

On behalf of the Respondent 1. Shri. D.S. Deshmukh, AEEA
2. Smt. Prajakta S. Kekane, AOEA

Date of Hearing: 10/09/2009

Date of Order : 29/10/2009

Judgment by Shri. S.P.Goswami, Chairman

M/s. Indage Engineering Pvt. Ltd, Indage House, Dr. A.B. Road, Worli, Mumbai – 400 018, has come before forum for his grievances regarding waiver of Outstanding amount A/c No. 200-010-637.

Brief history of the case

- 1.0 Meter no. P000277 was installed at above premises on 9/2/2002. On 15/1/2002 this meter was found stopped (no display) while inspection. As per ledger readings complainant was charged on average basis (3500 units/month) from Aug-2000 to Jan-2002.

- 2.0 Vide letter dtd. 22/1/2002 respondent informed the complainant the defect observed & informed that their meter will be replaced on the same day. Respondent requested complainant to remain present at the time of replacement of meter. Further it was informed that for the interim period the complainant will be charged on average basis & advised that his electricity bills will be amended suitably. This letter of respondent was acknowledged by the tenant of the complainant (UTI Securities).

- 3.0 On 22/1/2002 M/s. UTI Securities gave an undertaking to the respondent that he will pay the amended bills whenever called upon. The complainant had acknowledged the test report dtd. 22/1/2002.

4.0 Vide letter dtd. 21/3/2003 M/s. UTI informed that they have vacated the premises of complainant on 31/1/2002. Vide this letter the said firm had shown willingness to pay the differential amount for the period when they were at Indage House.

5.0 Vide letter dtd. 24/4/2008 respondent informed complainant that their electricity bills were amended for the period 24/10/2001 to 22/1/2002. The amendment claim amount is Rs.2,74,418.69. Respondent informed the complainant that the said claim amount will be included in the A/c no. 200-010-637 & requested him to pay the same.

6.0 On 1/7/2008 complainant approached Internal Grievance Cell of respondent in Annexure C format. In the said complaint he has requested the respondent to withdraw the claim amount on the following grounds:

6.1 As per Electricity Act, 2003 & MERC supply code the claim is time bar & not recoverable.

6.2 Test report of Meter no. P000277 was not shown to him.

6.3 After 6 years he cannot agree with this claim.

7.0 On 1/8/2008 respondent informed the complainant that the claim amount is as per regulation & hence in order.

8.0 Unsatisfied by the reply of the respondent dated 1/8/2008 complainant approached CGR Forum in schedule 'A' format on 24/6/2009.

**Complainant by his written application and during
Hearing stated the following**

- 1.0 Complainant states that the arrears of Rs.3,49,313/- (Rupees Three Lacs Forty Nine Thousand Three Hundred Thirteen Only) shown in the bill of May 2008 for the amended period 24/10/2001 to 22/1/2002 be fully waived.
- 2.0 He said that 8 years back UTI was their tenant and they were using electricity and were paying the bill. They left us on 31/1/2002 now if we ask them to pay, now they will not pay UTI-64 is closed and also UTI Bank is closed.

During the hearing complainant states that :

- 3.0 He had already paid all electricity bills preferred by respondent during the period 1/11/2001 to 01/02/2002. The details of bill payment are as under :-

Bill period	Amount	Receipt No. & Date
01/11/2001 to 01/12/2001	37,329	SY 9251 dt 01/02/2002
01/12/2001 to 01/01/2002	35,580	SY 7710 dt 02/03/2002
01/01/2002 to 01/02/2002	18,981	000030A dt 03/04/2002

This supplementary amendment bill is overlapping the Billing period. Respondent as a Licensee of Electric Supply, cannot demand twice for same period, on same meter.

- 3.1 He had not agreed to pay any differential amount. The letter dated 26/02/2003 was given by M/s. UTI Securities exchange Ltd. without his consent and knowledge.
- 3.2 In the letter EA/Site Testing/defect/99 dtd 22/01/2002 respondent mentioned that complainant will be billed on the basis of average consumption. Accordingly, respondent has billed complainant @ 3500 units/month. Now, after 8 years respondent again amending the bill for the same period @ 14204 Kwh units and 7896 Rkvah units. The respondent calculated this average different? How can complainant trust on accuracy of meter no. P000 277? Why two times two different averages given i.e. on first time 3500 units & second time 14204 units?
- 3.3 In the letter EA/Dept 7/844/2008 dtd. 01/08/2008, respondent mentioned that complainant were billed on average basis 3500 units per month which was very less than the actual consumption. But, as per Exh-'A' has written 'NO DISPLAY, NO MRI' in place of last reading column. If, respondent has not noted the last reading then how can respondent prepared the amendment bill on actual consumption?

Further, in site testing report respondent has not mentioned accuracy of meter No. P000277 i.e. Percentage error etc. Complainant has full confidence that his meter was working fast, on comparing previous consumption pattern. Respondent should refund complainant excess amount paid in past. Hence, he does not agree with letter dated 1/8/2008.

- 3.4 He is not satisfied with the explanation of respondent officers hence, he is challenging against the claim in CGRF.

3.5 As per Electricity Act, 2003 and MERC supply code 2005 pro-claim amount of Rs.2,74,418.69 is wrong and not payable by him. The current bill of Rs.78,894/- which we have already paid. Hence no arrears unpaid.

3.6 Respondent cannot compare this case with BMC V/s. Yatish Sharma & Others. These two cases are totally different. In this case, complainant is challenging for 8 years delay for sending the Bill / Claim and accuracy of Meter no. P000277. In the site testing report of respondent meter no is erased and over written, and also percentage error is not written. Therefore, average taken for preparing the amendment is wrong. The report is also appears doubtful.

Further, 8 years back UTI was our tenant and they were using electricity and paying bill. They left our premises on 31/01/2002 now, if he is asks them to pay, they will not pay as the UTI-64 is closed and also UTI Bank is closed. This has occurred because of long delay from respondent i.e. 8 years approx. It is not our fault.

3.7 He had not given undertaking for making payment of amendment. Letter reference EA/Site Testing / defect/ 99 dtd. 22/1/2002 is acknowledged and signed by M/s. UTI Security exchange Ltd. They left our premises in 31/1/2002.

3.8 In this para, respondent accepted that meter no. P000277 was defective, but not mentioned percentage of error, either fast or slow etc. On verification of billing ledger it is observed that during the period from May 2000 to July 2000 respondent charged complainant excessively due to fast working of meter. Therefore, average taken for preparing the amendment is on higher side and wrong.

3.9 The amendment claim prepared after 8 years is not as per Electricity Act, 2003 and MERC supply code 2005. The site rest report is doubtful as the meter number over written, average taken on higher side. Hence, claim is not in order.

- 3.10 Respondent as a licensee of electric supply not checking the electric meter every three months.

- 3.11 He states that he is regular bill payer and honest consumer of respondent since last 35 years. Such type of illegal financial burden divert his mind to change the licensee of electric supply.

- 3.12 Complainant states that they are common entity cannot explain more in this case, and hope can understand his problem.

Considering the above facts, he prayed for justice under Electricity Act, 2003 and MERC supply code 2005 and give suitable instruction to respondent to withdraw the above said claim amount along with interest and delay payment charges levied thereon.

Respondent by his written statement and during Hearing stated the following:

- 1.0 The arrears' of Rs.3,49,313/- shown in the bill of May 2008 consists of Rs.2,74,418.69 (proclaim amount) + Rs.74,894/- (Current month bill) is payable by the complainant.

- 2.0 The law is well settled that the claim is said to be preferred only when a bill is issued to the complainant. It is also held by Hon'ble High Court of Bombay in the case of BMC V/s. Yatish Sharma & Others reported in AIR 2007, Bombay 73, that a sum can be said to be 'due' from complainant only after bill is served upon. In the instant case the payment becomes due when the bill is served upon the complainant. The bills are issued to the complainant on 1/5/2008. The complainant is therefore liable for payment. The contention of the consumer is therefore not sustainable.

- 4.0 Meter No. P 000277 was found defective and same was replaced on 22/1/2002. Also, complainant had acknowledged the above fact and signed an undertaking to pay the amended bill of the period.

- 5.0 The complainant was using the electricity through defective meter No. P 000277. During periods from 1/6/2000 to 22/1/2002 complainant was billed on average of 3500 Kwh UPM where as the actual consumption was 14204 UPM & 7896 Rkvah UPM. The net debit amount would be approximately Rs.20 lacs for under billed 206074 Kwh units & 129246 Rkvah units. However, they have amended the bills for 3 months from 24/10/2001 to 22/1/2002 instead of under billed period from 1/6/2000 to 22/1/2002. Hence the complainant is liable to pay the cost of Rs.2,74,418.69 towards under billed units for the period 24/10/2001 to 22/01/2002 as per Electricity Act.

- 6.0 The amendment claim raised is in order.

- 7.0 The complainant may not be allowed to produce any more evidences before the Hon'ble CGRF during the hearing of the case without giving us an opportunity to offer our comments.

- 9.0 The complainant should not be allowed to change the facts of the case presented in his application.

During the hearing Respondent states that:

- 10.0 The meter number written on the test report is same as on the bill & as mentioned in the earlier communication with the complainant.

- 10.0 Average of 3500 units/month was decided based on the prevailing practice i.e. on the basis of connected load.

- 11.0 The delay in raising the amended bill of the defective meter was due to the administrative problem.

- 12. For amendment of the bill for the period 24/10/2001 to 21/2/2001 consumption for the period 1/3/2000 to 1/6/2000 was considered.

Observations

Differing Opinion of Member, CGRF (CPO) Smt. Varsha Raut.

1. Some basic facts relevant to this case are as follows:
 - i) Meter no 000277 installed on 9th Feb 2000.
 - ii) Meter last read in the month of July 2000.
 - lii) Respondent's ledger shows that for next 18 months i.e. from Aug. 2000 to Jan 2002 meter showed the reading of 3500 units.

2. Respondent has not done the reading of this meter in these last 18 months

3. Complainant has paid the bills from Aug 2001 to Jan 2002 for 6 months.

4. After 6 years, in Apr 2008, complainant receives the bill for a period 24th Oct 01 to 22nd Jan 2002 amounting to Rs.2,74,418/69. This bill has been disputed by the Complainant.

5. This case is squarely covered under Sec 56 (2) of Electricity Act 2003 which is reproduced herewith : "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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of electricity”.

6. Complainant has already paid the bills from Aug 2001 to Jan 2002 for 6 months. The respondent has raised the additional bill for the period of 24th October'01 to 22nd January'02 which is disputed by the Complainant. The old meter which had stopped recording the reading was replaced on 22nd Jan 2002. Complainant is paying the bills for the replaced meter for 6 continuous years. In these last 6 years Respondent has never raised the bill for this outstanding amount. Since the said additional bill has been received by the Complainant for the first time in April 2008 i.e. after 6 years from the date when such sum became first due, it is clearly hit by limitation period of 2 years under Sec 56 (2). Respondent has therefore no legal authority to raise such bill after 6 years and in the light of Sec 56 (2) of the EA-2003, such bill has to be declared as null and void and hence hereby set aside.

7. Thus, on these grounds Respondent is not justified to ask from the complainant arrears for the period between 24/10/01 to 22/1/02 as well as interest and D.P. charges. The same is therefore set aside as illegal.

Opinion of Chairman, CGRF Shri. S.P.Goswami

1. From the reading position given in the billing ledger it is observed that the complainant was billed 3500 units per/month from Aug-2000 to Jan-2002.

2. The respondent came to know about the defective meter (no display) on 15/1/2002 & the same was replaced on 22.01.02 in presence of consumer. As per respondent complainant had acknowledged the

replacement of meter and signed an Undertaking to pay amended bill of the disputed period.

3. The disputed period is Aug-2000 to Jan-2002 (18 months). However, amendment is done for the period 24/10/2001 to 22/1/2002 i.e. for period of 3 months which is as per clause no. 15.4.1 of MERC (Electric Supply Code & Other Condition of Supply) Regulations, 2005.

3. The complainant & his tenant (M/s. UTI) were aware of the defective meter & also about the amendment of bills in future. Complainant is in fact liable to pay the energy charges for entire disputed period of 18 months as the defect of display of the meter do not disturb the actual recording of the energy consumed.

5. As per the written statement of the respondent and the proceedings during the hearing, it is observed that after replacement of meter respondent had not made any efforts in their testing laboratory to retrieve the actual energy units registered in the memory unit of electronic energy meter & failed in recovering the actual energy consumption for the period in which the display of the meter was defective.

6. As per the record submitted by the respondent, M/s. UTI (the tenant) has agreed to pay the differential amount in lieu of amendment of bills.

7. Respondent actually raised the amendment bill in April-2008. As per the note arising out of the Hon'ble High Court's judgment (case no. AIR 2007 Bom. 73) given in section 56(2) of Electricity Act, 2003 due date starts from the date of service of the bill. Hence, as per clause 56 (2) of Electricity Act, 2003 the outstanding is recoverable even if it

is assumed that, the bill was first time sent to the complainant in the month of April 2008. The arrears are shown continuously in the electricity bills of the complainant by the respondent is proved by the ledger position submitted by the respondent and also respondent has not cutoff the supply of the electricity of the complainant.

8. In view of the above observations following order is issued by the undersigned as a Chairperson of the Forum, using second & casting vote as per the provisions of section 8.1 of MERC (CGRF & EO) Regulations, 2006 amended upto date.

ORDER

1. Complainant's request to withdraw the amendment claim raised by the respondent is rejected.

2. Copies of this order be served on both parties.

(Shri. S. P.Goswami)
Chairman

(Smt. Varsha V. Raut)
Member