



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.19 OF 2005 **In the matter of Amendment Bill**

Shri Yatish & Jai Sharma
Gr. Floor, Chanda Wadi,
138, C.P. Tank Road,
Mumbai – 400 004.....

Appellant

Versus

B.E.S & T Undertaking
BEST Bhavan, BEST Marg,
Mumbai – 400 001.....

Respondent

Present:

1. Shri W. G. Gorde, Ombudsman

On behalf of the Appellant:

1. Shri Jai Sharma
2. Shri Sanjay Nilwarna

On behalf of the Respondent:

1. Shri P.R.B.Nair, Divnl. Engr(Energy Audit)
2. Shri A.R. Sarmukadam, Asstt. Engr.
3. Shri S. M. Sakpal, Supdt (Energy Audit)

Dated. August 24, 2005.

1) Shri Yatish and Shri Jai Sharma is a consumer of B.E.S. & T Undertaking and is situated at Chandawadi, 138, C.P. Tank Road, Mumbai – 4. Shri Sharma is engaged in production of ice-cream in his unit. Shri Sharma has approached this office and submitted his representation on 27th June, 2005 against the order passed the Consumer Grievance Redressal Forum on 29th April, 2005 on the grievance regarding excessive average billing. Shri Sharma (hereinafter called as Appellant) had initially approached the B.E.S. & T Undertaking officials for correction of their bill. Having failed to get proper redress, the Appellant filed the grievance with the Consumer Grievance Redressal Forum and now this representation against the order passed by the Forum. Brief details of the case are as under:

2) The Appellant states that the meter No. P991370 was installed at their premises on 19th January, 2000 under GP2 tariff. The Respondent, B.E.S. & T Undertaking did not read the meter until 27th May, 2000 after its installation. In absence of any meter reading the Respondent raised the electricity bill on the “assumed basis” for 5 months. The bill, thus raised, was duly paid by the Appellant from time to time.

3) On 27th May, 2000, the Respondent visited the premises of the Appellant and noticed that display of the meter was defective and as such, replaced the meter with a new one. There was no communication thereafter from the Respondent, until 23rd August, 2004 when the amended bill of Rs. 78186.46 was sent to the Appellant towards the arrears without showing any bifurcation of units per month. The Appellant protested about the bill and wrote to the Respondent for rectification. The Appellant further says that he has paid Rs. 90,000/- on 17th August, 2004 towards the part arrears raised by the Respondent pending rectification, who advised the Appellant to approach the ‘In – house Review Committee’ by paying 50% of the arrears. The Appellant did not do so and instead approached the Forum.

4) The Forum heard the matter in April, 2005 and issued the order on 29th April, 2005 directing the Respondent, B.E.S. & T Undertaking to revise the amendment bill by taking average prior to disputed period and restrict the amendment of bill to 3 months. Being aggrieved with the said order of the Forum, the Appellant filed the present representation.

5) The Appellant says that he has been paying the electricity bills regularly including for the period from January, 2000 to May, 2000 as raised by the Respondent. The meter installed in his premises was never read for 5 months after its installation and bills issued on “assumed basis” which were paid. The amended bill was sent to him after 4 years in 23rd August, 2004 without any consideration of consumption. His premises were under repair during that period and no work was done. As such, the amended bill issued without any consideration and that too after the period of 4 years is unilateral and illegal. He has also cited the judgement in Civil Writ Jurisdiction Case No. 6499 of 1992 (Dumraon Textiles Limited Versus Bihar State Electricity Board) in this regard. The Appellant reiterated that the amendment of bill for the period 19th January, 2000 to 27th May, 2000 after 4 years and back billing by adopting the method of average consumption is not valid.

6) The Appellant states that his premises were under heavy renovation and there was no business during that period. He has furnished copies of the letters from the architect, the landlord and few material suppliers in support of his claim. The Appellant has stated that the defective meter was not tested by the Respondent and therefore amendment bill prepared after 4 years without testing the meter is bad in law. Since he has been paying the current bills regularly, the Appellant has requested that the Respondent should not be allowed to disconnect the electricity supply under the provisions of Section 56(2) of the Electricity Act, 2003. Prayer is also made to set aside the order of the Forum, which allowed billing on past average basis for 3 months.

7) The Respondent submitted its written statement on 11th July, 2005. It is conceded that the meter No. 991370 was not read since its installation on 19th January, 2000 upto

27th May, 2000. It was a new account and no past average consumption was available to their EDP department for billing the consumer on past average basis. The connected load was 1 KW and the consumer was billed on the basis of this connected load during the “stopped meter” period. The Respondent agrees that the amended bill was issued in the year 2004 based on the average consumption recorded from 27th May, 2000 to 1st June, 2001 i.e. post meter replacement period. This amended bill was further amended in consonance with the order of the Forum and is restricted to cover the arrears for 3 months on the basis of past average between 16 December, 1998 and 19th January, 2000. Claim amount is thus, reduced from Rs. 78187.17 to Rs. 29913.34.

8) The Respondent agrees that the meter was ‘display defective’ as observed on 27th May, 2000. The meter was removed and replaced by a new one on the same day. However, the old defective meter was never subjected to test. In fact, the Respondent has taken the stand that each and every defective meter need not be tested in the laboratory. The Respondent stated that electronic meter P991370 was installed on receipt of the request from the consumer that the consumption is likely to be around 3000 units per month. The Respondent disputes that the Appellant’s premises were under heavy renovation from December, 1999 and the proof submitted by the consumer claiming heavy renovation are not sufficient. In the written statement, the Respondent has prayed that it should be allowed to disconnect the electricity supply to Appellant’s premises under the provisions of Section 56(2) for non-payment of bills.

9) The matter was heard on 19 August, 2005. The Appellant explained his case to say that he has been paying the bills for energy consumption promptly as and when received from the licensee. Likewise, he received the bills for the period from January, 2000 to May 2000 and they were accordingly paid. Similarly, the bills received thereafter were also paid from time to time without any default. He said that his premises were closed for renovation during January and May, 2000 and no work was carried out. Therefore, there was no energy consumption except the usual lighting load. He further stated that there was no communication about any arrears for this period until August 2004 i.e. for over 4 years. The Appellant relied on the Maharashtra Electricity Regulatory Commission’s order dated February 23, 2005 in Case No. 19 of 2004 about the amendments / supplementary bills and pleaded that no supplementary bill in this case can be issued after 4 years especially when there was no meter testing carried out and no results intimated.

10) The Respondent during the hearing agreed that the meter was not read between January and May 2000 and bills were sent on assumed basis which the party has paid from time to time. The meter was tested before installation with an initial reading of 50. On 27th May, 2000 it was observed that the meter was display defective and was therefore replaced. It was conceded that upon removal, this meter was not tested as there was no request from the consumer. It was also agreed that in absence of meter testing, it cannot be certainly said whether it was a case of stopped meter or slow meter.

11) The Respondent was asked to comment on the Appellant’s stand on issue of supplementary bills in the context of Maharashtra Electricity Regulatory Commission’s order. On the applicability of Section 56 (2) of the Electricity Act 2003, he argued that the sum on account of consumption of energy would become due on issue of the bill and

not on consumption of the energy. He could not, however, substantiate his statement further. The other facts in this case were clear and undisputed.

12) On going through the written and oral submissions, following issues become crucial to decide the matter: -

- a) whether it is correct on the part of the Respondent to work out the bills for the disputed period on the basis of average consumption in the present case.
- b) whether the Respondent was right in raising the amended bill of Rs. 78187.17 after a period of 4 years.

13) It is seen from the records and the submissions during the hearing that the electronic meter installed on 19th January, 2000 was not read by the Respondent's representatives until 27th May, 2000 i.e. for over 5 months. It is expected that the meter is read every month or the alternate month depending on the billing cycle. The Respondent did not bother to read the meter for a long time contrary to the conditions of supply. Therefore, the Respondent never came to know until 27th May, 2000 whether the meter was properly working or otherwise.

14) On 27th May, 2000, the Respondent removed the meter with a remark of defective display but did not send the meter for testing. The Respondent, strangely, has taken a stand before the Forum that it is not necessary to test every defective meter in the laboratory. They would have tested it, had the consumer so demanded. It has, instead, preferred to raise bills on assumed basis for 5 months, which the consumer has paid. Thereafter the Respondent did not take any steps to test the meter in order to arrive at its correctness or otherwise. It has also not bothered to work out the final bill in accordance with the conditions of supply then prevailing, for 4 years on the ground that it did not have the record of past consumption.

15) It is also observed that the Respondent, in the year 2004, first raised the bill towards arrears based on the average recorded in the next 12 months or so after May 2000 in the post replacement period, at the rate of 3621 units per month. It is not explained whether it is permissible to raise such bills without any testing of meter. The Respondent subsequently, upon the Forum's order, revised the bills based on the past average between 16th December, 1998 and 19th January, 2000. This indicates that consumption of the past period were available with the Respondent. This is contrary to the stand taken by the Respondent in its written submission that no past average consumption was available to raise the bills on that basis.

16) The Respondent has prayed that since the consumer has not paid revised amended bill showing arrears of Rs. 29913.34 for the disputed period, it should be allowed to disconnect the electricity supply under the Electricity Act, 2003 for non payment of bills.

- 17) In order to examine the issue further, it would be worthwhile to read the provisions on Section 56 of the Electricity Act 2003.
Section 56: “(1) Where any -----no longer”:
PROVIDED that the supply of electricity shall not be cut off if such person deposits, under protest, -
(a) an amount equal to the sum claimed from him, or
(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,
whichever is less, pending disposal of any dispute between him and the licensee.”

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

18) In the present case, it is clear that the Respondent did not test the meter after removing it on 27th May, 2000. In absence of such test, it cannot be concluded whether or not the said meter ceased to be correct. Even if the display was defective, the meter should have been tested to ascertain the total consumption during the disputed period, as it was not a case of “stopped or damaged meter”. The Respondent, therefore, is not authorised to raise bills on average basis without testing the meter. The action of the Respondent in raising the bill based on the post replacement period cannot be justified as rightly observed by the Forum. Had the meter been tested and found slow, the amendment / supplementary bills could have been raised for a period of 3 months based on result of such test subject to other provisions of the Act and Regulations.

19) Further, it is seen that the Respondent raised the bills for the disputed period in the year 2000, on the basis of assumed readings, which the consumer has already paid. Raising and recovery of any dues from the consumer after the period of two years from the date when such sum became first due is non-permissible under the provisions contained in the Section 56(2) of the Act. It should be clearly understood that arrears for consumption become due immediately on energy usage and is billed on the dates prescribed according to the billing cycle. The respondent has, in fact, billed the consumer from Jan to May 2000, may be on assumed consumption basis, when it was due at that time. It is not open to the respondent to raise the bill towards the arrears after 4 years and still argue that such bills become first due in August, 2004 (when raised). In this case, neither the arrears (if otherwise permissible) were raised when it became due nor they were shown as arrears at any time until August, 2004. Raising the amended bills after 4 years, under such circumstances is clearly not permissible.

20) It is seen that while making an order allowing the bill towards arrears to be raised, the Forum has not considered the provisions under Section 56(2) of the Electricity Act, 2003 in the above context. In normal situation, when the meter is tested and found slow, amendment bill could be issued well in time and recovered. Here is the case where the defective meter is not tested and also not declared as stopped or damaged. Further, no supplementary bills are raised for 4 years until June, 2004. Therefore, the order of the

Forum is not in consonance with the provisions of the Act. The Respondent has cited the Civil Writ Case No. 6499 of 1992 between Dumraon Textiles V/s. B.S.E.B referred in earlier paragraphs. The referred case relates to a situation where the meter was burnt and the bill on average basis was issued. Facts of the present case are not identical to that case and nothing parallel can be drawn for application to the matter under consideration.

21) The Forum has observed that the consumer has not given sufficient proofs to show that his premises were under repairs and hence consumed less electricity. Documents of record show that the consumer has furnished letters from the architect, landlord and the material suppliers to show that his premises were, in fact, under renovation during the disputed period. This was not countered by the Respondent by any evidence except mentioning that there are no sufficient proofs to show the renovation. Although, this cannot be taken as the sole basis to substantiate the stand of the Appellant that less power was consumed but it would not be fair either to brush aside the submissions made by the consumer in this behalf.

ORDER

1. In view of the submissions and the oral evidence led by both the parties as above, I have no hesitation to conclude that that the Respondent was not justified in raising the supplementary bill on average basis without conducting any test on the meter.
2. Further the supplementary / amended bills raised after the period of 4 years from the date when it became first due, is not recoverable as per the provision of Section 56(2) of the Act.
3. The order of the Forum in allowing the Respondent to raise the amendment bill for 3 months by taking past average consumption is not in consonance with the provisions of the Section 56 (2) of Electricity Act 2003 and the regulations made thereunder and is therefore set aside.
4. The Appellant has paid the current bills regularly including the bills for the disputed period raised by the Respondent from time to time and therefore prayer of the Respondent to allow disconnection for non-payment of arrears has no merit and is therefore rejected.
5. This order should be carried out immediately and the compliance reported within a period of one month from the date of its issue.

Sd/
(W. G. GORDE)
Ombudsman

Sd/
(S. N. YADWAD)
Secretary