

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-83-09 dt . 14/09/2009

Shri. Samir Jitendra Javeri ... Complainant

V/S

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

Present

Quorum

1. Shri. R.U.Ingule, Chairman
2. Shri. S. P. Goswami, Member
3. Smt. Varsha V. Raut, Member

On behalf of the Complainant

1. Shri. Jitendra K. Javari
2. Shri. Rajesh Dave

On behalf of the Respondent

1. Shri. T.D. Jadhav, Supdt. `D' ward
2. Shri. G.D. Ubhalkar, AOCC `D' ward
3. Shri. P.P. Vichare, OACC `D' ward

Date of Hearing: 17/11/2009

Date of Order : 22/12/2009

Judgment by Shri. R.U.Ingule, Chairman

Shri. Samir Jitendra Javeri, 72, "Panorama" (North East), 7th Floor, 203, Walkeshwar Road, Mumbai – 400 006 has come before forum for his grievances against defective meter amendment claim of Rs.25258/- in A/c No. 461-369-033.

Complainant's contention in Brief are as under

1. Complainant Shri. Samir Jitendra Javeri, 72, "Panorama" (North East), 7th Floor, 203, Walkeshwar Road, Mumbai – 400 006 has approached to Internal Grievance Redressal Cell of respondent (BEST) on 02.07.2009 regarding his grievances against his meter declared defective and amendment claim raised by the respondent for the same.
2. Respondent vide letter dt. 21.08.2009 informed to the complainant that they have revised the earlier claim of Rs.73767.27 (amendment period 01.06.2000 to 28.06.2001) to Rs.25258.00 (for six months).
3. Unsatisfied by the reply of respondents IGR Cell, complainant approached CGR Forum in Schedule 'A' format on 09.09.09 and requested to set aside the amendment claim of Rs. 25258/-.
4. As per complainant he had purchased the flat at the above premises on 13/7/2000. From 15/5/2000 to 12/7/2000 this flat was vacant as lease agreement of earlier occupant to whom the flat was leased by the owner was terminated on 15/5/2000. After purchase of the flat he started the renovation work of the flat in August 2000 & the same was completed in October 2001. During the period from 1/6/2000 to 30/6/2001 complainant continued to stay at 'Adarsh' flat no. 10, Walkeshwar. During the period from July 2001 to Oct-2001 he was staying at other place i.e. Asmita building, Walkeshwar. In this regard he has submitted the certificate from the Secretary, Urmi Co-op.

Society, stating that he was staying in the lease flat in Asmita no. 1 Building during the period 29/6/2001 to 30/10/2001. According to the complainant as he was staying at other place during the disputed period there was negligible consumption of electricity recorded by the meter. Hence, the meter was not defective & the interpretation of the respondent that the meter was sticking is incorrect. Further, according to the complainant, the base of average consumption considered for amending the bills for the disputed period is not appropriate & is not agreeable to him. According to him after replacement of meter there was no rise in consumption. The amendment claim raised by the respondent after a period of 3 years & is not as per the prevailing rules & regulations. Hence, he has requested forum that the amendment claim raised by the respondent be set aside.

In counter Respondent, BEST Undertaking has submitted its contention inter alia as under

5. As per respondent, during investigation carried out on 8/11/2000 old meter no. L963524 of the complainant was found sticking (Exhibit-A). Hence it was replaced by meter no. M013557 on 28/6/2001 (Exhibit-B). Further, as there was drop in the consumption from 1/6/2000 onwards the bills were amended during the period from 1/6/2000 to 28/6/2001 on the basis of an average 1259 u.p.m (Exhibit-C) recorded during the period from 1/6/1999 to 1/6/2000. The claim amount worked out to Rs.73,767.27 which was intimated to the consumer vide letter dated 11/8/2004 (Exhibit-D).
6. Respondent transferred the meter on consumer's name on 16/11/2000 as per Req. No. 319 dated 2/11/2000.
7. As per respondent, according to the then procedure order 128 the consumer was charged 4400 units on the average basis during the period from 1/8/2000 to 4/12/2000 (Exhibit-E) & the same amount was refunded in January, 2001 under code 68 (Exhibit-F).
8. As consumer had disputed the claim amount the case was referred to respondent's in-house Review Sub Committee for their decision on 20/9/2004 (Exhibit-G) by the respondent. However, the file received back without any decision in the year July, 2007.
9. As per respondent, Administrative Order 331 & 332 dated 12/6/2007 was issued to follow the procedure in respect of amending / reviewing bills, based

on the Electricity Act, 2003 the claim is revised for six month for Rs.25,257.93 (Exhibit-H) for which management approval was obtained (Exhibit-I) & vide letter dated 25/6/2009 the consumer was requested to pay the revised claim amount.

10. Respondent has prayed to the Hon'ble Forum to dismiss the case & requested to direct the applicant to pay the revised amendment claim of Rs.25,258.00.

Reasons

11. We have heard the Complainant and the Respondent at length. Perused papers.
12. In the matter on our hand, the Complainant has been challenging the claim made by the Respondent licensee of an amount of Rs.25,258/-, as the meter was found sticking and as such it was defective. The Complainant allegedly came to be under charged during the period 1/6/2000 onwards. Accordingly, the Respondent licensee by serving a letter dated 21/8/2009 directed the Complainant to pay the said electricity consumption revised charges for 6 months of Rs.25,258/-, which has been challenged before this Forum being improper and illegal.
13. In the instant Complaint the averments made by the Complainant inter alia are that, the premises under consideration wherein the electric meter was provided was purchased by the Complainant on 13/7/2000 and was in his possession from this date. Thereafter the Complainant had undertaken a heavy repair and renovation work in the said premises during a period from 1/8/2000 till Oct-2001, costing him more than Rs.57 Lacs. The Complainant further averse that he was staying in "Adarsh" Flat no.10, Walkeshwar, Mumbai-400 006 and sold the same in 29/6/2001. Thereafter the Complainant stayed in a close by Asmita building during a period from July-2001 to Oct-2001.
14. In short it is the contention of the Complainant that during a period under consideration from 1/6/2000 to 30/6/2001 he has not stayed in the premises under consideration as a heavy work of repair and renovation was going on in the same. Therefore, there was not any quantity of electricity consumption by the Complainant, as assumed by the Respondent licensee for claiming an amount of Rs.25,258/- from him.

15. We observe that it is not in dispute that the electric meter provided to the premises under consideration came to be replaced on 28/6/2001. In this connexion, the Respondent licensee contends that during an investigation carried out on 8/11/2000 the old meter no. L963524 was found sticking. Therefore there was a requirement to replace the same with a new meter no. M013557 on 28/6/2001. In counter the Complainant contends that the said electric meter which has been replaced on 28/6/2001 by the Respondent licensee, was not defective at all.
16. At this juncture we find it appropriate to advert to a statutory provision provided u/s 26 of the Indian Electricity Act, 1910 in regard to "Meters". Therein a significant provision has been provided in respect of dispute pertaining to correctness of meter under sub section (6) of section 26. Therein it has been inter alia provided that whether any difference or dispute arises as to whether any meter referred to in sub section (1) of section 26, is correct or not, the matter needs to be decided by any electrical inspector, upon the application of the either party, for deciding whether such meter has been, in the opinion of such inspector, ceased to be correct. Such inspector shall estimate the amount of energy supplied to the consumer as provided under said sub section (6).
17. Pertinent to observe that as provided under sub section (6) of section 26, it was obligatory on the part of the Complainant to prefer an application to the electrical inspector, when he intended to raise a dispute that the old electric meter was not defective as alleged by the Respondent licensee. Admittedly the Complainant has not approached the electrical inspector by filing any application before him at the relevant time as envisaged under section 26 (6) of the Indian Electricity Act, 1910. Therefore, in our considered view now it cannot lie in the mouth of him to contend that the old electric meter no. L963524 was not sticking at all.
18. Now we proceed to assess whether there has been any illegality or any improperness in the revised claim of Rs.25,258/- made by the respondent licensee against the Complainant on account of the less reading being shown by the defective meter. In this context we find that during investigation carried out on 8/11/2000 the old meter no. L963524 was found sticking and as such not recording the correct consumption of electricity supplied. The said meter was replaced with a new one on 28/6/2001. Therefore for making amendment in the electric bill to be levied on the Complainant, the period taken into consideration by the Respondent licensee, has been 1/6/2000 to 28/6/2001. To reiterate, the meter was replaced on 28/6/2001. For the calculation of the unit that must have been consumed by the Complainant, the base period taken into consideration by the Respondent has been of a one year i.e. from 1/6/1999 to 1/6/2000. Therefore, an average unit worked out by the Respondent has been 1259 per month. The amount to be claimed for the same comes to Rs.73,767.27.

19. Thereafter we find that as the complainant has disputed the said electricity charges amount of Rs.73,767.27 intimated on 11/8/2004, the matter was reviewed by the authority of the respondent and proceeded to revise the said consumption charges only for 6 months for Rs.25,258 directing the Complainant to pay the same.
20. While defending the electricity consumption charges claimed by the Respondent of Rs.25,258, the Complainant has contended about a heavy repair and renovation work being carried out from 1/8/2000 to Oct-2001, while the period under consideration for claiming electricity charges has been 1/6/2000 to 28/6/2001. The Complainant, therefore, contends that during the concerned period the said premises was not at all occupied by him for his residence. Therefore, the electricity consumption charges revised for 6 months of Rs.25,258.00, are totally baseless and improper.
21. We, however, find ourselves unable to uphold the said plea raised by the Complainant for a simple reason that as submitted by him a heavy repair and renovation work was going on by the architect in the said premises during a period from 1/8/2000 to Oct-2001 costing him more than Rs. 57 Lacs. Even on accepting the said plea submitted by the Complainant it is *per se* evident that there was a consumption of electricity by the Complainant for undertaking such *heavy repairs and renovation work* costing him more than Rs.57 Lacs. In our considered view the said huge amount and a considerable period of 14 months consumed for the said repair and renovation, speaks a volume about the consumption of electricity on a higher side on the part of the Complainant.
22. In regard to working out of revised electricity consumption charges for 6 months of Rs.25,258/- at the cost of repetition, we observe that the new meter has been installed on 28/6/2001 as the old meter was found sticking and recording less electricity consumption units. Therefore, the amended period of 6 months preceding 28/6/2001 has been taken into consideration by the Respondent licensee to charge the appropriate electricity consumption by the Complainant. Pertinent to note at this juncture that initially the amended period taken into consideration by the Respondent was of a one year proceeding 28/6/2001 which has been later on reduced to 6 months by the review committee considering the representation made by the Complainant. For calculating the electricity consumption charges to be paid by the Complainant, we find the Respondent has drawn average unit per month of 1024, only for which the base period taken into consideration has been 3/10/2001 to 3/10/2002. In our considered view, we do not find any arbitrariness, improperness or illegality in charging Rs.25,258/- on the part of the Complainant on account of the electric meter provided to the Complainant being found defective and was required to be replaced on 28/6/2001.

23. An attempt has been made by the Complainant to contend that the claim made by the Respondent licensee has been time barred. In this context the Complainant could not bring to our notice any provision provided under the Indian Electricity Act, 1910 to support his contention. We may further observe at this juncture that the amount of electricity consumption charges does not get vitiated or contaminated merely because the management of the Respondent undertaking proceeded to revise its claim considering the representation made by Complainant. Taking the help of provisions provided under Indian Electricity Act, 2003 and Administrative order 331 & 332 dated 12/06/2007 issued there under, the Respondent Licensee has reduced the claim of electricity charges to be paid by the Complainant. In our considered view, as the same does not cause any prejudice to the Complainant, therefore, it is unwarranted and unjustified on the part of the Complainant to raise any grievance on this counts.
24. Admittedly the meter provided to the complainant was defective and was recording incorrect and less consumption of electricity. As such there was every warrant and justification available to the Respondent to work out the appropriate electric consumption charges required to be paid by the Complainant. To reiterate, there has not been any iota of substance in the contentions raised by Complainant that the said premises was unoccupied, as we find admittedly a very heavy repair and renovation work has been carried out in the said premises for almost 14 months by the Complainant therein.
25. The Complainant further contends that after installation of a new meter on 28/6/2001 thereafter some electric bills showed the consumption of electricity being nil. In this regard the Respondent licensee has in counter submitted that on account of a consumption of some period of time taking place for communication of information about installation of such new meter to the concerned department issuing the bills, such bills showing nil consumption are issued to the Consumer. We find the said contention raised by the Respondent being justified one, taking into consideration a huge number of consumers in lacs, the Respondent Licensee is required to serve with by running its operation through various departments.
26. In the view of the aforesaid, observations and discussion, we do not find any arbitrariness, improperness or illegality in claiming an amount of electricity consumption charges of Rs.25,258/-, as directed to the Complainant by the Respondent Licensee vide its letter dated 21st August, 2009. In the net result we find no merit in the complaint preferred before this Forum by the Complainant and the same therefore deserve to be dismissed.

Dissenting Judgement by Mrs. Varsha Raut, Member

27. Respondent carried out the investigations of the meter on 8.11.2000, and replaced it after 7 months in the month of June 2001.
28. As per Sec 26 (6) of Electricity Act 1910 "Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector".
29. I would like to rely on the Hon'ble Supreme Court's orders in various cases which are as follows:
30. In Belwal Spinning Mills(1997)6 SCC 740 case it is said that" Any unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of the meter".
31. In BEST v/s. Laffans case 2005 SCCL.com 307, it is said that "According to the proviso appended to sub-section (4) of Section 26, the licensee cannot take off or remove any such meter as to which difference or dispute of the nature described in sub-section(6) has arisen until the matter has been determined by the Electrical Inspector". It further says that "In the present case, the meters said to be incorrect have been removed and replaced by the appellant. Admittedly, no dispute has been raised and referred to the Electrical Inspector. The most material evidence being the meter, it has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission, the act of removing the meter and the omission to make a reference to the Electrical Inspector."
32. It also says further that "The meter is alleged by the appellant to be not correct and yet the appellant has not made a reference to the Electrical Inspector under Section26 (6). The appellant cannot now be allowed to raise an additional demand over and above the demand raised through the bills which were issued for that period. The right to raise additional bills stands lost by the appellant for its failure to proceed in accordance with Section 26(6) of the Electricity Act 1910."
33. In M.P.E.B Vs. Basantibai 1988SCR (1)890 it has stated that "In our view, the view taken about the scope of section 26(6)in the decisions cited above are correct. The dispute relates to whether the meter is correct one or it is faulty not recording the actual energy. So this dispute squarely falls within

the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute”.

34. Thus, in my opinion it squarely falls in the ambit of Sec 26 (6) of Electricity Act 1910. The facts in this case are similar to that found in BEST v/s. Laffans case. I am therefore of the considered opinion that although Sec. 26(6) permits the licensee to recover the bills for the disputed period on the basis of last 6 months prior to the dispute, the very fact that the Respondent removed the meter without referring the matter to the Electrical Inspector, the Respondent cannot be allowed to take advantage of its own wrong, as observed by the Supreme Court in the said case. It thus prohibits Respondent to ask for this disputed meter amendment claim where meter was not shown to the statutory authority which is Electrical Inspector under Section 26(6) and claim was not made as per the direction of him.
35. I therefore order that the claim of the Respondent of Rs 25,258/- is not tenable in law for the aforesaid reasons and is hence hereby set aside.
36. For the forgoing reasons we proceed to pass the following order by virtue of majority's view.

ORDER

1. The complaint no. S-D-83-09 stands dismissed.
2. Copies be given to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member