



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. 22 OF 2005

In the matter of various billing disputes

M/s. Indian Leather & Handicrafts, Appellant
Plot No. B70, Road 21, Wagle Estate, Thane
Versus
The Executive Engineer (Wagle Estate Division)(EE-WED),
Maharashtra State Electricity Distribution Co. Ltd.,
Administrative Building, Road 15,
Wagle Estate, Thane..... Respondent

Present:

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

On behalf of the Appellant:

1. M/s. Indian Leather & Handicrafts through its nominated representative
Shri Ashwin Treasurer

On behalf of the Respondent:

1. Shri S. B. Wahane, Executive Engineer, M.S.E.D.C.L., Thane
2. Shri L. K. Wasave, Divisional Accountant, M.S.E.D.C.L., Thane

Date: 17th November, 2005

M/s. Indian Leather & Handicrafts through its nominated authorised representative Shri A.V. Treasurer filed this representation, which was received on 12th July, 2005. The representation is against the order issued by the Consumer Grievance Redressal Forum, Maharashtra State Electricity Distribution Co. Ltd. at Bhandup on 4th May, 2005. Brief details of the case are as under: -

2. M/s. Indian Leather & Handicrafts is an industrial unit having factory at Plot No. B70, Road No. 21, Wagle Estate, Thane. It is a consumer of electricity supplied by Maharashtra State Electricity Distribution Co. Ltd (hereinafter called as the Respondent). M/s. Indian Leather & Handicrafts (hereinafter called as Appellant) had filed its grievance against the Respondent with the Forum by listing several points in respect of electricity billing and related issues which mainly include interest on security deposit; wrongful clubbing of lighting and industrial billing; incorrect assessment and levy of penalty on connected load; delayed receipts of electricity bills; levy of penalty thereon and issues related to average billing during defective meter period.

3. The Forum heard the matter and issued the order on 4th May, 2005 with the following directions:

- 1) Security Deposit to be shown on the bill and interest to be paid from the date of connection at 9%. Amount of Security Deposit to be considered for 65 H.P. in the year 1979.
- 2) Clear 20 days time should be allowed for making payment of bills.
- 3) The Forum ruled that issues regarding the excess connected load and assessment of penalty, etc are beyond its jurisdiction.
- 4) The Forum directed the Respondent Licensee to furnish details of Rs. 3550/- given to the Appellant as credit.
- 5) The Forum directed the Licensee to apply LTMD tariff to the consumer with effect from February 2005, as the consumer has exercised the LTMD option on 17th December, 2004.

4. Aggrieved with the order, this representation happens to be filed by the Appellant under the Regulations 16.3 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. The Appellant has furnished a statement of claim against the Distribution Licensee for excess billing of Rs. 747017/- as on 27th June, 2005 for LTMD tariff option. It says that the Respondent did not offer LTMD option as per Maharashtra Electricity Regulatory Commission's tariff order dated 5th May, 2000 and should now be allowed to exercise the option afresh (de novo) with effect from 1st May, 2000. It is also prayed that rectification of excessive fixed charges and load and capacitor penalty should be carried out.

5. The Appellant is also aggrieved with the order of the Forum, ruling that, the issues relating to excess connected load and penalty thereon falls under Section 126 of The Electricity Act, 2003 and is beyond its jurisdiction. The Forum, therefore, declined to go through the issues. The Appellant submitted that similar issues have been considered earlier by the Ombudsman as being within his jurisdiction. Therefore, same view should be taken now in this case and all such issues should be considered in the appeal.

6. The Appellant in the Schedule B of the representation listed following main grievances for consideration:

- a) Non payment of interest on security deposit ,
- b) Inadequate period for payment of bills and levy of DPC and interest,
- c) Excess assessment of load, recovery of charges,
- d) Double billing, incorrect clubbing of light and power bills,
- e) Wrongful entry into consumers premises,
- f) Illegal disconnection of supply,
- g) Average billing during the faulty meter period.

7. The Appellant submitted an annexure with the representation giving a statement of rebilling as worked out by him. This includes lighting consumption billed at higher tariff after June, 1997, retrospectively. Excess fixed charge and penalty on connected load and also the details regarding meter readings, average billings, double billings, etc. and finally arrived at the amount of refund claimed from the Licensee.

8. Notice was issued on 14th July, 2005 to the Respondent calling upon to file written statement of defence and the documents on which it intends to rely. Both the parties were requested to consider whether they are willing to work out a settlement through conciliation or mediation. In absence of point wise reply in time from the Respondent, the matter was scheduled for hearing on 18th August, 2005.

9. On 18th August, 2005, the Respondent furnished its reply denying the claims and allegations of the Appellant. The representation was termed as frivolous, vexatious and malafide. On the issue of Security Deposit, the Respondent states that the Appellant ought to have made enquiry with the previous owner about the amount of security deposit made by him. The Appellant cannot saddle the Respondent with the interest from 1979 paid or payable to the earlier owner. The Respondent objected to Appellant's bringing up the alleged irregularity since the year 1975 and pleaded that the consumer ought to have taken steps at that time by approaching Electrical Inspector for the redress. The grievances are now time barred and not supported by any documentary evidence.

10. On the issue of assessment of charges and penalty, the Respondent agreed with the Forum that the issues fall within the purview of Section 126 of The Electricity Act, 2003 and therefore the Appellant should approach the Appellate Authority i.e Chief Engineer, P.W.D. under Section 127 of the Act and not the Ombudsman. There is no prima facie loss or damage or inconvenience caused to the Appellant and pleaded that the representation should not be entertained, as not being maintainable. The Respondent also states that the Appellant has unnecessarily wasted its manpower and energy by filing the representation and claimed a compensatory cost of Rs. 5000/- from the Appellant.

11. On the issue of interest on the Security Deposit to be paid by the Respondent, it states that the rate of interest at 9% granted by the Forum is not correct and it should be at the post office saving rates as per prevailing rules. The Appellant failed to point out any error as he himself was not sure whether the amount was actually paid to the previous owner.

12. The matter was heard on 18th August, 2005. It was noted during the hearing that the Respondent had not filed a detailed point wise reply to the issues raised in the representation. Submissions made by the Appellant during the hearing was limited to the issues of jurisdiction and those listed in the annexures, mostly relating to assessment of connected load, fixed charge and double billing units of lighting consumption and incorrect arrears and interest.

13. 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.

14. 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.

15. 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. 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 fifteen days to proceed with the case.

16. In view of the above, both the parties were allowed to make further submissions and rejoinders, if any to consider the issues further on merit. The case was adjourned. The Respondent vide its letter dated 31st August, 2005 submitted a rejoinder to the issues raised by the Appellant in the representation. It reiterated its earlier stand that the representation is frivolous, vexatious and malafide. The Respondent maintained that the consumer was charged in accordance with the approved tariff, revised from time to time and the bills were accordingly issued. It questioned the Appellant's approaching the Ombudsman now, on the issues pertaining to very old period. It commented on various references of the cases quoted by the Appellant in the appeal to say that the facts of those cases are different and therefore cannot be made applicable to the present case. The Respondent objected to delay in submitting the present representation by the Appellant beyond a period of 60 days and prayed for its dismissal on this ground. Various issues raised in the representation are very old and they are time barred within the provisions of the Indian Limitation Act and Consumer Protection Act. The rejoinder further says that the security deposit paid by the old consumer is required to be refunded to him only with interest and not to the present consumer. The onus of providing documentary proof of payment of security deposit lies with the Appellant. The Respondent submitted that it should be allowed to pay interest at the rate of Post Office Savings Deposit as applicable on the security deposit. Therefore, order of the Forum to pay 9% interest violates the statutory provisions. It is prayed, therefore, that the Forum's order in this respect should be set aside. The Respondent in the above circumstances prayed for dismissal of the representation with cost and claimed compensation of Rs. 10,000/-.

17. 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 9 days. Considering the

issues involved and the documents to be submitted on various points, the delay of 9 days in filing the representation by the Appellant is hereby condoned.

18. The Appellant failed to submit the appeal memo in the given time of two weeks. Instead he filed a letter dated 14th September, 2005 requesting to put off further hearing until the order under another Case No. 21 of 2005 is issued. Although issues in that case are similar, the facts are different. This request was not therefore acceptable and hence the hearing proceeded.

19. The matter was again heard on 19th October, 2005. The Appellant, during the hearing, reiterated that the Respondent has not paid interest on security deposit. He did not dispute on the amount of Rs. 1350/- paid as security deposit from time to time from the year 1974 to 1980. It was claimed that additional security deposit of Rs. 800 was paid by the consumer and the Respondent should be asked to trace out the old records to confirm the deposit and also pay interest thereon. He stated that the Appellant has not properly worked out the refund in respect of clubbing of bills for power and lighting. He stated that from June, 1999 to February, 2001 although the clubbing was done but it is not in accordance with the Board Resolution No. 724 of the Respondent. After February, 2001, clubbing is done but the lighting load of 1 H.P. is added to the connected load used for motive power. The Appellant also raised the issue of applying LTMD tariff belatedly in the month of July, 2005 instead of February, 2005 inspite of directions of the Forum. He objected to calculation of excess connected load and levy of penalty thereon on different occasions. The Respondent billed the Appellant from November, 1996 to August, 1997 on average basis inspite of the faulty meter. He also argued on over billing by the Respondent during the period of March, 1998 to August, 1998 for which the bills were issued in October, 1998. The Appellant argued on the issue of excess connected load and penalty levied by the Respondent from time to time. He cited three occasions when the lighting load was added to the power load or the connected load was incorrectly calculated without a proper inspection report. The Appellant submitted during the hearing that the Respondent has disconnected the supply illegally and entered the premises wrongfully without proper notice.

20. The Respondent refuted the arguments made by the Appellant on various issues. On security deposit, he argued that it was for the Appellant to produce proof of having paid additional security deposit as claimed. The Forum has erred in granted interest at 9% on the security deposit, which is in contravention with the prevailing rules on payment of interest. Interest on security deposit as per the prevailing practice is the same as paid on the post office savings account. The Respondent conceded that period for payment of bills should be 20 days (now reduced to 15 days from 20th January, 2005) excluding the date of bill. In some cases actual period available for making payment upto due date was indeed less than 20 days. He also agreed that there was a delay in applying LTMD tariff, which was done in July, 2005 by making necessary adjustments in the bills for February, March and April, 2005.

21. The Appellant has submitted that it has a sanctioned load of 66 H.P. Connected load on different occasions was wrongly calculated by the Respondent on the basis of input rated capacities of the machines instead of their output capacities as measured by meters. This argument was examined at great length in the Case No. 16 of 2005 between

M/s. Bombay Protein Manufacturers versus Maharashtra State Electricity Distribution Co. Ltd. It was concluded that the connected load has to be understood and calculated as per the definition appearing in the 'Conditions of Supply' framed by the Respondent with the approval of the Government. The argument advanced by the Appellant in this behalf, therefore, cannot be accepted.

22. On the issue of clubbing of lighting and power consumption, he agreed that load used for lighting is added to connected load for power. Fixed charge is levied on the sum total of these loads. There is no separate sanction for lighting load. However, penalty is charged when the total load including lighting load exceeds the sanctioned connected load. The Respondent had, on 28th February, 2000, noticed a total load of 64.9 H.P. inclusive of lighting load of 4.1 H.P. The load being within the sanctioned load, no penalty was levied. The squad noticed during the inspection in August, 2001, total connected load of 139 H.P and therefore the penal charges and penalty was levied in accordance with the "conditions of supply". The sanctioned load was subsequently reduced to 65 H.P. by the order dated 22nd April, 2002 and made retrospective from February, 2002. While replying to issue of average billing during the period of November, 1996 to August, 1997, the Respondent submitted that the lighting meter was faulty and stopped and therefore the average billing was resorted to which is in accordance with the rules. It was denied that the officials of the Respondent entered the consumer premises wrongfully or without any intimation. No evidence to this effect is furnished by the Appellant. He also denied of any illegal disconnection as alleged by the Appellant.

23. Both the Appellant and the Respondent argued at great length. It is observed from the above deliberation that the Forum has already decided the issue of security deposit and interest to be paid thereon. The Appellant could not produce any evidence of having paid an additional security deposit of Rs. 800/-. The Respondent vide letter dated 12th August, 2005, has now clarified that the additional security deposit of Rs. 800/- sought vide firm quotation dated 24th November, 1980 was paid on the same day vide M.R. No. 100565. Thus, it is clear that total security deposit inclusive of additional security deposit paid by the Appellant is now Rs. 1350/- as reconciled. The Respondent has paid an interest of Rs. 3054.48 and credited in the billing month of July, 2005. View taken by the Forum on the rate of interest as 9% appears to be incorrect in so far as it is contrary to prevailing rules, which allow the interest at post office savings rate.

24. The Respondent has shown that it has already effected corrections in the clubbing of bills for lighting and power from June, 1997 to May, 1999. Amount of Rs. 3550.97 is credited in the month of September, 2004. Reconciliation of figures, if any on this account shall be carried out by the Respondent. The issue of connected load and penalty thereon due to clubbing of lighting load was agitated by the Appellant. It should be clearly understood that the Respondent did not issue separate sanction for connected load used for lighting purpose. Therefore, it cannot be treated as "unauthorised" either prior to clubbing or after clubbing with the power load. This issue was extensively examined in the Case No. 16 of 2005 (M/s. Bombay Protein Manufacturers v/s. Maharashtra State Electricity Distribution Co. Ltd). The Respondent shall carry out necessary correction in the bills including withdrawal of penalty if charged for excess connected load.

25. Inspection squad of the Respondent, on 3rd March, 2003, observed a total connected load of 70 H.P. which, according to the squad, consists of 6 H.P. as lighting load. In that case, the observed connected load for motive power would be 64 H.P. which is below the sanctioned load of the Appellant. Therefore, no connected load penalty would be leviable on this account.

26. The Respondent has furnished a copy of inspection report of the squad, which indicates connected load of 139 H.P. in August, 2001. Reduction in the sanctioned load was subsequently carried out in April, 2002 retrospectively from February, 2002. Issue of penalty and penal charges levied on such load, power factor penalty to be levied on LT consumers on the basis of definition of "connected load" given in condition of supply were also discussed in the Case No.16 of 2005 (M/s. Bombay Protein Manufacturers v/s MSEDCL). Same principles shall apply for levy of charges and penalty if any, in this case also. The excess penalty / penal charges collected if any shall be refunded with interest applicable to delayed payment of bills.

27. Perusal of few bills brings out that less than 20 days period was available in some cases to the consumer for making payment. Delayed payment charges levied, if any on this account shall be reviewed and withdrawn if the consumer has made the full payment with arrears on or before 21st day (16th day after 20th January, 2005) from the date of issue of bill. Detailed reasons have been elaborated in the Case No. 16 of 2005 (M/s. Bombay Protein Manufacturers versus MSEDCL).

28. On the issue of wrongful entry to the consumer's premises, the Appellant could not substantiate to establish any violation. In fact, the officials of the Respondent can seek entry for the purpose of inspection and to ensure observance of various conditions of supply. Reasons have been elaborated in the Case No. 16 of 2005 (M/s. Bombay Protein Manufacturers versus MSEDCL). The Appellant mentioned disconnection of power supply as one of the grievances. However, no evidence was produced to substantiate this point. On levying average energy bill during the period of November, 1996 to August, 1997, the Respondent has clarified during the hearing that the meter was faulty and stopped. The bill on average basis was therefore issued to the consumer which is in accordance with rules. The Appellant has paid this bill without any complaint or protest in the year 1996-97 be it would, therefore, not be permissible now to raise and entertain this issue. In the matter of over billing during March, 1998 and August, 1998, the Respondent conceded the mistake but clarified that this is corrected subsequently and necessary effect is already given in the bill of October, 1998. This grievance therefore, does not survive.

29. The Appellant during the hearing reiterated his prayer to opt for LTPG tariff due to various reasons and it does not wish to continue with the LTMD tariff any more. Option to select the tariff is the right of the consumer. As such, the Respondent shall take a note of this request and effect the necessary changes quickly in accordance with the tariff order. The Appellant's prayer for option to get LTMD tariff retrospectively from May 2000, however, cannot be accepted. Option must be exercised at the consumer's request prospectively. It is, however, seen that the Respondent has already effected the Appellant's request for LTMD tariff with effect from February, 2005 as directed by the Forum.

30. The Appellant argued that on the bill of Rs. 318470/- issued by the Respondent which was protested by the Appellant by letter dated on 27th February, 2002, pertains to the period more than two years before and therefore cannot be permitted under Section 56 (2) of The Electricity Act, 2003. Documents on record indicate that the bill referred to above was issued by the Respondent on account of penal charges and penalty for excess connected load before June. 2003. Therefore, it is not correct to say that the bills so raised would attract the provision of Section 56(2) of The Electricity Act, 2003, which came into force from 10th June, 2003. The argument made by the Appellant in this respect cannot be accepted.

31. The Respondent in its reply has submitted that the representation filed by the Appellant, is malafide, frivolous and vexatious. No further argument or evidence was put forth during the hearing to make this point. I am unable to agree with the contention of the Respondent in this behalf. Similarly, there appears no force in its submission that the representation is not maintainable. It is a fact that the Appellant has raised more than stale issues spread up over 10 to 20 years, without taking recourse to other available redress. But, more than the Appellant, it is for the Respondent to find out why this point was neither submitted nor agitated before the Forum. It is of little consequence to raise the issue during appeal filed by the Appellant.

32. After conclusion of hearing on 9th October, 2005 the Appellant filed a letter at 28th October, 2005 for settlement by mediation and/or concillation. However there was no corresponding proposal from the respondent, Moreover no proposal for concillation /mediation was received from any party in response to this office notice dated 14th July, 2005. Appellant prayer for mediation /concillation at this stage therefore cannot be acted upon.

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 15 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 29 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, as elaborated in paragraph 24 above.
5. Assessment of charges for violation has to be done as per the guidelines given in Maharashtra Electricity Regulatory Commission's order dated 14th July, 2005. Excess amount collected should be refunded with interest at the rates applicable to the delayed payment of bills, as elaborated in paragraph 26 above. 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 27 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. Power Factor charges are applicable as per the definition of connected load and penal charges given in conditions of supply as elaborated in paragraph 26 above. Appellant's prayer to consider power factor as per his write up on connected load and certificate of his Chartered Engineer is rejected.
 8. Appellant's prayer that the bill of Rs. 318470/- issued by the Respondent which was protested by the Appellant on 27th February pertains to the period of more than two years before and not permitted u/s 56(2) of EA, 2003 can not be accepted for the reason given in paragraph 30 above.
 9. Appellant's prayer to put off hearings till issue of order under Representation No. 21 of 2005 is rejected for the reasons given in paragraph 32 above.

Sd/
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary