

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-EA-109-11 dt . 7-01-2011

Poonam Tripathi, .....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. Sunil H. Pawar  
2. Shri. Vivek Tripathi

On behalf of the Respondent :  
1. Shri. D.N. Pawar, DEEA  
2. Smt. Manasi M. Borade, Supdt. EA  
3. Shri. A.Y. Khan, AEEA  
4. Smt. Vishakha J. Sawant, DYE  
5. Smt. P.S. Kekane, Asst. OS (EA)  
6. Shri. V.K. Raul, Asst. Legal Advisor

Date of Hearing : 03-02-2011 & 11-02-2011

Date of Order : 11-3-2011

Judgment by Shri. R.U. Ingule, Chairman

Poonam Tripathi, Grd floor, Room no-4, Pearl Arcade, Tata Road no-2, Mumbai - 400 004 has come before Forum for grievances regarding amendment claim of A/c No 100-015-765.

Complainant has submitted in brief as under :

- 1.0 The complainant states that vide A/c No. 100-015-765 was having Meter No. P-981280 which was replaced for the reason Defective Meter DISPLAY DEFECTIVE on 31-08-2002. This fact was intimated to Complainant, vide letter dated 02-06-2010 by respondent. Complainant had contested against the additional/supplementary bill for defective meter on 28-07-2010 wherein complainant had clarified his say and refused to accept the Liability. The claim is for period 01-11-2001 to 30-08-2002 for (10 months) and the demand for payment of past amount is being asked vide letter dated 02-05-2010 i.e. After 8 year. Complainant say that in the disputed period he was billed for that particular period and he had already paid his bills pertaining to that period.
- 2.0 The complainant further states that as per guidelines provided by MERC Standard of performance rules and regulations, supply code. The Electricity Act, 2003. The disputed/Defective meter claim is to be restricted for 3 months only and to be recovered Secondly. As per section 56 (2) of the Electricity Act, 2003 the dues which were raised after the period of 2 years were not recoverable and time barred. Thirdly as per limitation act the dues for whatsoever reasons are not recoverable after 3 years. The concerned Authorities failed to perform their given duty within the time frame (Negligence) so Complainant humbly request to Hon'ble Consumer Grievance Redressal Forum to justify and set aside / withdraw the claim. The disputed claim amount is already included and debited in the bill, so the credit adjustment should be given in the next Energy Bill with appropriate credit for the delayed payment charges.
- 3.0 Complainant placed before Forum his Reliefs as below:
  - 3.1 The supply not to be disconnected unless and until the grievances is heard and decided by Hon'ble Forum.
  - 3.2 As the claim amount is time barred same to be withdrawn and set-aside.
  - 3.3 As the disputed amount is already debited in the bill same amount to be credited back.
  - 3.4 The delayed payment charges to be waived off.
  - 3.5 Liberty to Alter, Add Amend, correct the Application if required.

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

- 4.0 As per respondent Meter No.P 981280 was installed at the complainant's premises on 7-8-2000. The same was read on actual through CMRI till 1-11-

2001. Meter no. P 981280 was tested on 30-7-2002 and found display defective. Same was replaced by meter No. P 011678 on 31-8-2002.

- 5.0 As per respondent the bills were amended from 1-11-2001 (date of last available reading) to 31-8-2002 (date of replacement) on the basis of 1682 units based on the average monthly consumption for the period 31-8-2002 to 1-9-2003. The details of Rs.36,179.33 towards same preferred to the complainant vide respondent's letter dtd. 12-9-2005.
- 6.0 The complainant did not respond to respondent's letter. However, in reply to respondent persistent reminders, complainant complained in 'C' form stating to withdraw the claim as it is time barred as per section 56(2) of the E.A. 2003. Respondent further state that the amendment claim is required to be revised to bring it in line with Electricity Supply Code & Administrative Orders issued by the respondent's Management.
- 7.0 Respondent state that the proposal was put up to revise the amendment for the period of 3 months resulted into debit of Rs.21865.41 against initial claim amount of Rs.36179.33 the same is verified and recommended by respondent's Audit Dept.

The details are under:

Description	Original claim	Revised claim
Amendment period	1.11.01 to 31.8.02	1.11.01 to 1.2.02
Base Period	31.8.02 to 1.9.03	7.8.00 to 1.11.01
Basis of amendment	1682 upm	1585 upm
Claim amount	Rs.36179.33	Rs.21865.41

- 8.0 The revised claim amount Rs. 21865.41 duly approved by respondent's Management was informed to complainant vide letter dated 8-9-2010 which was duly acknowledged by complainant and was debited to the complainant's A/c in the billing month of October 2010. Complainant was not satisfied with the reply and disputed the same vide complainant's letter dated 20-12-2010 and refused to make the payment.
- 9.0 Complainant approached Hon'ble CGRF vide Complaint in Annexure 'A' dated 7-1-2011.
- 10.0 Regarding complainant's contention that the claim is time barred and hence not recoverable, respondent has to state that the law is well settled that the claim is set to be preferred only when a bill is issued to the consumer. 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 consumer only after bill served upon. In the instant case the payment becomes due when the bill is served on the complainant and bills

are issued to the complainant on 12-9-2005. The complainant is therefore liable for payment and claim is strictly in accordance with Section 56 (2) of the Electricity Act 2003. The contention of the complainant is therefore not sustainable.

- 11.0 As per respondent the meter No.P 981280 was tested on 30-07-2002 had found defective and same was replaced on 30-8-2002. Also, the complainant had acknowledged the above fact and signed on the undertaking to pay the amended bill of the period if any.
- 12.0 As per respondent the complainant was using the electricity through defective meter No. P 981280. During period from 1-11-2001 to 30-08-2002. As per the average of 1585 units per month complainant has to be billed for 14265 units but due to revision of 3 months as per the MERC Regulations the billing is done only for 4755 units. Since the claim is revised as the MERC Regulations the complainant has to pay only Rs.21865.41. The complainant is liable to pay the cost of R.21865.41 under billed units for the period 1-11-2001 to 1-2-2002 as per Electricity Act 2003.
- 13.0 The contention of the complainant as regards validity of recovery within the stipulated period of 2 years is not sustainable as the claim is said to be preferred only when a bill is issued to the consumer.

14.0 PRAYER

- 14.1 The revised bills issued by the respondent are to be treated as accurate since the claim is revised as the MERC Regulations.
- 14.2 The complainant may not be allowed to produce any more evidences before the Hon'ble CGRF during the hearing of the case without giving respondent an opportunity to offer our comments.
- 14.3 The complainant should not be allowed to change the facts of the case presented in his application.

REASONS :

- 15.0 We have heard learned representatives Shri. Sunil H. Pawar & Shri. Vivek Tripathi for the complainant and learned representatives Shri. D.N. Pawar, Smt. Manasi M. Borade, Shri. A.Y. Khan, Smt. Vishakha J. Sawant, Smt. P.S. Kekane & Shri. V.K. Raul for respondent BEST Undertaking. Perused documents.
- 16.0 At the outset we observe the present complaint preferred before this Forum, being devoid of any merit. The complainant admittedly was having a meter No. P 981280 and the same was replaced for a reason viz. "Display Defective", on 31-8-2002. Complainant contends that this fact was reported to him by the distribution licensee vide its letter dated 2<sup>nd</sup> June, 2010. Complainant contends the electricity charges for a period from 1<sup>st</sup>

Nov, 2001 to 30<sup>th</sup> Aug, 2002 i.e. for 10 months period, thus demanded after a lapse of 8 years. The complainant further contends that the Regulation provided under the Electricity Act, 2003 in regard to defective meter restrict such claim for 3 months only. Under section 56(2) of the Electricity Act 2003, claim raised after a period of 2 years, gets time barred. As such there has being a negligence on the part of officials of the Respondent BEST Undertaking. Hence prayed to declare the claim made by the Respondent BEST Undertaking being time barred and delayed payment charges to be waived.

- 17.0 Per contra, the Respondent BEST Undertaking submits that the meter No. P 981280 was tested on 30<sup>th</sup> July, 2002 to find the same being "Display Defective". Therefore replaced with meter No. P 011678 on 31<sup>st</sup> Aug, 2002. The bill was amended from 1<sup>st</sup> Nov 2001, the date on which the last reading was available to the date of replacement of the meter viz. 31<sup>st</sup> Aug 2002, on the basis of 1682 units, based on average monthly consumption for a 12 months period from 31<sup>st</sup> Aug, 2002 to 1<sup>st</sup> Sept 2003. The details of the amount of Rs.36179.33 charged by the Respondent BEST Undertaking were informed to the complainant vide the letter dated 12<sup>th</sup> Sept, 2005. Despite the Respondent BEST Undertaking persistently sending reminders to the complainant consumer, no response received from her.
- 18.0 The complainant preferred a complaint in 'C' form before the Internal Grievance Redressal Cell, contending the claim being a time barred u/s 56(2) of the Electricity Act, 2003. We find that the management of the Respondent BEST Undertaking giving the benefit of Regulations provided under the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, revised the claim made by it amending the same for a period of 3 months and debiting the account of the complainant for Rs.21,865.41 instead of for Rs.36179.33. The Respondent BEST Undertaking has taken into consideration a base period from 7-8-2000 to 1-11-2001 for amending the claim amount for a period of 3 months. During this base period average unit consumption per month found to be 1585 units.
- 19.0 We find that a bare perusal of a ledger folio, placed before the Forum by the Respondent BEST Undertaking in respect of the complainant's A/c no. 100-015-765 manifest the meter No. P 981280 being replaced by a meter No. P 011678 in the month of Aug 2002, as contended by the Respondent BEST Undertaking. We further find that the old meter No. P 981280 was "Display Defective" as it was not showing any reading of consumption of electricity unit on the part of the complainant.
- 20.0 In view of a law laid down by the Hon'ble Supreme Court in a case of BEST Undertaking V/s. Laffan's (India) Pvt. Ltd, as envisaged u/s 26(6) of the Electricity Act, 1910, the meter contemplated thereunder has been a 'running meter', and not a burnt meter or meter not showing any reading of the consumption of electricity. Therefore in such cases for the period for which readings could not be recorded or retrieved, there has been nothing wrong on the part of the distribution licensee, to raise the demand based on the average consumption for the similar period during the previous year, it

being the reasonable basis. In our considered view had the Respondent BEST Undertaking prompt enough to recover the electricity consumption charges, at the time of noticing meter being "Display Defective", it could have recovered the charges for the entire period during which the defective meter did not record any consumption of electricity.

- 21.0 However, in the matter on our hand we find the Respondent BEST Undertaking, proceeded to inform the complainant on 12<sup>th</sup> Sept 2005, about working of electricity charges to Rs.36179.33 for a period from 1<sup>st</sup> Nov 2001 to 31<sup>st</sup> Aug 2002 on the basis of 1682 units based on the average monthly consumption for the period from 31-8-2002 to 1-2-2003. We find a copy of this letter alongwith details of net payable amount of Rs.36179.33 placed on file before us, at Exhibit-B.
- 22.0 We thus find that the Respondent BEST Undertaking for the first time has informed the complainant the amount of electricity charges payable by the complainant consumer on account of "Display Defective" meter on 12<sup>th</sup> Sept 2005, when MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 has been in force. Admittedly in a response to a representation made by the complainant, Respondent BEST Undertaking has accordingly revised its claim of electricity charges in arrears, confining the same for a period of 3 months, instead of a period from 1<sup>st</sup> Nov, 2001 to 31<sup>st</sup> Aug, 2002. We thus find that now the Respondent BEST Undertaking has proceeded to debit the account of the complainant consumer, for Rs.21865.41 for a period of 3 months i.e. from 1<sup>st</sup> Nov, 2001 to 1<sup>st</sup> Feb, 2002. For calculating this amount of arrears for 3 months the base period has been taken from 7-8-2000 to 1-11-2001 wherein 1585 average consumption of units per month has been worked out. We find such base adopted by the Respondent BEST Undertaking has upheld "being reasonable" by their Lordship of the Supreme Court in the case of BEST Undertaking V/s. Laffan's (India) Pvt. Ltd.
- 23.0 To conclude the controversy under our consideration for redressal, we thus find the action taken by Respondent BEST Undertaking been squarely covered under the provisions of law provided under the Electricity Act, 2003 and law laid down by their Lordship of Supreme Court, as observed above.
- 24.0 Last but not the least, we also do not find any merit in the contention taken by the complainant consumer that the claim made by the Respondent BEST Undertaking being 'time barred', as envisaged under sub section (2) of section 56 of Electricity Act, 2003. In this context we observe that as provided under this section the claim made by the Respondent BEST Undertaking cannot be considered being 'time barred'. As shown in the ledger folio placed before us, the Respondent BEST Undertaking has been showing 'continuously' the electricity charges in arrears payable by the complainant as a recoverable and has not cut off the electricity supply.
- 25.0 Besides it, significant to observe that the amount of arrears has been informed for the first time to the complainant on 12<sup>th</sup> Sept, 2005 and proceeded to persuade the complainant for recovery of the same, by

sending him various notices from time to time. We thus find placed on file a copy of letter dated 12-9-2005, follow-up letter dated 16-9-2006 and various reminders. We further find that all these letters have been sent to the complainant under register AD. Accordingly we find an endorsement passed on all these letters placed before us. We find the Respondent BEST Undertaking has proceeded to send all these letters in their course of routine business transaction. Besides it, we do not find any enemical relation or grudge Respondent BEST Undertaking is having with the complainant consumer. Under such facts and circumstances therefore, we find ourselves unable to ascribe any merit to the contention of the complainant that it is only for the first time on 2<sup>nd</sup> June 2010 she was informed to pay the arrears of electricity charges. We proceed to hold that it was informed to the complainant on 12<sup>th</sup> Sept 2005 as observe above. Thus we do not find any merit into any contention raised by the complainant consumer.

- 26.0 In the aforesaid observation and discussion, in the net result we find the compliant under consideration, being liable for dismissal. Accordingly we do so.

ORDER :

1. The complaint No. S-EA-109-11 dt . 7-01-2011 stand dismissed.
2. Copies be given to both the parties.

(Smt Varsha V Raut)  
Member

(Shri S P Goswami)  
Member

(Shri R U Ingule)  
Chairman