



BEFORE THE OMBUDSMAN

(Appointed by the Maharashtra Electricity Regulatory Commission under Section 42(6) of the Electricity Act, 2003)

606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051
Tel. / Telefax: 022-2659 2965

REPRESENTATION NO. 14 OF 2005 **In the Matter of Dispute of Electricity Bills**

M/s. R.K.Dye Chem
Laxmi Industrial Estate,
Hanuman Gali, Lower Parel,
Mumbai – 400 013.....

Appellant

V/s.

Superintending Engineer
Maharashtra State Distribution Co. Ltd.,
O&M Circle, 2/3 Deepashree Colony,
Navaghar, Vasai Road (E).....

Respondent

Present:

1. Shri W. G. Gorde, Ombudsman
2. Shri S. N. Yadwad, Secretary

On behalf of the Appellant:

1. Shri S. L. Bajaj, Partner
2. Shri S. N. Goswami

On behalf of the Respondent:

1. Shri U.P. Sinha, Asstt. Engr, Boisar
2. Shri R.S. Deshmukh, Ex. Engr, Palghar
3. Shri S.A. Kajale, Ex Engr (T), Vasai

Dated: 18th July, 2005

1. M/s. R.K. Dye Chem, an industrial unit located at E-16/5, M.I.D.C. Tarapur, is a Low Tension, 3 phase power consumer of Maharashtra State Distribution Co. Ltd. (M.S.D.C.L.). The unit has a connected load of 47 KW and is engaged in manufacture / trading of ice. M/s. R. K. Dye Chem (hereinafter called as the Appellant) has filed the representation on 17th May, 2005 in this office against the order of the Consumer Grievance Redressal Forum, Kalyan in respect of the excessive bills issued by the M.S.D.C.L. (hereinafter called as the Respondent). The Forum in its order dated 23rd

March, 2005 has directed the Respondent to prefer the bill for 5,45,341 units for the period from 6th June, 2000 to December, 2004. The order is based on the conclusion of the Forum that the meters installed at the premises of the Appellant are not defective and therefore the Respondent is directed to prefer bills on the basis of the meter readings recorded from time to time.

2. The Appellant being aggrieved with the said order, filed the representation with this office, which is registered, at Serial No. 14 of 2005. The Appellant states that the order of the Forum is biased against him and has been passed without going through the statements and submissions made before the Forum. It is alleged that the Respondent has changed the meters on five occasions between, August 2001 and February 2004. The Appellant mentions that the first meter No. 115924 installed in June, 2000 became faulty and was reported to the Respondent in August 2000. The Respondent replaced this meter on 13th August, 2001 by another meter No. 52018.

3. The second meter installed on 13th August, 2000 was also reported to be faulty and the Respondent was requested to check and replace it. It is stated that the said meter was removed on 15th April, 2002 and replaced by third meter No. 1049015. The Appellant paid testing fees for this purpose. However, the meters were not put to test until 26 / 27 March, 2004 inspite of repeated requests from the Appellant. The fourth meter with No. 2183688 installed on 23rd December, 2002 was an electronic meter. The Appellant states that this meter too did not display the readings. Finally, the meter was removed on 17th March, 2003 and replaced by the fifth meter No. 088854, on the same day. The Inspection Squad of the Respondent visited the factory on 24th April, 2003 and noticed that this meter was working slow by 30% as checked by the Accuchek Meter at site. However, this meter was not replaced until 17th February, 2004 when it was sent for testing and again a new meter (sixth one No. 3155390) was installed in the premises of the Appellant which is now working.

4. The Appellant states that in view of the faults noticed in the meters from time to time, the Respondent was time and again requested to test the meters and give him the reports of such testing. It is alleged that despite his constant follow up, the Respondent did not carry out the tests until 26 / 27 March, 2004. The meters were removed from time to time and were kept in custody of the Respondent for a long time. Finally, the Respondent decided to test the meters on 26th and 27th of March, 2004 and invited the Appellant to remain present during tests. However, the Appellant decided not to attend the tests carried out by the Respondent, as he felt, it would serve no useful purpose, since the meters remained in the custody of the Respondent for a long time with no tests carried out.

5. In the meantime, the Respondent issued bills for consumption of energy units to the Appellant from time to time. The Appellant did not make any payments for 34 months from September 2001 to June 2003 except total payment of Rs. 1,00,000/- in the month of April 2002 and September 2002 and kept on insisting for correction of bills due to faulty meters. The Appellant says that he approached the Assistant Engineer and the Executive Engineer concerned to redress the issue of bills. The Executive Engineer instructed the Assistant Engineer to prepare the demand note for arrears on 7th June, 2003. Accordingly, the Assistant Engineer prepared the demand note on 10th June, 2003

showing arrears of Rs. 4,80,000. In response to this note, the Appellant paid some instalments on 10th September 2002, July, August 2003 and September 2003 towards the arrears. Finally, the Appellant paid Rs. 2,37,000 on 30th October, 2003 in settlement of the dues raised in the said demand note. The Assistant Engineer concerned issued a letter on 31st October, 2003, in token of this payment.

6. The Appellant says that even after settlement of dues as per the demand note, the officials of the Respondent opened up the issue, in February 2004 and took the stand that the arrears of the bills would have to be paid in accordance with the readings recorded by the meters upon tests. The Appellant objected to this by saying that the meters were removed long back and were in custody of the Respondent and therefore no testing should be carried out now to decide the issue of arrears. He alleged harassment by the Respondent. Instead, he suggested that a settlement be worked out based on the production in the unit from time to time.

7. The Respondent submitted his written statement on 2nd June, 2005 refuting the allegation made by the Appellant that he was being harassed. It is mentioned that the meters had been replaced on the basis of the Appellant's request from time to time. The meter No. 115924 removed on 13th August, 2001 was suspected to be faulty while the meter No. 02183688 removed on 17th March, 2003 was replaced as there was no display. The meter No. 088854 was declared slow by the Inspection Team. The other meters were removed and replaced at the Appellant's request.

8. The Respondent agreed that there was delay in testing these meters but pleaded that the accuracy of static meters is not affected with the passage of time. In case of electro magnetic meter, it can go slow if tested after 2 to 3 years but never show fast if tested later. The Appellant was asked to remain present during the testing but declined to do so. The Respondent confirms that the meters were tested without disturbing the existing seals and therefore it was not necessary to draw any panchnama during the test. The Respondent reaffirms that the meters were tested and found to be in order. Consumption recorded by correct meters becomes a conclusive proof of the quantity of energy supplied to the consumers.

9. The matter was heard on 28th June, 2005. The Appellant was present in person. The Respondent's senior representatives were not present but only the Assistant Engineer was deputed. The Respondent expressed inability to send its senior officials due to heavy rains in the area and problem of commuting. The Appellant deposed on the points raised in his representation. It was brought to our notice that he did not attend the testing of meters on 26 / 27 March, 2004 as he believed, no useful purpose would be served by testing the meters after two years. He confirmed that the Respondent wrote him a letter on 24th March, 2004 requesting him to be present during the testing. It was also brought to our notice that the Respondent did not draw any panchnama and reference of the paper seals signed by the representatives of both the parties were not mentioned on the test report. It was alleged that the meters have been tampered during the custody of the Respondent. On asking whether he has any evidence to show that the meters may have been tampered, he replied in negative but reiterated his observation indicating the possibility of such tampering.

10. On the issue of paper seals with joint signature of the Appellant and the representative of the Respondent, the Respondent clarified that there is no such provision to affix any seal by the consumer on the meter. As such, there need not be any reference or mention thereof on the test report. Original seals as per the records are still intact and are not required to be touched during testing.

11. On asking whether the payment made against the demand note of Rs. 4,80,000 was towards final settlement of the arrears, the Appellant replied that it was more or less a full settlement at that time but it could be considered as an adhoc payment till the bills are rectified in the context of the arrears shown. He confirmed that he had discussions with the concerned Executive Engineer and Assistant Engineer while working out the arrears. The Appellant stated having agreed to pay around Rs. 15000 per month while the officials insisted on payment of around Rs. 20000. Further, he conceded that he does not have any document to show details of working out arrears reportedly agreed by the Respondent.

12. The Respondent was represented by one Shri Sinha, Assistant Engineer. He said that he had joined the Palghar Division in December, 2003 and he was not aware of any decisions made by the officials earlier to that, in this case. He agreed that there was long delay in testing of the meters removed from the Appellant's premises but could not give any explanation for the delay. He pleaded his inability to explain the details of the arrears on which basis the demand note of 10th June, 2003 was issued.

13. The Respondent further stated that the meter No. 2183688, although failed to show display, its storage data retrieved by MRI indicate that the meter has recorded the units correctly. The load survey data of January 9, 2003 to March 8, 2003 shows that full load was drawn on all days from January 14, 2003 and total consumption of energy units recorded during the period was 20792 KWH. Considering initial reading of 22 and multiplying factor of 2, total consumption during the above period is 41540 units. At this point, the Appellant argued that the load survey graph produced by the Respondent does not bear meter number or any details of the consumer and hence it is not possible to identify to which meter the data belongs. Under the circumstance it could be a false or fabricated one or belonging to any meter other than the meter No. 2183688. The Respondent sought further time to clarify.

14. The Respondent informed during the hearing that the first meter removed on 13 August, 2001 was now located and recently tested. He furnished a copy of the test report. The copy was also given to the Appellant. The test report in respect of this meter shows that the meter was defective and stops working intermittently. The representative of the Respondent could not give clarifications to the points raised by the Appellant during the hearing and needed further time to respond. The case was adjourned to 12th July, 2005 to enable both the parties to file a rejoinder and further submission, if any.

15. The matter was heard again on 12th July, 2005. The Respondent was called upon to clarify the points raised by the Appellant during the earlier hearing. Regarding printing of meter number and details of consumer on MRI Data Load Survey graph, the Respondent clarified that such facility is not incorporated in old meters. The data retrieval can be done in presence of representatives of consumer. In case of new meters,

the facility of printing details of consumer is incorporated. The matter was also taken up with the manufacturer who has agreed to modify the data software of old meter to enable printing of meter number on the load survey graph. The new graph so taken out was produced during the hearing to dispel the doubt raised by the Respondent. It shows the serial numbers of the meter. The Respondent also produced the copies of record showing the serial number of the seals on various meters to show that they are the same even now and reiterated that there is no tampering of any meter as doubted by the Appellant.

16. Upon hearing both the parties and considering the written and oral submissions, following issues are considered crucial in deciding the matter:

- a) Whether the meters removed and replaced from time to time can be considered as correct and bills prepared on the basis of meter readings are in order.
- b) Whether no dues letter issued by the official of the Respondent can be considered to be valid and
- c) Whether on that basis it can be concluded that the Appellant has made complete payments of the bills for the energy consumed.

17. It is observed that the Respondent removed the first meter on 13 August, 2001 and replaced with another meter on the same day. The first meter was in service from June, 2000 to 13 August, 2001. For the first three months or so, no proper bill was issued as no reading was taken. The first reading was taken in October, 2000 showing consumption of 55681 units followed by consumption of 21715 units in November, 2000. Further, consumption from December 2000 to August 2001 are not based on actual readings and remarks like "locked" or "faulty" are seen in the consumer's personal ledger maintained by the Respondent. Final reading in August 2001 is seen as 156090 which is much less than earlier readings recorded during October and November, 2000. This shows that either the Respondent did not take proper readings during the period or meter has gone faulty sometimes after recording the reading upto November 2000. This has led to a situation showing consumption of only 12756 units in the period of 14 months, which is ridiculously low as compared to consumption recorded in earlier months and months subsequent to August 2001. A copy of the test report furnished during the hearing by the Respondent clearly brings out that this meter was finally found to be faulty.

18. The Respondent has not taken any care to work out the consumption in time nor did it arrange to test the meter until in March 2005. This has resulted in non billing the consumer on reasonable and approved assessment basis for the period when the first meter was in service till 13th August, 2001. The Forum in its order has upheld the view that the Respondent should bill the consumer only for 12756 units for 14 months which averages out to around 911 units per month. The Respondent also failed to submit to the Forum the details of the test report in time and in fact had reported to the Forum that this meter was not traceable. In view of this, there is a clear case of under billing for 14 months. This is based on the difference of the last and initial reading of the meter over the period. However, it is neither open nor possible for the Respondent to revise bills for that period.

19. On the issue of not disconnecting the power due to non payment of arrears, the Respondent argued that the Appellant was an influential person and past president of

Tarapur Industries Manufacturers Association. The Appellant objected to this stand and submitted that he was never past president and did not prevent the Respondent to take any action. The records of the case show that no payments were made by the Appellant for 19 consecutive months from September 2000 to March 2002 followed by non payments for four months and nine months during May – August 2002 and October 2002 – January 2003. Argument of the Respondent in this behalf exposes only dereliction of its duty and cannot be accepted. Nothing prevented the Respondent to act as per rules and there is no use blaming the Appellant for its own lapse

20. As regards testing of four meters subsequently replaced, the Respondent submitted that they were tested on 26th and 27th March, 2004 at their Vasai testing division. All the meters according to the test report are reported to be in order. The Appellant raised doubt that the meters may have been tampered by the Respondent as they were lying in their custody for a long time. It was also alleged that paper seals with signature of the Respondent and the Appellant's representatives were not in place during the testing and no mention is made about these seals. The Respondent argued that there is no procedure providing the consumer to put his seal while replacing the meters and sending them for testing. Therefore, there is no need to make any mention about any such seal if at all put by the consumer. The Respondent says that it has maintained the record of all the official seals put on the meters and all of them were intact during the test and even today.

21. On the issue of testing of the meters, the Respondent had informed and invited the Appellant to remain present during the tests. The Appellant, however, chose not to remain present on the ground that the meters were being tested after a long delay and may have been tampered by the Respondent. The Appellant further said that the report of the test carried out in his absence would not be binding on him.

22. It is clear from the above, the Respondent had removed all the five meters between 13 August, 2001 and 17 March, 2003 but did not bother to get them tested in time and merely kept them in custody with no action until they were tested on 26th / 27th March, 2004. This is a lapse and utter negligence on the part of the Respondent. The question, therefore, arises whether negligence and / or lapse on the part of the Respondent render the report of the test invalid.

23. The facts mentioned above refers to the period prior to the Electricity Act, 2003 came in force. Earlier Act did not put any specific time limit for getting the meter tested. As such, the action of the Respondent, although displays utter negligence and laxity, would not automatically result in invalidating the result of the test merely on the ground of delay. This is more so because there is no evidence of any tampering of the meter. The last readings while removing the meters closely tally with the readings while undertaking the tests and a difference of around 20 energy units seen in most meters. The Respondent explained during the hearing that prior to the tests carried out at their Vasai testing division, the meters were initially tested at Palghar, which consumed few energy units. There is nothing to indicate that the meters were used elsewhere or tampered.

24. The Forum has rightly concluded that none of the meters had ceased to be correct during their service and therefore the question of assessment of energy afresh during the

period when the meters were in service does not arise. This observation of the Forum would not hold good now, in respect of first meter removed on 13th August, 2001, which was found faulty during the test conducted on 12th March, 2005. The Respondent had misled the Forum by informing that this meter was not traceable. But in any case, as said earlier, it is not open to the Respondent to revise the bills during the period of working of the first meter at this stage. The Respondent must look into the act of negligence and lapse on the part of concerned officials resulting in probable loss to the Respondent.

25. On the issue of no dues letter dated 31st October, 2003, the Appellant has argued during the second hearing that the demand note issued on 10th June, 2003 was meant for the final settlement. It is not his responsibility to verify whether the amount mentioned in the demand note was correct or not and whether it has any proper approval on the records of the Respondent.

26. In order to verify correctness of the arrears and the demand note issued by the Respondent, it is necessary to go through the events preceding the issue of the demand note on 10th June, 2003. The letter dated 27th December, 2002 furnished by the Respondent during the hearing shows that the Executive Engineer, Palghar had directed the Assistant Engineer, Boisar to consider the consumption of 12756 units for 12 months period due to non working of the factory to its full load during that period from November, 2000 to August 2001. He has not taken any action for getting the meter tested and arriving at the correct bill. On the other contrary, he preferred to acknowledge non working of the factory to its full load and allowed charging of only 12756 units in his own authority and instructed the Assistant Engineer, Boisar to calculate arrears of Rs. 4,28,787.66 on this basis. This is inspite of his knowledge that the arrears as per the consumer's ledger were around Rs. 9,00,000. It is confirmed during the hearing that no proper approval has been obtained even up till now for this so called settlement. The Assistant Engineer in his letter dated January 2003 addressed to the Executive Engineer in response to his letter, agreed to charge for only 12756 units for July 2000 to August 2001 period and further mentioned that the delayed payment charges and interest on arrears are completely waived. Assistant Engineer was aware that the actual bill / arrears amount on that date was Rs. 1096548.89 and sought the approval of the Executive Engineer for his proposed action. The constant follow up by the Appellant for settlement of his arrears finally yielded result, in June 2003. The Assistant Engineer on the instructions of the Executive Engineer issued the demand note on 10th June, 2003 for Rs. 4, 80,000 knowing fully well that total arrears were over Rs. 10,00,000 at that time. The Appellant, based on this demand note, paid Rs. 4.87 lakhs including the last instalment of Rs. 2.37 lakhs on 30th October, 2003. The Assistant Engineer issued to the Appellant a letter on 31st October, 2003 showing that as per directions issued by the Executive Engineer, Palghar, the arrears upto October, 2003 amounting to Rs. 2.37 lakhs is paid. Sequence of events followed by the issue of the letter, dated 31st October, 2003 clearly indicate that the Executive Engineer and the Assistant Engineer had intentionally tried to settle the arrears at Rs. 4.8 lakhs inspite of the arrears amounted about Rs. 10 lakhs on that point of time. Incidentally, it is mentioned that the Assistant Engineer concerned retired from the service on the same day i.e. 31st October, 2003.

27. In the light of the above, it can be clearly concluded that the action of the Assistant Engineer and the Executive Engineer in trying to settle the arrears without any

proper approval is not correct, more so, when the arrears were continuously shown in consumer's personal ledger and the bills. The amount shown as arrears is therefore recoverable from the Appellant and cannot be wiped off merely because of a letter issued by the Assistant Engineer. Action of the Executive Engineer and the Assistant Engineer is not only that of negligence but also seems malafide.

28. The Appellant has argued that his factory was not working to its full capacity and he informed to the Respondent from time to time. He also argued that the Respondent had charged him the bill upto August 2001 on the basis of his production and not on the basis of meter reading. He could not, however, substantiate his say. On the contrary, perusal of the consumer's personal ledger for the period clearly shows that the bills were charged on the basis of the last reading of the meter in August 2001 minus the initial reading shown in September 2000 (which is equal to consumption 12756 units) over that period. This meter subsequently proved to be faulty. All other meters upon tests, though belated, were found correct. Therefore, the argument of the Appellant that the consumption should be worked out on the basis of his production details, cannot be accepted. Consumption of energy recorded by the correct meter readings has to be relied upon.

ORDER

1. The Respondent's action in not testing the meters for a long time is serious and deplorable. This led to possible revenue loss to the Respondent during the working of the first meter up to August, 2001. The revision of the bills during that period is not now permissible. Decision of the Forum in this respect, is therefore upheld.
2. The Appellant chose to remain absent during the testing. He chose not to avail the offer of the Forum to test the meters again. The Appellant could not substantiate his allegations of tampering the meters. The Forum has arrived at the decisions to charge bills on the basis of meter readings. Therefore it is not necessary to interfere in the Forum's order.
3. The "no dues letter", given by the Respondent's official on 10th June, 2003 cannot be taken as a ground for waiver or not charging of arrears in the light of the observations made in the earlier paragraphs.
4. The Respondent is directed to take a note of the lapse and negligence mentioned in the paragraph 18,19 and 27 and to take suitable action.
5. This order should be complied immediately and compliance reported within a period of two months.

Sd/
(W. G. Gorde)
Ombudsman

(S.N. Yadwad)
Secretary