



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. 16 OF 2005

In the matter of various billing disputes.

M/s. Bombay Protein Manufacturers,
Plot No. 201-A, Wagle Estate, Thane..... Appellant
Versus
Maharashtra State Electricity Distribution Co. Ltd.,
Wagle Estate, Thane..... Respondent

Present:

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

On behalf of the Appellant:

1. Shri Sharad C. Shah through his nominated representative
Shri Ashwin Treasurer

On behalf of the Respondent:

1. Shri N.A. Khan, Superintendent Engineer, M.S.E.D.C.L., Thane
2. Shri Gadi, Accounts Officer, M.S.E.D.C.L., Thane

Date: 16th November, 2005

1. M/s. Bombay Protein Manufacturers is an industrial unit located at Plot No. 201-A, Wagle Estate, Thane. It is a Low Tension Consumer of Maharashtra State Electricity Distribution Co. Ltd. M/s. Bombay Protein Manufacturers (hereinafter called as Appellant) filed this representation on 08th June, 2005 against the order of Consumer Grievance Redressal Forum, Bhandup of Maharashtra State Electricity Distribution Co. Ltd. on their grievances filed with the Forum.

2. The Forum in its order dated 23rd March, 2005, has directed Maharashtra State Electricity Distribution Co. Ltd. (hereinafter called as Respondent) to pay interest on security deposit till date. The Forum has acknowledged the fact that the Chief Engineer, M.S.E.D.C.L., Bhandup Zone had accepted to give credit of Rs. 1,02,709/- against revision of bills after clubbing of energy units of sub meter used for factory lighting with the consumption for industrial use for the period prior to September, 1999. The Forum had also directed Maharashtra State Electricity Distribution Co. Ltd. to give clear 20 days time to Consumers for making payments of bills. The order also says that Maharashtra State Electricity Distribution Co. Ltd. should study the amendment in respect of the electricity duty and take necessary action. The Forum further ruled that the balance issues of dispute relate to assessment and fall under Section 126 of the Electricity Act,

2003. Therefore, the Forum declined to go through the issues as being beyond its jurisdiction.

3. The Appellant through its nominated and authorised representative, filed this representation against the above order listing several grievances, which according to him have not been redressed by the Forum. The Appellant is also aggrieved on the stand taken by the Forum about “balance issues” falling under Section 126 which have not been considered and decided for want of jurisdiction. The Appellant listed 50 grievances, as they appear in Annexure ‘A’ filed with the representation. The Appellant also submitted two detailed annexures with the appeal containing rebilling statements as prepared by the Appellant based on LTPG tariff option (alternative A) and LTMD tariff option (alternative B).

4. Being aggrieved with the Forum’s order on various issues as well as on classification of ‘other issues’ falling under Section 126 of the Electricity Act, 2003, the Appellant sought a special preliminary hearing to decide the course of action required to be followed in such situation. The Appellant having filed the appeal on 8th June, 2005 which is beyond the time limit permissible under the Regulations, has requested condonation of the delay in filing the appeal. The Appellant submitted that the major grievances relate to recovery for excess connected load, over billing, illegal excess load penalty, incorrect charging of electricity duty and disconnection of power. The issues also include non payment of interest on security deposit, wrong recovery of cost of meter and meter rent, incorrect clubbing of lighting load with the power load, levy of delayed payment charges and interest and short notice given for payment of bills, etc. The Appellant, apart from listing grievances in the Annexures referred to above, worked out and submitted rebilling statements and claimed a refund of Rs. 40.82 lakhs and Rs. 36.81 lakhs (as on 17th May, 2005) in the alternatives ‘A’ and ‘B’ respectively, as shown in the statements, with retrospective effect from March, 1975.

5. Superintending Engineer (Thane Urban Circle) Maharashtra State Electricity Distribution Co. Ltd., on behalf of the Respondent filed his short reply on 25th July, 2005 submitting his explanation in respect of compliance of the order issued by the Forum. He says that, on 31st March, 2005, a credit of Rs. 8480.23 is given to the Appellant against the interest on security deposit. Further, credit of Rs. 1,02,696.68 is given in the bill of May, 2005 in compliance with the Forum’s order in respect of correction effected due to clubbing of lighting and power bills. He submitted that the electricity duty is charged in accordance with the provisions of The Bombay Electricity Duty Act, 1958 and at the rates prescribed by the Government of Maharashtra from time to time. The reply further goes on to say that it has levied penalty on the Appellant due to unauthorised excess load, which the consumer has paid without any protest.

6. The matter was initially heard on 26th July, 2005. It was brought to the notice of both the parties that the Appellant is expected to file an appeal memo issue wise to put up his case. The Respondent is expected to file its point wise reply to the issues raised by the Appellant in the memo. A short reply filed by the Respondent without addressing to most issues raised by the Appellant is not enough to examine the matter.

7. During the hearing, the issue of jurisdiction, especially regarding the issues not addressed by the Forum, were discussed. It was argued by the Appellant that excess connected load and /or excess recorded maximum demand do not fall within the ambit of Section 126 of The Electricity Act, 2003. There are no instances of use of artificial means, means not authorised, case of tampered meter or use of electricity for unauthorised purpose. It has no element of ‘unauthorised use of electricity’ as defined within the meaning of Section 126 of the Electricity Act, 2003. It was submitted by the Appellant that the Ombudsman has considered similar cases in the past and has jurisdiction in such matters. Therefore, the assessment of charges due to excess connected load or excess maximum demand have to be considered by the Forum as they are outside the ambit of Section 126.

8. The Respondent did not comment on this point but merely agreed with the Forum’s Order that such issues may be considered to fall within the Section 126 and therefore the appeal should lie with the Appellate Authority as provided under Section 127 of the Act.

9. While deliberating on this issue, the Respondent conceded that in the present case there are no artificial or unauthorised means to use the electricity. There is no case or allegation of tampering the meter and the electricity is not used for the purpose other than for which it is sanctioned. On few occasions, during inspection by the squad of the Respondent additional, excess connected load was certainly noticed. There are provisions in the ‘Conditions of Supply’ as well as in the Regulations to deal with such issues. It can be therefore concluded that the use of electricity, in the present case, cannot be classified as “unauthorised use” as defined under Section 126 of the Act. I am inclined to agree with the Appellant’s argument on this point. The matters concerning additional connected load or maximum demand and levy of penalty on that account would not be covered under Section 126 in absence of anything to demonstrate “unauthorised use” as defined in the Act and the matter necessarily needs to be examined in accordance with the provisions of the Act, Regulations, tariff orders and Conditions of supply. The Forum has erred in declining to deliberate on these issues as being beyond its jurisdiction. With these observations, the Appellant and the Respondent were advised to submit their further say within 2 weeks to proceed with the case, on merit.

10. It is noted that the Appellant did not file his Representation within a period of 60 days as provided under the Regulations and there is a delay of 16 days. Considering the issues involved and the documents to be submitted on various points, the delay of 16 days in filing the representation by the Appellant, is hereby condoned.

11. The Appellant failed to submit the appeal memo in the given time of two weeks and sought further one week’s time. Extension in time was granted. He, however, failed to submit it even in the extended time and finally submitted the Exhibit ‘Y’ on 25th August, 2005, containing copies of papers filed before the Forum in support of reliefs

sought and the appeal memo on 8th September, 2005. Following broad billing issues are raised:

- (a) Quashing of incorrect bills ab initio and re-billing de novo, in order to fully neutralise the excess billing, including the resultant excess DPC, interest, etc., in view of the numerous inter-related continuous excess billing and to arrive at a specific amount of refund due to consumer.
- (b) Imposition of multiple higher tariffs retrospectively without offering option to the Consumer.
- (c) Levy of incorrect load penalty in LTMD tariff in contravention of MERC tariff order.
- (d) Retrospective & excess average / assessed /slow meter / bill adjustment recovery in absence of correct meter reading / addition of amount due other than as per meter reading; in absence of meter test report / meter change report, non-submission thereof to consumer; and delay in defective meter replacement.
- (e) Payment of unpaid interest on Security Deposit since inception i.e.1975.
- (f) Refund of DPC & interest wrongly charged, when clear 20 days not given for bill payment.
- (g) Refund of Electricity duty wrongly charged on Fixed charges.
- (h) Meter cost wrongly charged and not refunded as per MERC orders.
- (i) Refund of excess meter rent and CT/PT rent wrongly charged as per MERC orders.
- (j) 10% slow meter / faulty meter not replaced but excess bills raised.
- (k) Consumer grievances not replied by the Respondent.
- (l) Disconnection of supply when amount is disputed.
- (m) Interest of 9% p.a. on Rs. 1,02, 709.82 till date of payment.
- (n) Excess Electricity Duty charged after 01/5/98.

12. Apart from the above, the Appellant has brought out other points regarding accounting of security deposit, non compliance of Forum's orders and disconnection of power supply on 20th November, 2004. The Appellant, in his appeal has listed six Respondents, 5 being various officials of MSEDCL and has also named Chairman, Consumer Grievance Redressal Forum, Bhandup as the 6th Respondent.

13. The Respondent filed its point wise reply on 6th October, 2005 and prayed that the fresh appeal memo filed by the Appellant is not in the Schedule B of the Regulations and therefore it should be dismissed. It also sought dismissal of the appeal on the ground that no valid documents are produced and the appeal is time barred in terms of The Limitation Act, 1963. It refuted the allegations made by the Appellant as false and incorrect. The Respondent says that necessary credits are given to the Appellant as per the order of Consumer Grievance Redressal Forum. It says that the various claims now made through the representation were never raised for years together right from the year 1975 onwards and therefore they are time barred both under The Consumer Protection Act, 1986 and The Limitation Act, 1963.

14. The matter was heard on 17.10.2005. Mr. Ashwin Treasurer, on behalf of the Appellant, reiterated his stand on various issues submitted in the appeal and explained the issues through his argument. He conceded that the Appellant does not have any proof of payment of security deposit and Respondent should be asked to produce the old records showing the amount of deposit. He stated that power bill payment for the month of September, 1999, was misappropriated to include it in the security deposit and so also the lighting bill. He claimed that calculation of interest made by the Respondent in this respect were not correct.

15. Mr. Treasurer further stated that the Respondent charged him wrong meter rent as applicable to the high-tension consumer and also recovered Rs. 11000/- as the cost of meter wrongly. He reiterated that no meter cost could be recovered from the existing consumer in accordance with the Maharashtra Electricity Regulatory Commission's orders.

16. Shri Treasurer argued that the Respondent has been following the wrong practice of calculating connected load based on rated capacity of the machines. He said that it should be the output capacity of each machine rather than the input capacity. While making this point, he extensively quoted the calculation submitted in the write up and notes in this behalf. He relied on the provisions of the Electricity Act, 1910 and the Indian Electricity Rules, 1956 to say that the connected load is neither defined, nor envisaged, nor is it permitted as a tariff parameter. He argued that the penal charges levied by the Respondent on the basis of excess connected load, worked out on the basis of rated input, in the past, should be reviewed and withdrawn.

17. Shri Treasurer stated during the hearing that the Respondent imposed LTMD tariff, in May, 2000 unilaterally without giving any option to the consumer and continued the tariff until, September, 2001 when the high tension tariff was imposed on the consumer wrongfully. It was argued that tariff order in the year, 2000 provided an optional MD tariff. It was, therefore, obligatory on the part of the Respondent to make an offer to the consumer about the choice of tariff and then only apply relevant tariff. The high-tension tariff was subsequently withdrawn in the year, 2003 and the consumer was brought under the LTPG tariff retrospectively from May 2000. The Respondent accordingly billed the consumer on LTPG tariff from May 2000 onwards including penal charges levied for excess connected load. This was done ignoring the correct meaning of 'connected load' by the Respondent.

18. On the issue of electricity duty, Shri Treasurer argued that the Bombay Electricity Duty Act, 1958 does not provide levying of duty on the fixed charges as well as on the transmission and distribution losses. Thus, ignoring the provisions and amendment, the Respondent has collected wrongly excess electricity duty. It needs to be refunded. He quoted the notification on proposed amendment to the Bombay Electricity Duty Act, 1958, dated 30th April, 1998. The Appellant added further that wrong levying of Electricity Duty is practiced by all billing centres of the Respondent in the entire state of Maharashtra. He also confessed that no request for refund of E.D. was made by him earlier.

19. As regards to clubbing of lighting and power consumption, Shri Treasurer stated that the Respondent double billed the consumer for lighting load at two different billing offices. In one office, separate lighting bill was issued on LD2 tariff while at the same time, lighting bill clubbed with the power bill was issued at the other billing office. He quoted Board Resolution No. 724 of 3rd May, 1997 of M.S.E.D.C.L. to say that the Respondent has wrongly added connected load of lighting equipments to the connected load of machines and charged penalty for exceeding connected load as compared to the sanctioned load. When brought to his notice that there are two subsequent circulars issued by Maharashtra State Electricity Distribution Co. Ltd. (No. 585 and 292) in respect of clubbing of lighting load to power load, he insisted that the BR 724 should alone be considered as being superior to the circulars issued by the commercial department of Maharashtra State Electricity Distribution Co.Ltd. He conceded that he did not challenge validity of the circulars any time in the past.

20. He also disputed the method of charging on any basis other than the energy units recorded by a correct meter. He relied on Section 26(1) of the Indian Electricity Act, 1910 which says that the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of correct meter.

21. On the issue of capacitor penalty, he submitted that the Appellant had provided capacitor of adequate capacity to correct the power factor and therefore any penalty on this account would be incorrect and should be reviewed. The Appellant also objected on the entry and inspection made by the officials of the Respondent from time to time except with the prior written intimation to the occupier. He said that the officials of the Respondent can enter the consumer's premises only with a written intimation and that too for inspection of the licensee's equipments and not beyond. As no proper intimation was given, entry of the officials of the licensee was illegal.

22. On the issue of supplementary bill raised in the month of March, 2003 by the Respondent retrospectively from May, 2000; Shri Treasurer stated that in view of the provision of the Electricity Act, 2003 in this behalf, the bills so issued become illegal. He quoted Section 56 (1) and (2) to make his point. In this case since the licensee raised bills from May 2000, which is more than two years, it becomes non-recoverable beyond two years and therefore should not be recovered.

23. On the issue of disconnection of power, he stated that no notice was issued as required under Section 56 (1) of the Electricity Act, 2003 before disconnecting the power supply on 20th November, 2004. Disconnection of power thus, becomes illegal. Shri Treasurer later summarised the other issues listed in the appeal and sought orders on those issues.

24. Shri Khan, Superintendent Engineer defended his stand on various issues and refuted the allegations made in the appeal by the Appellant. He conceded that due to untraceability of old records, security deposit could not be properly accounted in time. Details of deposit and interest paid thereon were furnished by the Respondent in the

written statement. This shows that interest amounting to Rs. 8840.23 was paid for the period from April, 2000 to March, 2005. The interest was based on the rates applicable to post office savings deposit in accordance with the prevailing rules. The Respondent, further agreed that amount of Rs. 46561 shown in the deposit column of the bill is a mistake and it does not indicate the correct amount. Records available with the Respondent indicate that the original security deposit was Rs. 10710. He conceded that the balance amount of Rs. 35851/- was wrongly appropriated from the power bills of the month September, 1999. Upon realising this mistake, the amount with some other charges was credited to the consumer's account in August 2000. This shows the credit entry of Rs. 39790/-. The Respondent agreed to work out and pay the balance interest on security deposit at the applicable rates.

25. The Respondent during the hearing could not justify levy of high meter rent and recovery of Rs. 11000/- towards the cost of meter in the context that the Appellant is a consumer of Low Tension electricity. Charges towards the meter rent and the cost of meter should have been recovered at the appropriate low-tension rates instead of at the high tension consumer rates. While replying to the grievance of levy of wrong penalty on the excess connected load, Shri Khan explained that the charges were levied in accordance with the "conditions of supply", especially the provisions under Condition no. 31. While elaborating on the exact method of working out the penal charges, the Respondent conceded that they appear to have levied "penalty" at the rate of 200 % instead of the 'penal charges' at 200% for excess connected load. He agreed that the supplementary bill with retrospective effect from May 2000 was raised in March 2003 after classifying the consumer back to LTPG tariff category. This was meant to correct the classification of consumer in LTMD and HTP-1 category from May, 2000 to March 2003. A bill for that period was therefore reworked out and issued in March, 2003. Arrears of the bill were shown thereafter continuously and as such it does not become non recoverable under the provisions of Section 56 (2) of the Electricity Act, 2003.

26. Respondent further explained that anomaly in respect of double billing due to raising of separate lighting bills was corrected subsequently. He agreed that the Chief Engineer has conceded a liability on this account to the tune of Rs. 1,02,709 before the Forum. He quoted that the 724 is the number of Board Resolution based on which the circulars no. 585 of 30th May, 1997 and 292 of 24th June, 1998 were issued. It is clear from the circulars that consumption of lighting load and power load has to be combined for the purpose of determination of tariff slab and the connected load of lighting is added to the connected load of motive power for the purpose of levying fixed charges and penalty, etc. He refuted the argument of the Appellant in this behalf.

27. The Respondent agreed that 20 days notice is required to be given for payment of bills excluding the day of issue of the bill. This has been now brought down to 15 days under the new Supply Code Regulations. Circular No. 523 of 4th December, 1993 in this behalf makes it clear that the date of the bill is to be excluded while computing the number of days available for making payment. Few instances of the recent bills after January, 2005, were brought to the notice during the hearing wherein the dates printed on

the bills do not allow 15 clear days to make such payment. He conceded the lacuna and assured to enforce it forth with.

28. The Respondent refuted the allegation of the Appellant on the issue of capacitor penalty and maintained that the penalty was levied since the consumer had not provided adequate capacitors, required for the connected load observed at the premises of the Appellant, as per the prevailing conditions of supply.

29. The Respondent stated during the hearing that the electricity duty is levied strictly in accordance with the provisions of The Bombay Electricity Duty Act, 1958. The duty is collected and paid to the Government. In case there is any dispute regarding levy of excess duty or exemption or any other issue regarding duty, matters are dealt directly by the State Government through the Inspectors appointed for the purpose. Any claim for refund of duty therefore will have to be preferred to the Government as per the procedure in the Bombay Electricity Duty Act, 1958. The Licensee is not authorised to decide the issues connected with interpretation of the provisions of the Act for basis for levy or refund, etc. He added that fixed charges form a part of consumption charges for levy of duty. This is done uniformly throughout the state. It is pertinent to note that the Appellant's argument on wrong levy of Electricity Duty on Fixed Charges is for all the consumers in the state and not limited to the present case under consideration.

30. The Respondent refuted the allegation of wrongful entry in the premises of the consumer at any time. He maintained that officials of the Respondent are authorised to enter the consumer's premises for the purpose of inspection, etc in accordance with the rules and various provisions of the conditions of supply. Officials of the Respondent did not violate the rules at any time as alleged by the Appellant.

31. The Respondent agreed to have disconnected the electricity supply of the Appellant's premises on 20th November, 2004 for non payment of arrears. The Appellant was informed by the letter dated 30th October, 2004 disposing his complaint and calling upon to pay the arrears immediately. Therefore, it is incorrect to say that the power was disconnected without any notice.

32. The Appellant and the Respondent during the hearing submitted their arguments in great details on various issues raised by the Appellant. Apart from the issues referred to in the above deliberations, the Appellant made following points in his submission:

- a) that the Respondent has no right to appeal. Therefore, he has no right to submit any cross objections on the issues considered and decided by the Forum
- b) the Respondent should not be allowed to bring any new issues during the appeal
- c) Chairman, Consumer Grievance Redressal Forum, Bhandup has been made the Respondent No. 6

33. Before proceeding to analyse the submissions made by both the parties, it is necessary to deal with the above points raised by the Appellant. It is true that the

Respondent licensee, in this case, has no right to file Representation to the Ombudsman under the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003. It is only the consumer who can file the representation against the order of the Forum. This does not, however, automatically extinguish the right of the Respondent to file cross objections during the appeal, on the issues which he feels ought to have been decided in his favour at the level of the Forum. If the right of appeal existed under the Regulations, the Respondent could have availed it, leaving no need to file any cross objections on any points considered and decided by the Forum. As per the Regulations, the Ombudsman is not bound by the Code of Civil Procedure, 1908. But, as a matter of guidance, procedure laid down in the Code can certainly be referred to decide on the issue of cross objections raised by the Respondent. Nothing prevents the Respondent to file cross objections on the issues in the interest of justice and to ensure transparency where he feels that the decision of the Forum should have been in his favour. This needs to be allowed. While agreeing with the suggestions of the Appellant, it will not be correct to accept altogether new issues during the appeal which were not agitated before the Forum. However, this does not prevent to relook at the material on the same issues in the interest of justice and to bring out facts more clearly.

34. The representation filed by the Appellant is directed against the order of the Forum in respect of the grievances considered by it. If the Appellant is not satisfied with any or all of the orders issued by the Forum, the right of appeal is provided under the Act and the Regulations. The appeal obviously has to restrict its ambit to the 'grievance' of the consumer against the licensee as defined in the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. The 'Grievance' is defined in the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 as under:

2.1(3) "Grievance means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to performance standards of licensees, as may be specified."

The consumer is not expected to ventilate its anger against the Forum, as it is not in the spirit of justice or of the Regulations. Addition of the Chairman, Consumer Grievance Redressal Forum as one of the Respondent is therefore unwarranted, ill conceived and not permissible. In view of this, it is necessary to strike out the name of Chairman, Consumer Grievance Redressal, Bhandup as the Respondent as 'improperly joined party' by the Appellant.

35. As per the records shown by the Respondent during the hearing the Appellant has paid security deposit of Rs. 10710/-. An amount of Rs. 35851/- paid by the Appellant towards electricity bill in September, 1999 was erroneously appropriated as additional security deposit which was reversed and credited in favour of the Appellant, in August 2000. Appellant's allegation of misappropriation of this amount thus gets disposed and hence no further order is necessary in this regard. Interest on security deposit for the

period from April 2000 to March 2005 has been paid by credit in the Electricity bill. The Respondent also agreed to pay unpaid interest on security deposit, if any, from the date of receipt of security deposit. The Appellant could not point out any specific instance or error except demanding that the Respondent should give full account of security deposit paid and pay interest on unpaid interest on security deposits from the year 1975. It must be understood that responsibility of providing details of such very old deposits rests on both the parties and must be discharged to the best of their ability. This unsubstantiated prayer of the Appellant, therefore cannot be granted. The Respondent is directed to pay the balance interest on the Security Deposit at the applicable interest rate, till the date of payment. There is no case for granting interest on unpaid interest if any, under the present circumstances.

36. Based on the Maharashtra State Electricity Board's Resolution No. 724 dated 3rd May, 1997, the Respondent issued circular no. 585 dated 30th May, 1997 and Circular No. 292 dated 24th June, 1998 to combine the entire consumption of lighting and power at LTPG tariff within the industrial premises from, June 1997. The Respondent conceded that there was no concept of sanctioning separate connected load for lighting purpose in the industrial premises earlier and only a separate meter was provided to record the energy units. The connected load used for lighting consumption was taken as 1 HP for all consumers except in those cases where the connected load of lighting consumption was actually found more during spot inspection. This argument was not supported by any order or circular issued by the Respondent. Since there used to be no separate sanction for the lighting load, such connected load after clubbing with power load, obviously, has to be treated as sanctioned load. Load used for lighting whether prior to clubbing or after clubbing with the motive power, can not be, by any stretch of imagination, treated as 'unauthorized'. Therefore, penal charges would be leviable only if actual connected load exceeds the sum of connected load of lighting and sanctioned motive power load. The Respondent can however levy fixed charges on the connected load used for lighting purpose as envisaged under the Circular No. 292 referred to above after clubbing as per the provision under condition no. 31 of 'Conditions of Supply'. Error in billing lighting consumption at non domestic (LD2) tariff in addition to billing at LTP-G tariff after clubbing both lighting and motive power consumption from June, 1997 to September, 1999 was rectified by the Respondent and a credit of Rs. 102709.82 was accepted by the Chief Engineer. The credit has already been given to the Appellant. There appears a small variation in the amount of liability accepted by the Respondent in this behalf and credited to the Appellant's account. It should be reconciled. On the prayer of the Appellant to pay interest on this amount, the Forum has observed that this amount should be paid with interest at the rate of 9% per annum, till date of payment. This observation is not, however, reflected in the Order of the Forum. The Appellant has prayed that this observation should be treated as the order and should be implemented. Appellant's prayer to pay interest of 9% per annum on Rs. 102709.82 is in order. Interest should be paid until the refund is credited to the Appellant's account.

37. The billing of industrial consumers on the basis of connected load is done as per the approved tariff and the conditions of supply made in exercise of powers conferred under the Electricity (Supply) Act, 1948. The argument of the Appellant to consider the

output capacity of the machine as measured for the purpose of computing the connected load is not well founded. It is a fact that the term “connected load” is not defined either in the Electricity Act, 2003 or in the Rules or Regulations. However, it is clearly defined in the conditions and miscellaneous charges for supply of “electrical energy” framed by the Respondent with approval of the Government. The definition reads as under

“Connected load means the sum of all rated capacity of all the energy consumer devices duly wired up and connected to the power supply system on the consumer’s premises including stand by devices, if any”.

In view of this, it is not possible to accept the logic and the definition put forth by the Appellant which is in variance with the definition provided under the conditions referred to above.

38. The Appellant has sought a tolerance of 5% while computing connected load. No basis has been put forth for this purpose. However, reference to “tolerance” is seen in the latest tariff order effective from 1st December, 2003. In any case, charging on the basis of connected load has ceased to be effective with effect from 1st December, 2003. Therefore, question of considering or granting any “tolerance” for the purpose of computing connected load prior to 1st December, 2003 does not arise.

39. Assessment for violation of the connected load and maximum demand is required to be done as per guide lines given in Maharashtra Electricity Regulatory Commission’s order in respect of case no. 2 of 2003 dated 14th July, 2005, read with Corrigendum dated 17th October, 2005 for the following periods.

- i) Period prior to 10th June, 2003: As per clause 31 (f) of Maharashtra State Electricity Distribution Co. Ltd . ’s condition of supply.
- ii) From 10th June, 2003 to 30th November, 2003: One and half times the normal tariff for the load exceeding the sanctioned load measured by connected load method.
- iii) From 1st December, 2003 onwards: If exceeding the sanctioned load has been measured by maximum demand recorded by meter then two times the tariff applicable for the exceeded portion of the load.

Thus, prior to 10th June, 2003, penal charges are applicable in case of connected load exceeding the sanctioned load as per the Clause No. 31(f) (ii) for the excess connected load at double the rate of prevailing tariff for fixed charges. It appears from some bills that the Respondent has levied “penalty” at double rate on excess load instead of “penal charges” at the rate of 200 percent which includes penalty. The Respondent also appears to have levied penalty at incorrect rates from 10th June, 2003 to 30th November, 2003. It has also levied penalty on excess connected load beyond 1st December, 2003, which is clearly non permissible. The Respondent shall rectify the errors and give credit to the Respondent. Interest at the rates applicable to the delayed payment of bills should be paid from the date of collection till the date of refund. The Appellant shall point out specific instances of such errors to the Respondent within one month from the date of this order. Appellant’s demand to allow 5% tolerance on

connected load and compute connected load as per output capacity and certificate of his chartered engineer is not acceptable.

40. Perusal of some bills reveal that clear 20 days time (15 days from 20th January, 2005) is not given for payment of bills. In such cases, if delayed payment charges are levied even if the full payment of bill including arrears as contemplated in Clause No. 27(e) of conditions of supply is made on or before the 21st day (16th day from 20th January, 2005) from the date of bill, delayed payment charges in such cases are not leviable and hence have to be refunded. The Appellant must point out such specific instances to the Respondent within one month of this order. The Respondent shall refund the delayed payment charges in such cases with interest at the same rate which is levied on delayed payment of bills. Date of presentation of bill to the consumer, is although important, does not alter the due date of payment in terms of the conditions of supply and the Regulations. Appellant's prayer to give 20/15 days from date of presentation of bill for payment and quash all delayed payment charges if clear 20/15 days period is not given from the date of presentation of the bill, cannot therefore be accepted. If no bill is received within 20 days from the date of meter reading, the consumer is required to notify to the local office of the Respondent as per Clause No. 27(j) of the Conditions of Supply and delayed receipt of bill does not absolve the consumer from making payment in time as per Clause No. 15.5.3 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and also Clause No. 27(a) of the Conditions of Supply.

41. Electricity Duty is levied on the "consumption charges" and paid to the State Government as per Section 3 of the Bombay Electricity Duty Act, 1958 at the rates notified by the Industries, Energy and Labour Department of the Government of Maharashtra from time to time. Circular dated 18th January, 2003 issued by the Respondent in this behalf makes it clear that the Government has not made any decision on this issue so far and that the Respondent would act appropriately on receiving the decision. Interpretation of any section, clause, wording of the Act or notification, etc does not lie with the Licensee or the Forum or the Ombudsman. The Respondent confirmed that Fixed Charges are included in the consumption charges for the purpose of levying the electricity duty. This is followed throughout the state. There is no discrimination amongst the consumers. Appellant's prayer to the Respondent for levy of electricity duty based on his interpretation by excluding the fixed charges for computing consumption charges is not in order. The prayer is therefore, liable to be rejected. The Appellant is free to take up the matter with the appropriate authorities for redress.

42. It appears that LTMD tariff was imposed by the Respondent in May, 2000 in place of LTP-G tariff but meter was not reset every month. Later, HTP1 tariff was imposed, in September, 2001. The Appellant has submitted that he has not been offered the choice of the LTMD tariff and he had not opted for it. Apparently, the action of the Respondent in the above context was wrong. The Respondent corrected it subsequently. LTP-G tariff was reimposed in February, 2003 retrospectively from May, 2000. Supplementary bill was prepared upto the month of March, 2003 and included in the bill of April, 2003. This was done prior to 10th June, 2003, date on which the Electricity Act,

2003 came into force. Appellant's plea that the supplementary bill for the period prior to two years is not in accordance with the Section 56(2) of the Electricity Act, 2003 has no merit and cannot be accepted. The Respondent has clarified that the LTP-G tariff was reimposed and bills were revised retrospectively in March, 2003. This renders the act of not resetting the MD meter by the Respondent, undone and of no consequence due to LTPG tariff rebilling from May, 2000. LTMD optional tariff is included in the tariff order, which is revised from time to time after wide publicity. The tariff would be applicable after the Consumer exercises the option and would be normally effected from subsequent billing cycle. Appellant's argument that the LTMD tariff option was never offered and he should be allowed liberty to opt LTMD tariff now afresh retrospectively, has no merit. The Appellant is free to approach the Respondent directly to exercise the option as per the prevailing rules.

The Appellant referred to the provision under Section 26(1) of the Indian Electricity Act, 1910 to say that the Respondent could not charge any bill for connected load, maximum demand, etc. Since the bill can alone be raised for energy units recorded by a meter. Section 26(1) of Indian Electricity Act, 1910 reads as under:

"In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter".

Plain reading of the above sub section shows that it is the consumption of energy that is to be recorded by the meter. The meter does not record the amount of charges to be paid by the consumer. Consumption charges or the bill includes other elements too, in accordance with the applicable tariff. The Appellant's argument is absolutely without any basis and deserves to be rejected.

43. It appears that excess meter rent has been charged and recovered by the Respondent for few months treating the consumer as H.T. consumer even though the metering was always done on L.T. side. Rent on CT/PT etc is not applicable as per Respondent's Circular No. 658 dated 8th March, 2001. The meter rent was subsequently abolished after revision of tariff. As clarified in the revised tariff, cost of metering equipment has to be recovered in case of existing consumers at the time when existing meter is replaced but only once during life time of the consumer except in case of burnt / lost meter. The Appellant's argument that cost of meter should never be recovered from the existing consumer is not in consonance with the Regulations. In the present case, the Respondent has wrongly recovered Rs. 11000/- as cost of meter, which is meant for H.T. consumer. Appropriate cost of meter has been indicated in Respondent's Circular No. 648 dated 17th June, 2000. Excess rent levied and excess cost of meter recovered shall be refunded, with interest at the rates applicable for delayed payment of bills from time to time.

44. Power factor charges for L.T. Consumers who do not install power factor correction equipment i.e. L.T. capacitors of adequate size are applicable as per prevailing

conditions of supply (Clause No. 30K). The Appellant's contention is that power factor charges are applicable only if average power factor of consumer's installation is below 0.9 lag upon electrical measurement as per the principles of trivector. This is so as per Condition No. 30K of the conditions of supply for HT consumers. It is seen from the Condition No. 30K for LT consumers, that power factor penal charges are applicable to the consumers who do not install LT capacitors of adequate size. Rule 27 of the Indian Electricity Rules, 1956 read with Annexure VI S.No. 20K advises the consumers to consult engineers of the Licensee before ordering motors so as to provide adequate power factor correction apparatus. Respondent produced a table of capacitors required in kVAR for direct connection across induction motors based on average conditions and efficiency to maintain a PF of 0.95 to 0.97 for loading between 33.3% to 125%. Appellant's prayer to consider power factor based on KVA based maximum demand principles, his write up on connected load and certificate of his chartered engineer, has no merit, and can not be accepted.

45. Prior to disconnection of power on 20 Nov.04, a notice dated 30th October, 2004 was issued with an intimation to pay the outstanding dues immediately. Supply was disconnected after the consumer failed to make payment. It is seen that the Respondent had considered the disputed matters raised by the Appellant and disposed off with the direction to the Appellant to pay the dues. Even if the Appellant was not fully satisfied with the decision of the Respondent, it cannot be concluded that a proper notice was not given before disconnection. The Appellant's argument in this behalf cannot be accepted.

46. Respondent has pleaded that it has right to inspect consumer's apparatus and equipment for ensuring compliance of various clauses of the prevailing conditions of supply. Perusal of the conditions, more specifically No. 16; 17; 19, 30; 31(a),(d)(e),(f) approved by the State Government do indicate the need for visits and inspections to ensure observance of various conditions, by the officials of the Respondent. Appellant's objection to the entry of Respondent's officials for inspection of consumer's equipment is not in consonance with the 'conditions of supply' and therefore cannot be accepted.

47. Meter was found 10% slow by the Respondent during the inspection on 6th November, 1997. The Respondent revised the bills accordingly with retrospective effect from May 1996 and continued billing on this basis, upto May 1998. The meter was subsequently replaced. Respondent reiterated that the bills were paid without protest and the consumer did not raise any dispute or complaint in writing about the meter or the meter rent to the local office of the Board as per Clause No. 27 (b) of conditions of supply. The Appellant confessed that no dispute or complaint was not made earlier in the year 1996 to 1998 but the same have been included in the present grievance filed before the Forum in the year 2005. In case of any difference or dispute about the meter, reference is required to be made to the Electrical Inspector under section 26(6) of the Indian Electricity Act, 1910 and the amount in dispute has to be deposited with the Electrical Inspector if so requested by the Board as per Clause No. 27(c) of the conditions of supply. The Appellant had never approached to Electrical Inspector as required under Section 26(6) of the Indian Electricity Act, 1910 in the years 1996 - 1998. Therefore it is

not now permissible to open the issue after a lapse of 7 years under the present circumstances. No order can be passed on this issue at this stage.

48. In the year 1998, bills were raised by the Respondent on the basis of average of previous consumption under circumstances like locked premises, meter inaccessible etc. Respondent has clarified that bills raised on “average basis” were subsequently adjusted against the actual consumption recorded by the meter. The bills were paid by the Appellant without dispute, complaint or protest during the respective period. The Appellant has not raised this issue for over 7 years nor did it seek available redress. In this context, Hon. Supreme Court of India vide its order dated 21st April, 2005 in respect of Civil Appeal No. 3615 of 1996 of B.E.S.&T Undertaking versus Laffans (I) Pvt. Ltd. and Anr. has ruled that bills raised on average basis and also paid by the consumer and yet no reference is made to the Electrical Inspector would bind the Appellant and the Respondent both. The Licensee cannot raise an additional demand later. It follows that the consumer in turn also cannot demand to reopen the case later. Appellant’s prayer to quash all average bills raised and paid in the year 1998 has no merit.

49. On the issue of interest rate payable on refunds to consumers, while disposing off the Case No. 26 of 2002 dated June 28, 2005, Case No. 2 of 2003 dated July 14, 2005 and August 22, 2005, the Maharashtra Electricity Regulatory Commission has ruled that interest should be paid on refund amount at the same rate charged by the Licensee to consumers for delayed payment of bill. Appellant’s prayer to claim interest on refund of amount arising out of revision of bills at the same rate as applicable to interest on delayed payment of bills is in order. The same principle should be followed by the Respondent while making refunds to the Appellant unless otherwise specified in the order.

50. Fuel Cost Adjustment charges have to be levied as per the rates published for the respective billing cycles applicable to all consumers. The Appellant’s claim that FCA levied for January 1996 was incorrect, should be verified and error if any, should be corrected and refund if due, shall be given with interest.

51. The Appellant has prayed that the grievances arising subsequent to his application to the Forum should also be considered by the Ombudsman. As per Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003, the Grievances not presented before the Forum cannot be entertained by the Ombudsman directly. Appellant’s prayer to consider ‘new grievances’, ‘development grievances’, all grievances afresh” directly by the Ombudsman, etc is not in accordance with the Regulations, and hence cannot be accepted. In any case, the Respondent is required to take notice and act on the directions issued by the Commission and those contained in the Indian Electricity Act, 2003 and the Regulations thereunder.

52. Appellant’s complaint regarding shifting of billing center from Thane to Bhandup resulting into inconvenience, is out of place in as much as the Respondent can establish its office billing center, complaint centers etc. in the interest of administration

and service to all classes of consumers. The argument has no force and therefore no grievance in this behalf can be entertained.

53. Looking to the multiplicity of the issues involved in the case, delay in filing this representation before the Ombudsman has been condoned as per proviso under Regulation no. 16.2 of Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003.

54. The Respondent has raised the objection that the case is time barred in terms of the Limitation Act, 1963. Admittedly, various issues raised in the Representation relate to very old periods as back as 1975 and 1995 and are more than stale. The Respondent has included the issue of limitation in its reply to the Representation before the Ombudsman for the first time. It was not raised or agitated before the Forum. The Forum has gone through the case on merit and passed the order. In view of this, it is not appropriate to take cognizance and deal the issue of limitation, at this stage, inspite of the issues in the representation being very very old.

55. The Appellant has used the language in the representation and submissions, which is quite inappropriate in so far as it relates to the Respondent as well as the Forum, which is a statutorily constituted body. References to the Respondent No. 3 as “ostrich like”, “it has neither read nor understood nor made even a superficial attempt to understand”, are not in good taste. The uses of words like “ill-gotten gains”, etc for the Respondent is also not proper. The Appellant has gone overboard to the extent of hurling inappropriate comments about the Consumer Grievance Redressal Forum, a quasi-judicial Authority. The Appellant has alleged the Forum adopting “a partial attitude, perverse logic and having a devious mindset.” He has termed the Forum as showing itself up as a departmental extension of the Respondent No. 1. Allegations also go to the extent of doubting the knowledge of the Forum about the conditions of supply being severely limited and the issues beyond the comprehension of the Forum. The Appellant also alleged the Forum as biased, partial, inept, unsuitable and incompetent to redress the consumers’ grievance.

56. In view of the above, before parting with the order I must put up on record, my strong concern and displeasure about the highly reprehensible and wholly irresponsible conduct of the Appellant for making reckless and unfounded allegations against the Forum and also disapprove the comments made on the Respondent. I have no hesitation to reject these allegations as totally devoid of any basis and must be deprecated in clear terms.

57. After concluding the hearing in the matter on 17th October, 2005, the Appellant filed a letter dated 28th October, 2005 to permit a settlement by conciliation / mediation. There is no corresponding request from the Respondent. Moreover, no proposal from either of the party for any settlement through conciliation / mediation was received in response to this office notice dated 22nd June, 2005. Appellant ‘s request to permit settlement through conciliation / mediation is of no consequence at this stage and therefore cannot be acted upon.

58. The Appellant filed the representation dated 8th of June, 2005 listing over 50 grievances arising out of events way back since March, 1975. An appeal memo to the representation was filed by him on 8th of September, 2005, considering the multiplicity and interconnectivity of the issues involved, the hearings had to be adjourned twice and was concluded on 17th October, 2005. This entailed some delay in disposal of the case.

ORDER

1. Issues relating to violations like excess connected load and / or excess recorded maximum demand, in this case, are not in the nature of “unauthorised use”, as defined under Section 126 of The Electricity Act, 2003. The order of the Consumer Grievance Redressal Forum in this behalf is, therefore, set aside for the reasons elaborated in paragraph 7 above.
2. The Respondent shall pay unpaid interest if any on the security deposit from the date of receipt of deposit at the applicable interest rates for security deposits. The Appellant shall point out errors and omissions noticed, if any, in this behalf to the Respondent within one month from the date of issue of this order. Appellant’s prayer to pay interest on unpaid interest is rejected.
3. Appellant’s prayer for allowing liberty to opt for LTMD tariff afresh retrospectively from the year 2000 and rebilling since then, has no merit as elaborated in paragraph 42 above and is therefore rejected.
4. After clubbing of power and lighting consumption for billing on LTP-G tariff from June 1997, fixed charges are applicable treating the sum of lighting connected load and sanctioned motive power load as the sanctioned load. Lighting connected load, as it exists, in absence of any specific sanction by the Respondent, cannot be treated as unauthorized. Excess connected load charges are applicable only when total connected load exceeds the sum of lighting connected load and sanctioned motive power load. Bills not raised on this basis, if any, shall be corrected and excess amount billed should be refunded with interest as applicable to the delayed payment of bills. The Respondent has accepted and given a credit of Rs. 102696.68 towards error in billing of lighting consumption at non-domestic tariff (LD2) in addition to LTP-G tariff from June, 1997 to September, 1999. Interest at the rate of 9% as prayed by the Appellant, shall be paid as elaborated in paragraph 36 above.
5. Assessment of charges for violation has to be done as per the guidelines given in Maharashtra Electricity Regulatory Commission’s order in case no. 2 of 2003, dated 14th July, 2005 read with corrigendum dated 17th October, 2005 as elaborated at paragraph 39 above. Excess amount collected should be refunded with interest at the rates applicable to the delayed payment of bills. Appellant’s prayer to compute the connected load on the basis of output capacity, certified by his Chartered Engineer is not in accordance with the provision contained in the Conditions of Supply. The prayer is therefore rejected.
6. Delayed payment charges levied, if any, shall be withdrawn if full payment including arrears is made on or before 21st day (16th day from 20th January, 2005) from the date of bill as elaborated in paragraph 40 above. Appellant shall point out such specific instances to the Respondent for refund of the delayed payment charges within one month from the date of this order. The Respondent shall

- refund the excess delayed payment charges levied, if any, with interest at the rate applicable to delayed payment of bills. Appellant's prayer to quash all delayed payment charges if clear 20/15 days period for payment is not given from the date of presentation of the bill is not in consonance with the Conditions of Supply and Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. The prayer is therefore rejected.
7. Interpretation of the basis of levying Electricity Duty on 'consumption charges' is a matter concerning the State Government. This is not a matter of grievance to be deliberated before the Consumer Grievance Redressal Forum and the Ombudsman. The Appellant is free to seek redress under The Bombay Electricity Duty Act, 1958 with the appropriate authority as elaborated in paragraph 41 above.
 8. Excess meter rent levied and excess cost of meter recovered shall be refunded with interest at the rate applicable to delayed payment of bills as elaborated in paragraph 43 above.
 9. Power Factor charges are applicable as per the prevailing conditions of supply as elaborated in paragraph 44 above. Appellant's prayer to consider power factor as per his write up on connected load and certificate of his Chartered Engineer is rejected.
 10. Electricity Supply was disconnected in November, 2004 after due notice and in accordance with the provision under 56 of the Electricity Act, 2003. Action of the Respondent in this behalf cannot be termed as illegal, as elaborated in paragraph 45 above.
 11. Appellant's objection regarding entry of Respondent's officers for inspection has no merit. This has been elaborated in paragraph 46.
 12. Meter was found slow in the year 1997. Revised bills raised on this basis were paid by the Appellant without any protest. No dispute or complaint was referred to the Electrical Inspector nor was any amount deposited with the Electrical Inspector as required under prevailing conditions of supply. It is not permissible to reopen the issue now as elaborated in paragraph 47 above.
 13. The Appellant's prayer to quash all average bills can not be entertained now. This has been elaborated at paragraph 48.
 14. Respondent shall refund excess Fuel Cost Adjustment charges levied, if any for the month of January 1996 with interest at the rate applicable to delayed payment of bills as elaborated in paragraph 50 above.
 15. Appellant's prayer to consider new grievances, not earlier raised with the Forum, directly by the Ombudsman is not in consonance with the Regulations and is therefore rejected as elaborated in paragraph 51 above.
 16. The Appellant should refrain from using derogatory language in the Representation against the Consumer Grievance Reddressal Forum and the Respondent.

Sd/
(W. G. GORDE)
Ombudsman

Sd/
(S. N. YADWAD)
Secretary