter dated. 17/10/2012 which was acknowledged by her representative on 25/10/2012. Hence, the complainant's contention of debiting amendment claim of Rs. 6,00,766.44 in the

bill "without any intimation" is not correct. The claim was debited in the bill month of Nov.2012 i.e. after span of a month's period so that if any dispute raised by the complainant can be attended.

- 6.0 The complainant disputed the same in Annexure 'C' form dated 05/12/2012 at that time the claim was already debited in the account. The complainant was replied against Annexure 'C' form vide our letter dated 21/12/2012, which is also acknowledged by complainant on 22/12/2012. As desired by the complainant, the details of break up/calculations of amended bill amount of Rs. 6,00,766.44 on monthly basis was given to the consumer. The detailed break up, itself shows that 50158 kWh units were undercharged for the billing period from 24/10/2009 to 26/12/2009 due to stopped meter no. T 082156. Further, complainant was also informed through the letter that the bill is amended as per the provisions of clause No. 15.4.1 of MERC regulations, 2005 and is in order.
- 7.0 Complainant has paid the amendment claim amount of Rs. 6,00,766.44 alongwith the regular bill in December-2012.
- 8.0 Consumer's interpretation that "as per the Electricity Act 2003, section 56(2), BEST can not recover the charges prior to two years, is incorrect. The correct interpretation of E.A.2003, section 56(2) is that the sum payable becomes due from the complainant only upon the presentation of the amended bill and which is recoverable within the period of two years from the date of presentation of bill.
- 9.0 This sum of amended bill which became first due on the date of presentation of bill and was debited in consumer's account and paid by the consumer.
- 10.0 Hence, the amendment bill debited to consumer's account is to be treated as accurate and complainant is liable to pay the same.

REASONS

- 11.0 We have heard Shri Vivek Naik for the complainant and for the Respondent BEST Undertaking Shri R.S. Kale. Perused documents.
- 12.0 The complainant *inter-alia* contends that she was shocked to receive electricity bill in the month of November 2012 for an amount of Rs. 7,56,492.00, on higher side wherein Rs. 6,00,766.44 were added under code 003 without any prior intimation. As per reply of the BEST Rs. 6,00,766.44 was pertaining to the '*defective meter amendment*', for the period from 24/10/2009 to 26/12/2009. However, the Respondent BEST Undertaking cannot forward defective meter amendment claim after a period of three years from the date of replacement of *stopped meter*. As per the Electricity Act (for short E.A.), 2003, u/s 56(2) the Respondent BEST Undertaking cannot recover the charges prior to two years. This Forum finds the complainant in support of her arguments has enclosed few orders passed by Hon'ble Ombudsman.
- 13.0 In counter, the Respondent BEST Undertaking has contended that the old meter no. T000036 of the complainant being non ToD meter, the same was replaced by ToD compatible meter T082156 on 24/10/2009, in view of MERC ToD tariff schedule. As

the said meter no. T082156 was newly installed, the same was tested on 04/12/2009 to find the same being *stopped meter*. No electrical energy was recorded by the said meter and all 3 phases CT secondary current were "0". Therefore, the same was replaced with another meter no. T090481 on 26/12/2009 under intimation to the consumer's representative.

- 14.0 Thereafter, the Respondent BEST Undertaking proceeded to amend the electricity bill from 24/10/2009 to 26/12/2009 as the meter was stopped in this period on the basis of the average monthly consumption recorded by old meter. The Respondent therefore proceeded to raise the amended bill of Rs. 6,00,766.44 informing the complainant vide letter dtd. 17/10/2012 for debiting the same in the electricity bill for the month of November 2012. The Respondent BEST Undertaking further contends that on this ground the amended electricity bill raised cannot be called being in violation of section 56(2) provided under the E.A., 2003.
- 15.0 The Respondent BEST Undertaking in support of its said contention pressed into service a decision handed down by the Hon'ble Division Bench of the Bombay High Court in a case of **Rototex Polyester v/s Administration, Administrator Dadra Nagar Haveli, Electricity Department, Silvassa (2010 (4) BOM. CR.456)** and judgment handed down by Hon'ble Bombay High Court in a case of **Bombay Municipal Corporation v/s Yatish Sharma (AIR 2007 BOM 73)**.
- 16.0 This Forum finds that a report placed on file at Exhibit 'A' by the Energy Audit Department of the Respondent BEST Undertaking manifests that the meter no. T082156 provided to the complainant was tested on 04/12/2009 to find the said meter was not recording energy, and on all 3 phase current was zero, therefore recommended for replacement of the same. This Forum thereafter finds a test report dtd. 18/12/2009 duly counter signed by the representative of the complainant at the foot of it. This test report has been placed on file at Exhibit 'A-1' before this Forum. A bare perusal of the same manifest that on testing the said meter it was found that all 3 phase current was "0" and this meter was tested in presence of the representative of the complainant.
- 17.0 This Forum further finds that the said *stopped meter* no. T082156 was replaced with a new meter no. T090481 on 26/12/2009 in presence of the representative of the complainant who has signed at the foot of this report. Pertinent to observe at the juncture that on 26/12/2009 the said representative of the complainant Shri Deepak Masane has undertaken in writing that he has been convinced that in a *stopped meter* no. T082156 of 3 phase current was "0" and therefore he requested the Respondent BEST Undertaking to replace the same and undertaken to pay the amended bill whenever called upon by the Respondent BEST Undertaking. This Forum finds this undertaking of the representative of the complainant dtd. 26/12/2009 placed before us at Exhibit 'G'.
- 18.0 This Forum therefore finds that the old meter no. T082156 did stop recording electricity supplied during the period from 24/10/2009 to 26/12/2009. The same was tested and replaced in presence of the complainant. To reiterate, the representative of the complainant has also given in writing on 26/12/2009 agreeing that the meter being stopped and requested to replace the same and undertaken to pay the amended bill. However, now by approaching this Forum has challenged the amended bill of

Rs. 6,00,766.44 being *time barred* one in view of the provision provided u/s 56(2) of E.A. 2003. As this Forum has found the meter was stopped as contended by the Respondent BEST Undertaking during the period from 24/10/2009 to 26/12/2009 and the energy charges has been Rs. 6,0,766.44 as worked out and placed before this Forum at Exhibit 'E', therefore, it is left for this Forum to ascertain, whether such amended claim made by the Respondent BEST Undertaking has been indeed *time barred* one, as contended by the complainant u/s 56(2) of E.A. 2003.

- 19.0 Admittedly the amended claim has been for a period from 24/10/2009 to 26/12/2009 and raised against the complainant by including the same in the electricity bill for the month of November 2012. Under such admitted set of facts we find it expedient to advert to the judgment handed down by the Hon'ble Division Bench of the Bombay High Court in a case of **Rototex Polyester (supra)** and that in a case of **Advsh Panday v/s Tata Power Company(W.P. 2221/2009 decided on 05/10/2006)**.
- 20.0 We find that to call the amendment claim made by the Respondent BEST Undertaking being *time barred*, the complainant has placed a heavy reliance on the judgment of the Hon'ble Bombay High Court in a case of **Avdesh Panday (supra)**. While in counter, the Respondent BEST Undertaking has been placing a heavy reliance on a judgment handed down by the Hon'ble Division Bench of the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester (supra)** and that of the Hon'ble Bombay High Court in a case of **Bombay Municipal Corporation v/s Yatish Sharma (supra)**.
- 21.0 Before we proceed to advert to the law laid down by the Hon'ble Bombay High Court in both these judgments referred to above, this Forum finds it expedient to advert to an order dtd. 08/01/2013 passed by the Hon'ble Ombudsman in Representation no. 96/2012 between **M/s Jay Plastic v/s MSEDCL**. Therein referred to the judgment of Hon'ble Division Bench of the Hon'ble Bombay High Court in a case of **MSEDCL v/s Venco Breeding Farm Pvt. Ltd. (W.P. no. 6783/2009 dtd. 05/03/2010)**. Therein para 6 the Hon'ble Bombay High Court has observed that no direct conflicting view has been taken by the Hon'ble Division Bench of the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester (supra)** and that in the case of **Avdesh Panday v/s TPC (supra)**, therefore no need to refer the matter to the larger bench. This Forum therefore finds that both these judgments of the Hon'ble Division Bench of the Hon'ble Bombay High Court do not lay down any conflicting views.
- 22.0 This Forum on carefully going through the judgment handed down by the Division Bench of the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester (supra)** finds that the entire focus of Their Lordships was to explore the ambit and scope of an expression '*become first due*', employed by the legislature in subsection (2) of section 56 of the E.A.2003. While the Hon'ble Division Bench of the Hon'ble Bombay High Court in a case of **Avdesh Panday v/s TPC Ltd.** was engaged in exploring the *special mechanism* provided by the legislature under subsection(2) of section 56 of the E.A. 2003 of giving coercive power to the Distribution Licensee to recover its dues expeditiously, for improvement of supply of electricity. The Division Bench of the Hon'ble Bombay High Court therefore felt that in its opinion subsection (2) of section 56 provides a limitation to take a recourse to recover its dues by cutting of electric supply of two years from the date when such sum *becomes first due*. This Forum thus finds that these two judgments are in respect of two different and distinct facets and ingredients of subsection (2) of section 56 of the E.A., 2003.

- 23.0 To elaborate on this legal aspect this Forum finds it expedient to advert to the law enunciated by the Division Bench of the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester (supra)** therein, this Forum finds that in this case the electricity amount as per the contention of petitioner company M/s Rototex Polyester was *first time become due* in July 2003, but the said claim was raised by the Distribution Licensee on 03/10/2007. Therefore the consumer had contended the electricity charges claim being "time barred", under the provision of 56(2) of the E.A. 2003. In counter in this case on behalf of the Distribution Licensee a reliance was placed on a judgment of the Hon'ble Bombay High Court in a case of **U.S. Thadani v/s BEST Undertaking (2000 102 BOM. L.R. 502)** and on a case of **Yatish Sharma (supra)** to submit that when an erroneous bill has been served on the consumer due to a clerical mistake or oversight, then while correcting the same, the limitation period of two years provided u/s 56(2) would not come into way of Distribution Licensee.
- 24.0 This Forum finds that the Division Bench of the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester (supra)** thereafter proceed to peruse section 56 of the E.A. 2003 and relevant provision u/s 26 of the Indian Electricity Act, 1910 and further proceeded to peruse the decision given in case of **Bharat Barrel and Drum Mfg. v/s Mumbai Corporation for Greater Bombay (AIR 1978 BOM 369)**. Thereafter in para 14, the Division Bench of the Hon'ble Bombay High Court deduced the principle *inter-alia* that in case the consumer has been under billed on account of clerical mistake where the multiplying factor had changed from 500 to 1000, but due to oversight, the department issued the bill with 500 as multiplying factor instead of 1000, the bar of limitation cannot be raised by the consumer.
- 25.0 This Forum further observes that the Division Bench of the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester** thereafter proceed to consider the law laid down by Hon'ble Bombay High Court in a case of **Yatish Sharma (supra)** wherein a decision of the Hon'ble Delhi High Court in a case of **H.D. Shouri v/s Municipal Corporation of Delhi (AIR 1987 Delhi 219)** was taken into consideration to reach to a conclusion that the word "*due*" would mean due and payable after a "*valid bill*" has been sent to the consumer. Significant to observe at this juncture that the Division Bench of the Hon'ble Bombay High Court in the case of **M/s Rototex Polyester** respectfully agreed to the view taken by the Single Bench of the Bombay High Court in a case of **Yatish Sharma (supra)** and proceed to hold that when the revised bill has been served on 09/11/2007 on the consumer, therefore it becomes 'first due' on this date of 09/11/2007. Therefore the section 56(2) of the E.A. 2003 in this case would not come into way of the Distribution Licensee from recovering charges raised under the revised bills.
- 26.0 This Forum to reiterate thus observes the entire focus of Division Bench of the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester (supra)** has been for exploring the ambit and scope of the expression sum *become first due* to reckon and count a period of two years commencing therefrom, for recovering the electricity charges in arrears by taking coercive measure i.e. disconnection of electric supply.
- 27.0 This Forum further observes that to reiterate the entire endeavor of Division Bench of the Hon'ble Bombay High Court in a case of **Avdesh Panday (supra)** has been to explore the ambit and scope of the *special mechanism* provided u/s 56(2) of E.A.

2003, enabling the Distribution Licensee to recover its dues expeditiously by taking a *coercive measure* like cutting of electricity, for which the legislature has provided a limitation of 2 years commencing from the date when such electricity charges *becomes first due*.

- 28.0 This Forum on going through this judgment of **Avdesh Panday (supra)** finds that the dispute addressed by the Hon'ble Division Bench in this case was, whether the demand made by the Respondent TPC Ltd. was contrary to the provision of section 56 of the E.A. 2003. The Electricity Ombudsman by its order dtd. 18/07/2007 had held that the Respondent TPC Ltd. was entitled to recover past dues by correcting multiplying factor. In such peculiar facts and circumstances, Hon'ble Division Bench in *Avdesh Panday's* case has observed in paragraph no. 7 as under.

"In our opinion, Sub-section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long as a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting-of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or the generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit".

- 29.0 This Forum therefore do not have any hesitation to observe that the decision handed down by the Hon'ble Bombay High Court in a case of **M/s Rototex Polyester (supra)** has been entirely in respect of when the electricity charges to be recovered from the consumer becomes "*first due*". While the Division Bench of the Bombay High Court has observed in a case of **Avdesh Panday (supra)** about the *special mechanism* provided by the legislature u/s 56(2) of the E.A. 2003 to exercise *coercive process* for recovery commence from such electricity charges becomes *first due*. To conclude on this aspect in considered view of this Forum both these judgments are running in tandem and complementing each other. Now in respect of the controversy on our hand in the instant complaint admittedly the meter provided to the complainant was stopped one for a period from 24/10/2009 to 26/12/2009. Therefore for recovering the electricity charges of Rs. 6,00,766.44 for the said period, the Distribution Licensee proceeded to debit the said amount in the complainant's bill for the month of November, 2012.
- 30.0 In consider view of this Forum therefore such sum of electricity consumption for a period when the meter was stopped becomes *first due* when such sum has been quantified and as such a valid bill was informed to the complainant in the month of November, 2012. The limitation of two years therefore needs to be reckoned from the month of November, 2012 as envisaged under subsection (2) of section 56 of E.A. 2003. It is therefore blatantly manifest that the claim amount of electricity charges of Rs. 6,00,766.44 cannot be said be to "*time barred*" as alleged by the complainant.

- 31.0 Last but not the least, controversy remains for consideration of this Forum has been whether the Respondent BEST Undertaking has proceeded to amend its bill in respect of *stopped meter* as provided under Regulation no. 15.4.1 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005. In this connexion this Forum observe that in respect of *stopped meter* second proviso provided under 15.4.1 *inter-alia* provides that the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of 3 months based on the average meter consumption for 12 months immediately preceding the 3 months prior to the month in which the billing is contemplated.
- 32.0 However, admittedly while working out the amended bill for a period for which the meter was stopped recording, the Respondent BEST Undertaking has proceeded to take the average of immediately preceding period of 12 months. Obviously therefore, such amended electricity charges worked out by the Respondent BEST Undertaking has not been in compliance and conformity with the provision provided under the second proviso under Regulation 15.4.1. Therefore, this Forum finds a warrant to direct the Respondent BEST Undertaking to work out the amended bill in regard to "*stopped meter*" in compliance to provision provided under second proviso under 15.4.1 as observed above. To this extent only we find the complaint being liable to be allowed.
- 33.0 In the aforesaid observation and discussion this Forum proceeds to pass the following order.

ORDER

1. The complaint no. N-EA-182-2012 stands partly allowed to the extent of amending the bill in compliance of a second proviso provided under Regulation 15.4.1 of MERC(Electricity Supply Code and Other Conditions of Supply) Regulation, 2005. Thus far and no further.
2. The Respondent BEST Undertaking accordingly directed to serve a fresh electricity bill on the complainant within a period of one month from this date and further directed the complainant to pay the same within a period of 15 days from the receipt of the same.
3. The Respondent BEST Undertaking directed to report the compliance of this order within a period of one month therefrom.
4. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman