



## 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. 21 OF 2005**

#### **In the matter of Tampering of Meter Seals and Assessment of Bill**

Shri Laxmi Narayan Pandey,  
Sahas, Gokul Horizon, Thakur Village,  
Kandivali (E), Mumbai..... Appellant  
Versus  
M/s. Reliance Energy Limited..... Respondent

Present:

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

On behalf of the Appellant

1. Shri Laxminarayan Pandey  
Through his authorised representatives, Shri Krishna Kumar Pande  
and Santosh Kumar Pande.

On behalf of the Respondent

1. Smt. Anuradha Shetye, Nodal Officer

**Date: 23<sup>rd</sup> September, 2005**

Shri Laxmi Narayan Pandey, residing at Sahas, Gokul Horizon, Thakur village, Kandivali (East), Mumbai is a consumer of Reliance Energy Limited, running a flourmill having connected load of 10 HP. The consumer (hereinafter referred as Appellant) has submitted a representation on 5<sup>th</sup> July, 2005 against the order passed by the Consumer Grievance Redressal Forum of Reliance Energy Limited, on 11<sup>th</sup> May, 2005. The representation is registered in this office at Serial No. 21 of 2005. The Appellant has stated his case as under:

2. The Appellant is the owner of a flourmill called as 'Laxmi Flour Mill' situated at Borivali (East), Mumbai – 400 066 and is a functioning unit, from the year 1986 with a valid permit from the Municipal Corporation. The energy meter at the above premises was replaced during the year 1993 - 1994 due to some technical problem by the BSES (now called as Reliance Energy Limited). On or about 7<sup>th</sup> January, 2003, vigilance inspector of Reliance Energy Limited (hereinafter called as the Respondent) visited the flourmill, sealed the energy meter and disconnected the electricity supply on the ground that the seal of the meter (bearing No. 8081470) was tampered. After the Appellant called on the office of Reliance Energy Limited on the next day, the representative of the Respondent revisited the flourmill and reconnected the power supply after sealing the

meter with a piece of paper. During the visit of the Respondent's representative on the next day, the Appellant requested to show him whether the seal is broken or tampered but the Respondent did not show any such tampered seal.

3. On 15<sup>th</sup> March, 2003, a vigilance inspector from the Respondent's office visited the flourmill and handed over a notice indicating that the meter was working slow and that the paper seal was tampered. The Appellant denied the allegation and called upon the Manager (Technical) of the Vigilance Department of the Respondent who installed a parallel service meter on 22<sup>nd</sup> March, 2003 to record the energy consumption in both the meters. The Appellant says that the original meter bearing No. 8081470 was inspected by the Vigilance team from Kandivali office of the Respondent just 3 months prior to 15<sup>th</sup> March, 2003 and found the meter correct.

4. The Appellant protested through the letter dated 4<sup>th</sup> April, 2003 and denied the allegation of tampering. The Respondent replied to his letter on 16<sup>th</sup> June, 2003 stating that the meter was found tampered and has not recorded the correct readings and therefore, the supplementary bill for 44,063 units for the period starting from December, 1996 to 22<sup>nd</sup> March, 2003 has to be paid within a week.

5. Upon protest by the Appellant, he was told by the Respondent to approach the Appellate Committee after depositing 50% of the disputed bill, which comes to around Rs. 1,50,000/-. The Appellant did not approach the said Appellate Committee but wrote to the Electrical Inspector, PWD for redressal. The Electrical Inspector, in turn, wrote to the Respondent to take necessary action. Apparently, the Respondent did not take any action on the letter issued by the Electrical Inspector. The Appellant finally approached the Consumer Grievance Redressal Forum. The Forum passed the order on 11<sup>th</sup> of May, 2005.

6. The Forum in its minutes of the meeting dated 11.05.2005 informed the Appellant that as this being a case of unauthorized use of electricity under Section 126 (3) of the Electricity Act, 2003 and as the Assessing Officer has already made assessment, the applicant has to challenge the assessment order with the Appellate Authority. The Forum did not entertain the grievance further and disposed off the complaint.

7. Aggrieved with the said order of the Forum, the Appellant approached this office through the representation referred to above. The Appellant has prayed that the supplementary bill for 44063 units raised by the Respondent and paid by him under the threat of disconnection should be refunded with interest. The prayer reiterates that there is no theft of electricity and conceded that it may be a case of a faulty meter. The representation also highlights that the meter has not been tested in any laboratory uptill now. The Respondent did not show any tampered seal and has instead put a new paper seal on the old paper seal making it invisible. It is alleged that the Respondent has created a false and baseless case of electricity theft and the Appellant was forced to pay a supplementary bill for 44063 units.

8. The Respondent filed its say on 29<sup>th</sup> July, 2005 and additional reply on 1<sup>st</sup> August, 2005. The Respondent raised the following issues for preliminary consideration:

- a) That, the case is time barred before the Forum under the Regulation 6.3 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003.
- b) That, the representation filed by the Appellant is frivolous and malafide and without any sufficient cause and should be rejected under the provision of the Regulation 16.5.
- c) That, it is a case of tampering the meter with an intention to avoid paying the electricity bills as per the actual consumption. The case, therefore, falls under Section 126 of the Electricity Act, 2003 and the appeal should lie before the Appellate Authority, under Section 127 of the Act and not before the Ombudsman.

9. The Respondent prayed that in view of the above submission, the representation should be rejected without any relief. The Respondent enclosed a copy of its reply earlier filed before the Forum and confirmed that it stands by each and every statement, contentions and submissions made in the said reply. The reply further says that a check meter was installed in series with the old meter and readings were taken on 22.03.2003 and 27.03.2003. On the basis of difference in these readings in respect of both the meters, assessment of consumption was worked out for the period from December, 1996 to March, 2003.

10. The matter was heard on 2<sup>nd</sup> August, 2005. The Appellant reiterated his submission made in the representation and also narrated the sequence of events that took place from 7<sup>th</sup> of January, 2003 till filing of the present representation. The Appellant vehemently denied the allegation of any tampering of the meter. He said that there was no such paper seal shown to him as allegedly tampered and instead, the Respondent's officials put a new paper seal on the meter making it impossible to see whether there was any seal below it. The Appellant agreed that the additional meter connected for comparison of consumption recorded by the defective meter, is still there and both the meters are showing different energy consumption readings. The Appellant conceded that although there is a variance in consumption units recorded by both the meters, the old meter appears to be slow. The Appellant further states that the Respondent never removed and tested the old meter to indicate the percentage error, if any. According to him, the allegation of tampering of the seal is totally baseless.

11. Mrs. Shetye, Nodal Officer, on behalf of the Respondent stated that the present appeal is barred by limitation under Regulations 6.3 as it was belatedly filed before the Forum. On questioning whether she had raised this issue of limitation before the Forum, she replied in negative. It was brought to her notice that the issue of limitation should have been taken up in the first instance before the Forum for its consideration. The Forum has since made an order and has not rejected the complaint on the point of limitation, raising that issue now at this stage, cannot be accepted, more so, when the Appellant has filed the representation before the Ombudsman within the time limit.

12. On the point of invoking provision under the Regulation 16.5, the Nodal Officer was asked whether she made any reference to this point before the Forum indicating that the complaint is frivolous or malafide. To this, she replied in negative. She was not able to explain as to how filing a representation against the order of the Forum becomes frivolous or malafide when this issue was never raised or agitated by the Respondent at any point of time before the Forum. Moreover, no evidence, direct or indirect, is put forth that in filing the representation there is any intention of malafide on the part of the Appellant. Raising these issues at this stage without any material cannot hold any ground and therefore cannot be accepted.

13. Mrs. Shetye argued during the hearing on 19<sup>th</sup> August, 2005 that the Forum has passed the order that the case is of unauthorized use of electricity under Section 126(3) of the Electricity Act 2003. The Assessing Officer has already made an assessment of energy and therefore the Appellant has to challenge the assessment order before the Appellate Authority under Section 127 of the Electricity Act 2003.

14. Sequence of events on record show that the Respondent's officials visited the flourmill on or about 7<sup>th</sup>/8<sup>th</sup> January, 2003 and again on 15<sup>th</sup> March, 2003. The additional check meter was installed on 22<sup>nd</sup> March, 2003. All these events took place before the commencement of the Electricity Act, 2003 on 10<sup>th</sup> June, 2003. Section 126 of the Act, thus, comes into play only on or after that date. The Respondent has, however, issued the supplementary bill for 44063 units on the ground of tampered meter and fraudulent extraction of energy on 16<sup>th</sup> June, 2003 i.e. after the Act came into force.

15. The Respondent filed an additional reply on 29<sup>th</sup> August, 2005. She reiterated that there is a prima facie case of tampering of meter / theft of energy under the provisions of Section 39 and Section 44 of the Indian Electricity Act, 1910. The said provisions are replaced by the new provisions of Section 126 and Section 135 to 139 of the Electricity Act, 2003. The Respondent even volunteered to do the testing of the meter No. 8081470 in the laboratory to prove their contentions at this stage also. She desired to submit these details along with the Inspection Reports, etc. to show that this is a case of tampering of a meter.

16. During the hearing on 30<sup>th</sup> August, 2005, the Appellant confessed having made an attempt to see whether any pin or wire can be inserted in the gap between meter cover and the glass. The Respondent objected to this stating that this action is totally unauthorised on the part of the Appellant and amounts to an attempt to tamper the meter and pleaded that the same be placed on record. After the hearing, Secretary to Ombudsman's office was directed to visit the site and submit his observation. The report submitted by the Secretary upon his visit, indicates that a cut out on the meter cover is provided with glass for taking meter reading. A small dent on the cut out and a small gap between the cut out and the glass of about ½ inch wide is visible. A thin pin or wire can be inserted through the gap. No scratch was visible on the nameplate. Two plastic seals, one each on left and right side of the meter cover were seen. Seal numbers were not visible due to dirt and inaccessible location. The Respondent made further submission on 8<sup>th</sup> September, 2005 to

say that the numbers of the seals could not be noted by the vigilance squad on 1<sup>st</sup> September, 2005, being non accessible.

17. In the context of the request from the Respondent, the Nodal Officer was permitted to produce the details of seal records of the meter and Inspection Report to bring out more facts in the case. Mrs. Shetye, Nodal Officer of the Respondent, during the hearing on 09.09.2005 accordingly furnished a copy of the inspection report dated 7.01.2003, seal records of the old meter No. 80081470, and summary of earlier consumption recorded by the old meter prior to March, 2003. Original copies of these documents were also shown for verification during the hearing. She pleaded that the original seals put on the meter did not tally with the seals now observed and that they are different. She reiterated her contention that the meter is tampered and the seals have been changed. She pointed out that due to tampering of the meter, it has gone slow and low consumption was recorded for a long time. This is brought out clearly in the inspection report of 07.01.2003 and 15.03.2003. She mentioned that in view of the tampering and slowing down of the meter, assessment of consumption of energy was made by the Assessing Officer.

18. The Appellant stated that there is no signature of the Appellant's representative taken on the inspection report referred above. He further stated that the contents of the inspection report were not brought to his notice. He objected to Respondent's submitting additional record at this stage. He clarified that his action of inserting a pin in the gap between the meter cover and the glass was merely to check whether there is really any gap as stated by the Respondent. He never intended to interfere with the meter by inserting a pin as is contemplated by the Respondent. On query, about the working of the flourmill, he stated that on an average, the flourmill works for about two hours in the morning and 3 hours in the evening shift. There are some fluctuations in the working hours in the past few years, due to establishment of some new flourmills in the area.

19. The Respondent's case is based on the stand that this is a case of tampering of the meter and thereby slowing it down to record low energy consumption. This amounts to indulging in unauthorised use of electricity and using it fraudulently and dishonestly for wrongful gains. The Nodal Officer argued that this being the case, it falls clearly under Section 126 of the Electricity Act, 2003 and therefore outside the jurisdiction of the Forum and the Ombudsman.

20. In order to examine the argument of the Respondent, it is necessary to consider the material on record and the provisions of the Act. Section 126 of the Act reads as under:

*“Assessment- (1) If an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.*

(2).....

(3).....

(4) .....

*Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.”*

21. In the present case, the report of Irregularity dated 07.01.2003 of Respondent's north zone department has indicated a gap between the meter cover and meter glass. It also mentions "scratches found on digits and number plate and meter sealed by paper seal". Report of Irregularity dated 15.03.2003 of Respondent's Vigilance Department indicate that the body seals are tampered and there is no paper seal and that the meter is slow. The Respondent thereafter fixed an additional meter on 22<sup>nd</sup> March, 2003 to record correct consumption of energy. Comparison of energy units consumed from 22.03.2003 to 27.03.2003 shows that the old meter records almost 50% of the consumption recorded by the new check meter fixed on 22<sup>nd</sup> March, 2003.

22. Evidence subsequently produced by the Respondent show that there were four seals on the meter as on 12<sup>th</sup> June, 1992. The inspection carried out in September, 2005 shows that although the seals are present on the meter, they have different numbers than the original seals, indicating the possibility of tampering.

23. The Appellant during the hearing on 15<sup>th</sup> September, 2005 vehemently rejected the allegation of any tampering on the meter. The Appellant conceded that the meter was slow. However, he did not come out with any explanation as to why the old meter records substantially lower consumption as compared to the check meter connected for comparison. In order to have a better idea of consumption recorded by the old meter over past few years prior to March, 2003, the Respondent was asked to show consumption records of the meter in the past. The statement of consumption was shown by Mrs. Shetye during the hearing. Copy of the consumption record was also submitted. It indicates that consumption recorded by the old meter from the year 1996 to 2002 varied between 5485 to 6088 units on year to year basis. This averages to around 19.38 units per day, assuming 300 working days of the year. The consumption recorded by the new / check meter from March, 2003 till September, 2005 averages to 33.77 units per day. It is pertinent to note that the flourmill runs on 10 H.P. motor, which consumes about 7 unit per hour. If flourmill works for about 5 hours it should consume around 35 units in a day. This closely approximates to the average consumption recorded by the check meter. Thus, it becomes clear that the old meter recorded substantially lower consumption right from the year, 1996 compared to consumption recorded by the check meter. It also brings out a lapse on the part of the Respondent that it has not checked the meter for years to bring out this irregularity well in time until, January, 2003.

24. Perusal of the inspection reports and the seal record of the meter, indicate a possibility of tampering of the meter. This is corroborated by record of consumption discussed in the preceding paragraph. The first inspection was carried out on 07.01.2003 followed by the second one on 15.03.2003 with the notice of irregularities handed over to the Appellant. Matters of theft of energy and interference with the meter were covered under Sections 39 and 44 of the Indian Electricity Act 1910, until 10<sup>th</sup> June, 2003.

Apparently, the Respondent initiated no action against the Appellant except to issue notice on 15<sup>th</sup> March and fixing an additional check meter on 22<sup>nd</sup> March, 2003.

25. The Electricity Act, 2003, came into force on 10<sup>th</sup> June, 2003. The letter dated 16<sup>th</sup> June, 2003 from the Respondent which mentions that “on inspection, the above meter which was found tampered and has not recorded actual consumption resulting fraudulent extraction of energy, we are now issuing a supplementary bill for the above tampered meter as detailed above”. The Respondent asked the Appellant to pay for 44063 units for the period from December, 1996 to 22<sup>nd</sup> March, 2003, within a week. The Appellant did protest on this issue but subsequently paid the amount in instalments and cleared the entire dues. Before that the Appellant was allowed to approach the internal appellate committee for redress by paying 50% of the arrears due. The Appellant says that he did not have money to pay and therefore did not avail this remedy. There appears no substance in the Appellant’s say that the Assessing Officer has not given him a fair chance.

26. Having deposited the assessed amount as above, such person is not subjected to any further liability or any action by any authority whatsoever, under section 126 of the Electricity Act, 2003. The Appellant conceded during the hearing that he was not aware of the other remedies and did not also approach the Consumer Forum at that time. He did pay the arrears raised by the Respondent in accordance with the assessment made by the letter dated 16<sup>th</sup> June, 2003, though after protest. Mrs. Shetye, the Nodal Officer, during the hearing reiterated her stand that the assessment was made after taking into consideration, the low consumption recorded by the old tampered meter as compared to the check meter.

27. Mrs. Shetye, Nodal Officer of the Respondent cited 3 different judgements, one delivered by the Madhya Pradesh High Court in the Writ Petition of 354 and 368 of 2003 and the other two delivered by the honourable Supreme Court of India, in Civil Appeal No. 2507 of 1997 and Civil Appeal No. 7798 of 1996. The facts of the case in the above judgements are, to some extent, different from the present case. However, certain guidelines emerge out of the judgements which indicate that the trial in the criminal case, whether initiated or not, will have no bearing in the matter of assessment having been made in accordance with the tariff of the value of the energy, dishonestly consumed. From the other judgement, it is seen that the Court has declined to record any finding in the case where meters were tampered with and the Respondent was called to pay the difference of the rate of electricity said to have been consumed during the stated period of detection. In yet another judgement, the Court has observed that the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order. In this case, the Appellant was offered this opportunity, which he did not avail. The Respondent has, then made the assessment of energy units alleging the meter as tampered and that the assessed amount is paid by the Appellant, without availing the remedy of review by the internal committee within the Respondent’s organisation.

28. The Consumer Grievance Redressal Forum dealt this matter and observed that this being a case of unauthorised use of energy, falls under Section 126 of the Electricity

Act, 2003 although it did not go through the details of the case. The Forum observed that the Assessing Officer has already made an assessment and it cannot entertain the grievance against the order of the Assessing Officer. Therefore, the appeal has to lie with the Authority under Section 127 of the Act.

29. The Appellant did not agree with the decision of the Forum. It, therefore, became necessary to go through the record and obtain additional information to ascertain existence or otherwise of a prima facie case under Section 126. The documents on record and the arguments during the hearings indicate a clear possibility of tampering the meter. It is, not intended to extensively deal with the evidence either to finally prove or disapprove the tampering as in that case, the matter would go, certainly beyond the jurisdiction of the Ombudsman. Once, there appears a prima facie case of tampering further examination of evidence and evaluation thereof is beyond the scope of the Forum under Regulation 6.4(1) of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman), Regulations, 2003. Therefore, it is also not necessary to evaluate the correctness and the duration of the assessment made by the Assessing Officer of the Respondent by the Forum. Since the Assessing Officer of the Respondent has made his assessment of energy and communicated to the Appellant vide letter dated 16<sup>th</sup>, June, 2003, the action is deemed to have been taken under Section 126 of the Electricity Act, 2003. The Forum, has therefore, rightly declined to entertain the matter.

30. In view of this, I am inclined to concur with the submission of the Respondent that this is a case of unauthorised use of electricity as described in section 126 of the Electricity Act, 2003 and the grievance falling within the purview of section 126 of the Electricity Act, 2003 are excluded from the jurisdiction of the Forum under Regulation 6.4 (1) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 and hence the Representation is non maintainable.

31. In order to determine the existence or otherwise, of the prima facie case of tampering of the meter, additional documents and information had to be obtained from both the parties necessitating few adjournments. This resulted in a couple of weeks delay in disposal of the case.

### **ORDER**

1. The documents on record and pleading during the hearing bring out a clear possibility of tampering of meter. As such, the case falls within the purview of section 126 of the Electricity Act, 2003.
2. In view of the above, the Forum has rightly informed the Appellant by the minutes of the meeting dated 11<sup>th</sup> May, 2005 that this is a case of unauthorised use of electricity and that the appeal if any should lie only in accordance with the provisions of section 127 of the Act with the Appellate Authority. The stand

taken by the Forum is in order and there is no reason to interfere in the decision taken by the Forum.

3. The Representation, thus, is non-maintainable as being beyond the jurisdiction of the Ombudsman. The Appellant is at liberty to seek redress as provided in the Act.

Sd/  
(W.G.GORDE)  
Ombudsman

Sd/  
(S.N. YADWAD)  
Secretary