

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-G(N)-104-2010 dt . 20/8/2010

Shri R. J. UttamchandaniComplainant

V/S

B.E.S. & T. UndertakingRespondent

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 Shri. R J Uttamchandani
(on 27-09-2010)

On behalf of the Complainant 1. Shri. R J Uttamchandani
(on 12-10-2010)

On behalf of the Respondent 1. Shri.R M Karande, DyECC G/N
(on 27-09-2010) 2. Shri.P.S.Deshpande, AOCC G/N

On behalf of the Respondent 1. Shri.R M Karande, DyECC G/N
(on 12-10-2010) 2. Shri.P.S.Deshpande, AOCC G/N

Date of Hearing: 27-09-2010 & 12-10-2010

Date of Order : 19/10/2010

Judgment by Shri. R.U.Ingule, Chairman

Shri R. J. Uttamchandani Ground floor A-2, La-Salette Bldg, La-Rose CHS, 356 Sitladevi Temple Road, Mahim, Mumbai - 400 016, approached the CGR Forum for his Grievance regarding Dispute against demand of D.P & Interest charges pertaining to A/c No. 634-131-119*4. He has requested for refund / stop levying any interest & DP charges as far levied, with interest at 15% on the

amount so far collected, requested to make payment of interest on deposits, requested to pass interim order to withdraw the threats of disconnection of electric supply and check the correctness of meter.

Complainant's contention in brief are as under

1. Complainant Shri. R. J. Uttamchandani, has approached the Internal Grievance Redressal Cell of respondent BEST on 16/6/2010 for his Grievance regarding dispute against demand of D.P & Interest charges pertaining to A/c No. 634-131-119*4.
2. In response to his grievance, the IGR Cell of the Respondent vide letter dtd. 13/7/2010 has informed that as per section 15.5.4 of MERC (Electric Supply Code & other conditions of supply), Regulations 2005 licensee is entitled to levy delayed payment charges & interest on arrears as per the tariff order passed by the Commission.
3. Unsatisfied by the reply of respondent's IGR Cell, complainant approached CGR Forum in Schedule 'A' format on 6/8/2010 for his grievance against dispute regarding demand of D.P & Interest charges pertaining to A/c No. 634-131-119*4.
4. Complainant states that respondent is demanding & collecting interest charges at 24% (cumulative) DP charges right from March 2005 till July, 2010 on their bills which was held up not due to his default but solely due to the excessive consumption of units shown in bills solely because of defective meters. On lodging complaint / petition with CGRF on 18/12/2007, against these excessive consumption of units resulting in inflated bills, CGRF passed an order on 22/2/2008, wherein under clause 2 of the said order it directed that "if the meter is found working within permissible limit the arrears (amount not mentioned) for the consumer may be recovered in 6 equal monthly installments". However, under clause 3 it also directed that "if the meter is found working otherwise then the consumer should be charged 120 Kwh per month for the period from the date 10/12/2005."
5. Respondent found the prevalent meter defective and gave rebate of Rs.1,825.45 in the bill for January 2009, also mentioning therein that the meter was found fast. Thus it is clear that the excessive consumption of units as complained by him were due to defective meter and hence the bills were held up. However, respondent has been charging interest at 24% (cumulative) and DP charges from March, 2005 till date and even threatening periodically every 2/3 months of cutting of electricity supply if the arrears (which in fact are only interest & DP charges) are not paid by him. This amounts to Dadagiri of Mafia type who believe in 'Pay or we will kill you'.
6. It is interesting to note that no where CGRF had mentioned anything about payment of interest & DP charges as demanded by nor respondent's officials in proceedings made any mention of the same. So how can the respondent demand and get these charges when the order of CGRF do not

mention the same. It is a well known fact of law that interest & other charges can be claimed by party to the case only if the same are specifically mentioned in the order of any court and any party to the dispute demanding any such interest & other charges without mention in the order is violating the said order of the court (CGRF) and the court is bound to take action against the party violating the said order. However, inspite of his repeated complaints to CGRF against respondent for the said illegal demands of interest & DP charges, no action has been taken by CGRF against the respondent for this illegal demand.

7. As per MERC rules / regulations he took up this matter in the format/(Annexure 'C') as per MERC rules / regulations with Internal Grievance Redressal System of respondent on 16th June, 2010 and literary there was no response from the respondent except a letter dtd. 13th July, 2010 without responding to my said complaint, but repeating the contents of letter dtd. 7th June, 2010, thus not redressing his grievances: hence this application to the Forum.
8. It is important to note since respondent complied with clause 3 of the CGRF order dtd. 22/2/2008, clause 2 of the CGRF order this becomes nullified & invalid, because the said clause is conditional on the meter working within permissible limits. Also, the said clause does not mention the amount of arrears whereas it is mandatory for any party to claim the arrears the amount has to be mentioned in the order which the CGRF did not mention and hence cannot be quantified. However, it is pertinent to note that inspite of clause 2 about arrears being nullified by clause 3 of the order ? He paid respondent a sum of total Rs.9,364.76 right from the date of order till June, 2010 the latest bill for which was received. Before in the months of April, May & June he had sent 3 cheques to the respondent towards their monthly dues for unit consumption which respondent returned, first in May then again in June and finally encashed the cheque; surprisingly respondent returned these cheques without assigning any reason whatsoever. Thus it is clear their intention was to build up arrears, charge/demand interest & DP charges on these bills towards arrears. However, inspite of clause 2 being nullified by clause 3 of the CGRF order dtd. 22/2/2008, respondent has been charging him violating the said order since to counter his charge of violation of CGRF order as per clause 3 of the said order, respondent resorted to make counter charge of violation, when in fact he had not violated any clause of the said order, having paid the amount of more than Rs.9,000/- after the date of order, which the respondent have not denied in any communication of theirs.
9. Further, since respondent quoted section 56(1) of Indian Electricity Act, 2003 for cutting of his supply in case of so-called illegal arrears demanded by respondent. He asked respondent to quote the relevant section of Indian Electricity Act, 2003 which entitled respondent to collect Interest at 24% (cumulative) & DP charges on arrears (illegal) as the bills were held up not due to his default but because of dispute of excess consumption of units which complaint of him was proved to be true as respondent paid him rebate as per CGRF order due to faulty

meter. In spite of his repeated reminders, respondent had not so far replied to him about the section of Indian Electricity Act, 2003 under which respondent can claim the right to demand and get interest & DP charges that too not specifically demanded by respondent and also not mentioned in the order of the CGRF.

10. Respondent have been quoting & relying on latest MERC order dt. 15/6/2009 in case no. 118 which in fact is only the petition filed by respondent themselves with MERC for approving their Annual Performance Review for the year 2008-09 and determination of ARR & Tariff for the year 2009-10. Respondent also sent him latest tariff booklet issued by respondent only for 1/6/2009 to 31/3/2010 but not for earlier years. As demanded by him to justify respondent's demand for illegal interest & DP charges and respondent have yet to respond. This shows respondent were relying on bogus rules made by the respondent & also MERC order having no relevance to his demand of withdrawal of these charges. Surprisingly, in respondent's reply dtd. 13/7/2010 in reply to his complaint in Annexure.III, the subject matter has been mentioned in respondent letter "Request to withdraw DP & interest" whereas in his complaint he had not made any such request since respondent's demand is illegal and it is essentially his complaint against this demand & not requested for withdrawal of DP & interest. Thus twisted the subject matter of his complaint to suit respondent's requirement to show he had accepted those charges & only made a request to withdraw the same. What subterfuge & arrogance of bureaucrat power and in fact when one of his friend's son went to deliver letter to respondent, their one Mr. Deshpande told him blatantly that their's is a Government organisation and they can demand & get what they want even illegally.
11. Respondent is making illegal demands of interest & DP charges, respondent have since last 5/6 years have not given him any rebate for the interest on his two deposits of Rs.65/- and Rs.280/- paid to respondent. Why ? is this not unfair practice & part of Mafia Raj ?
12. Complainant Prayer to the Forum
 - 12.1 Respondent be directed to refund/stop levying any interest & DP charges so far levied, with interest at 15% on the amount collected so far towards these illegal charges, total amount of interest & DP charges be refunded about Rs.3000/- till date & further if levied.
 - 12.2 Respondent be directed to stop threatening to cut off electricity supply with the demand of above illegal charges.
 - 12.3 Respondent be directed to make payment of interest on his two deposits of Rs.65/- & Rs.280/- alongwith interest at 15% on the total amount so far accumulated towards this interest;
 - 12.4 Respondent be directed to stop violating CGRF order dtd. 22/2/2008 forthwith and stop levying bogus allegation of violation of CGRF order by

complainant, without respondent quoting the relevant section of order violated by the complainant.

- 12.5 Respondent be directed further to explain the reason for their mentioning in their letter dtd. 13/7/2010 in the subject "Request to withdraw DP & interest" instead of treating his complaint under Annexure 'C' as per MERC rules & regulations;
- 12.6 Cost & compensation in terms of clause 8(3) & (4) of MERC Rs.500/-
- 12.7 Check the meter no. H083813 for irregular figures of consumption every month.
13. Since respondent has threatened to cut off supply, interim order in term of clause 8.3 of MERC Rs may kindly be issued by CGRF to respondent to withdraw such threats forthwith.
14. Any other relief as deemed fit by CGRF in the best interest of Justice.
15. Complaint also submitted rejoinders to the CGRF members & the Respondent at the time of hearing on 27/09/10 & 12/10/10 & requested CGR Forum to consider it as his submission during the hearing.

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

16. The complaint has admitted in para No.6 that he held up the payments due to excessive consumption recorded by meter. Since complainant was using electricity, he was liable to pay the bills and claim rebate on excess units. The Undertaking always considers high bill complaints and revises the bills whenever meter is found to be defective. In the instant case the consumer is given the credit of Rs. 1825.45 including D P charges of Rs. 322.17 for the period 10-12-2005 to 12-12-2008 charging the consumer for 120 units per month, as per the order of CGRF N-G(N)-45-07 dated 18.12.2007.
17. The complainant is liable to pay delayed payment charges and interest on arrears as admissible by the tariff schedule approved by MERC. This was explained to the consumer vide out letter dated 7.6.2000 regarding various statutory provisions for charging delayed payment charges and interest on arrears.

Therefore his allegations in this regard are unfounded and misleading.

18. The Undertaking is paying interest @ 6% p.a. to the consumers. Further the interest is credited in the electricity bills of February Month of each year under code 71. Accordingly the interest of Rs. 16.80 for the year 2009 on the security deposit of Rs. 280/- is adjusted in the electric bill of February 2010.

The security deposit of Rs.60 is in the name of old consumer Smt. Ishwaribai Harkishandas. As the amount pertains to the another consumer the interest on security deposit of old consumer cannot be given to Shri. R. J. Uttamchandani.

19. We have carried out checking on 01-09-2010 for the Meter no. H083813 of A/c no. 634-131-019 and it is found working.
20. In view of the above consumer may be directed to pay the arrears of Rs. 2855 up to bill period ending August 2010.

REASONS

21. We have heard the complainant in person and representatives S/Shri Karande, DyECC(G/N), Deshpande, AOCC(G/N) for the respondent BEST Undertaking at length. Perused papers.
22. The present complaint has been off shoot of the complaint no. N-G(N)-45-07 filed by the present complainant and decided by this Forum on 22/2/2008. A bear perusal of the order passed by this Forum manifest that the respondent BEST Undertaking was directed to charge the present complainant 120kWH per month for the period from the date viz 10/12/2005, in the event the meter allotted to the complainant found to be not working correctly. We may observe at the juncture that as admitted by the BEST Undertaking, in compliance to the said order dtd. 22/2/2008 passed by this Forum, the meter no. G035405 was tested in presence of the complainant on 18/8/2008 and found the same 3.11% fast. Obviously, therefore, as directed by this Forum as the meter was not 'correct' one therefore, respondent BEST Undertaking has charged 120 units per month to the complainant for the period from 10/12/2005 to 12/12/2008. The credit worked out by the respondent BEST Undertaking for the said period, has been Rs. 1825.45, to be adjusted in the bills to be served on the complainant.
23. We find that the respondent BEST Undertaking in its written statement presented before us has admitted about giving credit of Rs. 1825.45 including only delayed payment (DP) charges of Rs. 322.17 for the period 10/12/2005 to 12/12/2008. Admittedly the respondent BEST Undertaking has charged complainant for delayed payment, as well as imposed on him the interest also. In connexion with levying interest on the complainant, we observe that when the meter allotted to the complainant was found being "incorrect" then alongwith the DP charges respondent BEST Undertaking ought to have waived imposing interest on the complainant. We therefore hold that, it is highly unsustainable & improper on the part of the respondent BEST Undertaking not to waive of interest amount on the arrears of the electricity charges. We further observe that the said unjust and improper act on the part of the respondent BEST Undertaking has been continued till date. We therefore, proceed to hold that as prayed by the complainant the respondent BEST Undertaking is required to be directed to waive the DP charges and interest charges on the arrears of the electricity charges to be paid by the complainant.

24. The complainant has strenuously urged before this Forum that the meter has been transferred from erstwhile consumer Smt. Iswarabai Harkishndas to the complainant, therefore the security deposit of Rs. 60/- remitted by the old consumer Smt. Iswarabai Harkishndas ought to have been transferred to the complainant alongwith payment of interest thereupon. In this regard, in counter, the respondent BEST Undertaking has submitted that the security deposit of Rs. 60/- has been remitted by old customer Smt. Iswarabai Harkishandas. Therefore, she would be entitled to get the said security deposit alongwith interest thereupon and not the complainant. We uphold the said contentions raised by the respondent BEST Undertaking. We further observe that, in regard to security deposit remitted by the complainant he has been accordingly paid the interest thereupon at the rate prevailing and in operation at the relevant time. Accordingly, we find the entries in the ledger maintained by the respondent BEST Undertaking of the complainant. We may observe at this juncture that, the complainant has claimed payment of interest on the security deposit at the rate of 15%. We however, find no justification and basis to grant the said prayer made by the complainant before this Forum.
25. The complainant has also vehemently resisted the act of the respondent BEST Undertaking of imposing delayed payment charges and interest on the arrears of electricity charges being not supported by any provisions of law. In this context, we observe that, the respondent BEST Undertaking has rightly submitted before this Forum that by virtue of statutory provisions provided under Section 50 and Section 181(2) (ZP) of the Electricity Act 2003, the Maharashtra Electricity Regulatory Commission has framed and notified the Maharashtra Electricity Regulatory Commission (MERC) (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. Therein Regulation No. 15.5.4 empowers the distribution licensee like present respondent, to levy a delayed payment charges and interest on arrears in accordance with relevant orders of the Commission on the consumers who neglects to pay the bills.
26. We may further observe that the Maharashtra State Regulatory Commission, has been constituted under Section 82 of the Electricity Act 2003. Explicitly therefore, the State Regulation Commission has been delegated with the powers to frame the Electricity Supply Code and other Conditions of Supply as observed above. We may further observed that as held by the Hon'ble Supreme Court in case of M/s. Hyderabad Vanaspati Limited V/s Andhra Pradesh state Electricity Board (1998) (2 SCR 620) the terms and conditions for supply of electricity are statutory in nature. This Forum, therefore, without any hesitation hold that, the regulations framed by the delegated authority viz. the Regulatory Commission of this state are having the statutory force. To conclude on this point, we hold that, it is well within the powers of the respondent BEST Undertaking to proceed to impose and levy delayed payment charges and interest charges on the consumer who fails to pay the electricity bills. We, therefore, find no merit in the arguments advanced by the complainant on this count.

27. The complainant has also raised a grievance that the present meter no. H083813 allotted to him being not correct. Therefore, requested to check the same. In this regard we observe that the complainant is at liberty to approach the respondent BEST Undertaking with such prayer and it is for the respondent BEST Undertaking to check the meter by giving an intimation to the complainant in advance for remaining present while testing the meter.
28. In the aforesaid observations and discussions, we proceed to pass the following order.

ORDER

1. The complainant no. N-G(N)-104-2010 dtd. 20/8/2010 stand partly allowed.
2. The respondent BEST Undertaking has been directed to waive the delayed payment charges and interest from 10-12-2005 till the date of receipt of this order by the complainant, on the arrears of electricity charges to be paid by the complainant and to work out the credit accordingly for giving benefit of the same to the complainant.
3. Copies to be given to both the parties.

(Smt. Varsha V. Raut)
Member

(Shri.S.P.Goswami)
Member

(Shri. R.U. Ingule)
Chairman