



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. 31 OF 2005

In the matter of various billing disputes

Mrs. Shobha Treasurer
Plot No. A-102, Road 16, Wagle Estate, Thane..... Appellant
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. Mrs. Shobha Treasurer through her 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
3. Shri H. V. Dixit, Assistant Accountant, M.S.E.D.C.L., Thane

Date: 18th November, 2005

Smt. Shobha Ashwin Treasurer is an agent of the Court Receiver for running of factory of M/s. Engineers Enterprises Pvt. Ltd. located at A/102, Road 16, Wagle Industrial Estate, Thane – 400 604. Smt. Treasurer filed her representation which was received on 26th August, 2005 against the Order No. 3292 dated 13th May, 2005 in Case No. 23/05 of the Consumer Grievance Redressal Forum, Bhandup of Maharashtra State Electricity Distribution Co. Ltd. The representation filed by Mrs. Treasurer (hereinafter called as the Appellant) has raised the following broad issues:

1. Non payment of interest on security deposit.
 2. Non issue of bills for 17 months and sending high average bills.
 3. Inadequate time allowed for making payment of bills and levy of delayed payment charges and interest.
 4. Contravention of electricity laws, rules, regulations, notifications, etc.
 5. Unauthorised and illegal entry into consumer's premises.
 6. Illegal disconnection of supply.
2. The Appellant has stated her case as under:

The Appellant states that she has taken over the factory for running in the capacity of the agent of the Court Receiver. The factory unit called as M/s. Engineers Enterprises Pvt. Ltd. is working at Plot No. A/102, Road No. 16 of Wagle Industrial Estate, Thane from the year 1975. It is a Low Tension consumer of electricity supply of the Maharashtra State Electricity Distribution Co. Ltd. (hereinafter called as the Respondent). The electricity supplied to the factory was permanently disconnected on 31st March, 1989. The present Appellant requested the Respondent to reconnect the power supply sometime in the month of May, 1993. Upon making payments on or about 14th July, 1993, the supply was reconnected on 5th October, 1994, for a sanctioned load of 25 H.P.

3. Despite connecting the electricity supply in October, 1994, the Respondent did not raise and send bills for the energy consumed by the factory unit on regular basis. The Appellant reminded in June 1995 to the Respondent requesting to send the bills as per the meter reading, since it would be difficult for it to pay the accumulated arrears later. In spite of this, the Respondent did not raise any bills for a long time and finally issued the first bill in January, 1996 after a period of 15 months. This bill was issued on the basis of assumed consumption of 2000 units per month and 58 H.P. as connected load which was the connected load prior to disconnection in the year 1989. The Appellant, therefore, returned the bill for correction.

4. The Respondent, thereafter, prepared the bill for 17 months on 8th March, 1996 showing average energy consumption at 2000 units per month, but with 25 H.P. connected load. This was also returned to the Respondent for correction of wrong arrears. It showed a total bill of Rs. 1,19,852/- including the arrears of Rs. 110,765.99.

5. It was after 23 months that the Respondent issued a bill in October, 1996 for connected load of 25 H.P. and for energy units recorded by the meter for the first time. It showed consumption of 3779 units for 23 months (from October 1994). However, the said bill also indicated the arrears of Rs. 60535.71 and interest of Rs. 8330/-. Unexplained credit of Rs. 96687/- and interest on arrears Rs. 738.37 also appeared in the bill showing net payable amount as Rs. 7449/-.

6. The Appellant did not agree with the above calculation and instead worked out the amount payable on the basis of energy consumption and other charges and adjustment for the payments made in April, June and August, 1996. The net amount of Rs. 3063/-, worked out as payable, was paid to the Respondent by cheque dated 16th October, 1996. The Appellant says that she has been paying the current bills thereafter from time to time and there should be no arrears levied.

7. On security deposit, the Appellant stated that she has paid a total deposit of Rs. 3515/- at three stages in the year 1975, 1979, 1980. The Respondent has not paid interest on the security deposit from time to time. It is submitted by the Appellant that after reconnection of electricity, in October, 1994, the Respondent took away its meter for testing and did not return it thereafter and replaced it by another meter by recovering the cost of Rs. 725/-. It is stated that the original meter belongs to the Appellant and therefore the Respondent is bound to return the cost of Rs. 725/- recovered from it after replacement.

8. On the issue of clubbing lighting and power bills, it states that the Respondent has not worked out the bill after clubbing the units consumed for lighting with those of motive power, after June, 1997 in accordance with the Board Resolution No. 724 of the Respondent. The consumer removed the lighting meter in August, 1997 and connected the lighting accessories to the power meter and informed the Respondent to stop raising of separate lighting bill. It alleges that the Respondent did it only after November, 1998 and unaccounted bill adjustment of Rs. 6632/- was given.

9. The Appellant says that on most occasions, the Respondent has not allowed 20 clear day's time for making the bill payment. It says that the bills were received late and as such the time limit should be counted from the date of presentation of the bills.

10. On the issue of electricity duty, the Appellant stated that the Respondent has levied electricity duty incorrectly. It should have excluded the fixed charges while computing the amount of duty. The Appellant states that the Respondent had disconnected the supply on 20th January, 2005 without any notice. The supply remained disconnected for 11 working days causing inconvenience and loss to the Appellant. This is done despite it's paying current bills on an average basis for past six months as required under Section 56 (2) of The Electricity Act, 2003. The Respondent did not encash two cheques issued by the Appellant and thereby has shown the increased arrears leading to disconnection. The Appellant summarised various issues by preparing a rebilling statement from the year 1975 till February, 2005.

11. The Respondent submitted its reply on 13th October, 2005 and 09th November, 2005. It says that the representation is filed beyond the statutory period of 60 days. It is not in the proper Schedule B form as required in the Regulations and prayed that it is not maintainable. It also says that the rebilling statement furnished by the Appellant as not supported by the bills and documents and thereby rendering it non-authentic. Calculations prepared by the Appellant himself cannot be relied upon. The Respondent further says that the interest on security deposit has been duly given as per the consumer's personal ledger. The consumer is required to show the original receipt of security deposit, which it has not done. It has disagreed with the Appellant that the meter belongs to him and called upon to produce the receipt of the meter. It says that the time limit for making payments is not 20 days but it should be 15 days as per the regulations of the year 2005 and states that this is observed strictly.

12. The Respondent submitted that the Electricity duty is charged and recovered as per the rules and circulars under the Bombay Electricity Duty Act. The Respondent charged the Appellant that he is in a habit of making false and vexatious complaints and wasting of public money. It is prayed that there is no documentary evidence in support of the grievance and prayed that the appeal should be dismissed.

13. The matter was heard on 29th August, 2005. The Appellant reiterated its stand on the issues submitted in the representation. The Respondent also explained during the hearing that it has been relooking into the calculation of billing in the past and other issues like payment of interest on security deposit, etc. On going through the documents

on record, it was observed that most issues relate to reconciliation of the bills raised in the year 1994 – 96 when the meter was read but the bills were not issued for a long time. There appears a clear difference in the perception of the Appellant and the Respondent on the details of bills raised and recovered from time to time. There is no dispute on the amount of security deposit held with the Respondent but some dispute in respect of interest. The Appellant during the hearing prayed and suggested that the Respondent should be in a position to relook at the issues and come out with suggestions to reconcile the differences. At this stage, the Respondent also expressed its willingness to relook at the issues including the calculation of the bills and interest on the security deposit, etc. In view of this, both the parties were allowed to work out their proposals and submit within a period of 10 days. The hearing was adjourned.

14. The matter was again heard on 10th November, 2005. Both the parties submitted their offers in sealed envelopes, which were opened during the hearing. The Appellant in its proposal offered to bring down its claim to Rs. 95263/- including excess billing, return of excess Security Deposit and compensation for damages plus interest at 18% till date of payment and in addition sought the assurance to enforce the conditions listed in Part B of the offer. The Respondent's offer includes a reworking of the bills from October, 1994 to September 2005 which shows that instead of its earlier claim of Rs. 42514.59, the net payable amount is now reduced to Rs. 19810.28. This is excluding delayed payment charges and interest amount subject to approval of the competent authority. It further says that interest on security deposit since the year 1974 has been paid from time to time and furnished a statement giving details there on.

15. Close look at both the offers indicate that the Respondent as well as the Appellant have modified their earlier stand and brought down the claims to some extent but this is not enough to reconcile the differences on various issues taken up by both the parties. I find no meeting point in the offers made by both the parties and therefore, I declare that the efforts for reconciliation have rendered fruitless. In view of this the issues raised in the representation were taken up for consideration, on merit.

16. Submission made by the Appellant reveals that the power supply was reconnected on 5.10.1994 for a connected load of 25 H.P. First bill was raised after 15 months considering the connected load of 58 H.P. instead of 25 H.P. and average 2000 units per month. Billing continued on the same average basis. The bill dated 1.10.1996 for Rs. 35271.50 was issued for 23 months based on actual meter reading for 3779 units and the connected load of 25 H.P. After adjustment of unexplained arrears, interest on arrears, previous bill credit, etc the net bill payable was indicated at Rs. 7449.85. The Respondent conceded during the hearing that details of billing, previous bill credits, interest on arrears, etc shown in the bill are not clear to itself. The consumer pleaded to the Respondent vide his letter dated 17th October, 1996 that the minimum bill for 23 months was more than the bill based on the consumption charges and after adjusting the payments made earlier, the net payable amount was Rs. 3063/- only. This amount was accepted by the Respondent. However, the Respondent appears to have not bothered to reconcile the bill and continued to issue bills showing arrears, DPC and interest on arrears without any valid reason. The Respondent now agreed to reconcile this bill which would reveal that full amount of bill was paid as on 17th October, 1996 leaving on arrears

as on that date. Further billing upto date has to be revised as per rules on this basis, taking into account the current bills issued and payments received from time to time.

17. The Respondent furnished record of interest paid on security deposit by credit in the bills during the years – 1975-76 to 1980-81, 1993, July 2001, December 2002, May 2003 and December 2003. This indicates that interest on security deposit was paid from time to time as per prevailing practice. The Respondent also agreed to pay remaining unpaid interest on security deposit, if any. Appellant's prayer to pay interest on Security Deposit which remained unpaid from 1975, has no merit and cannot be granted. Payment of Rs. 3658/- towards August 1998 bill appears to have been wrongly appropriated and credited as additional security deposit which was subsequently reversed against bill payment in April, 2005. The Respondent shall pay interest on this amount from August 1998 to April 2005 at the same rate as applicable to interest on delayed payment of bills.

18. Meter belonging to the consumer appears to have been replaced on 5.10.1994 for testing and was not returned to the consumer thereafter. The new meter installed was found burnt on 12th December, 1995. A cost of Rs. 725/- was recovered from the consumer. The Consumer Grievance Redressal Forum has directed that the cost of Rs 725/- is to be refunded to the consumer towards not returning his own meter to him after testing. The Respondent could not submit any argument against the decision of the Forum. The amount of Rs. 725/- towards not returning consumers own meter to him shall therefore be refunded to the consumer, with interest at the same rate as applicable to the interest on delay payment of bills, from the date of removal of the meter.

19. The issue of clubbing of bills for lighting and motive power, raised by the Appellant was examined in a similar case no 16 of 2005 Bombay Protein Manufacturers versus MSEDCL. recently. 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'. The Respondent shall review the billing done and credit given in November, 1998 and January, 1999 on this basis. Interest on refund of amount arising

out of revision of bills should be paid at the same rate applicable to delayed payment of bills.

20. Perusal of few bills brings out that less than 20 days period was available in some cases of consumers for making payment. Delayed payment charges levied if any shall be reviewed and withdrawn if the consumer 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 of Representation No. 16 of 2005 of M/s. Bombay Protein Manufacturers versus Maharashtra State Electricity Distribution Co. Ltd.

21. The issue of Electricity Duty to be charged is exactly the same as was dealt in the case of Representation No. 16 of 2005 of M/s. Bombay Protein Manufacturers versus Maharashtra State Electricity Distribution Co. Ltd. The same dispensation applies in the present representation also.

22. Power supply was disconnected on 20th January, 2005. Respondent submitted that a notice of disconnection dated 19th June, 2004 for non payment of bills was served on the Appellant through its advocate. The Appellant deposited the amount on the basis of average charge for electricity during the preceding six months as per Section 56(2) of The Electricity Act, 2003. The deposits were accepted upto the billing month of September, 2004. The cheque of Rs. 4155/- deposited by Appellant was, however, returned vide Respondent's letter dated 18th January, 2005 saying that it is not as per the bill amount and if Appellant has any grievance he should contact the Respondent's office within 15 days, otherwise the supply would be disconnected. However, without waiting for 15 days and even without waiting for this letter to be dispatched and served on the consumer, the supply was disconnected on 20th January, 2005. Even assuming that some arrears remaining proper notice is required to be served before disconnection. The supply remained disconnected for 11 working days. This act of Respondent was wrong in as much as it reveals the reckless attitude of the Respondent's official causing harassment and hardship to the consumer. The Respondent may consider appropriate disciplinary action against the concerned official. The Appellant prayed for award of compensation orally during the hearing for the wrongful disconnection. The Appellant also produced an unsigned statement of direct and consequential losses suffered by him due to disconnection. The prayer for compensation does not appear to have been raised or deliberated before the Forum. However, considering direct losses and hardship suffered by the consumer due to irresponsible attitude of the Respondent and wrongful disconnection for 11 working days I am inclined to award compensation of Rs. 10,000/- to be paid by the Respondent to the Appellant within one month from the date of this order. Non payment ; would attract on interest on the same rate applicable to delayed payment of bills till it is paid.

23. In this matter, the Consumer Grievance Redressal Forum citing the case of Patel Dhirubhai Narsibhai Versus Gujarat Electricity Board – 1998 has observed that *“The reasonable conduct expected of a consumer who has agreed to abide by the contract would be to pay under protest the amount of the bill issued to him. He cannot sit tight over the assumed just and legal stand and say that first of all the Board should remedy*

the wrong caused and then only he shall pay the amount of the bill. Section 24 inter alia provides for resolving such disputes. The scheme of the Act indicates that the fact that the consumer can in no case retain the amount of the bill with him unless he obtains appropriate order from the Electrical Inspector". It follows that in the present case the consumer should not make any correction in the bills issued by himself but instead approach the licensee's office for correction if necessary and pay the bill in full.

24. The issue of access to consumer's premises for inspection of Respondent's apparatus as well as consumer's apparatus as was dealt in the case of Representation No. 16 of 2005 of M/s. Bombay Protein Manufacturers versus Maharashtra State Electricity Distribution Co. Ltd. disposed off by the order dated 16th November, 2005. The Appellant's objection to the entry of respondent's officials for inspections of consumer's apparatus is not in consonance with the conditions of supply and therefore can not be accepted.

25. The issue of power factor charges for not providing adequate capacitors is also the same as was dealt in the case of Representation No. 16 of 2005 of M/s. Bombay Protein Manufacturers versus MSEDCL referred to above disposed off by the order dated 16th November, 2005. Appellant's prayer to consider power factor based on KVA based maximum demand principles, his write up on connected load etc. can not be accepted.

26. The issue of time bar in terms of Limitation Act, 1963 is exactly the same as that dealt in the case of Representation No. 16 of 2005. In view of this dispensation it is not appropriate to take cognizance of limitation of time at this stage.

27. It is noted that the Appellant did not file the representation within 60 days as provided under the Regulation and there is a delay of 45 days. Considering the issues involved and documents to be submitted on various points, the delay of 45 days in filing the representation by the Appellant is hereby condoned.

28. The Appellant filed the representation dated 23rd August, 2005 listing the above grievances out of events way back since the year 1975. Considering the multiplicity and interconnectivity of the issues involved, the hearing was adjourned and concluded on 10th November, 2005. This entailed some delay in disposal of the case.

ORDER

1. 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.
2. 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 19 above.
3. 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 20 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..
 4. 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 21 above.
 5. Power Factor charges are applicable as per the prevailing conditions of supply as elaborated in paragraph 25 above. Appellant's prayer to consider power factor as per his write up on connected load and certificate of his Chartered Engineer is rejected.
 6. Power was disconnected on 20th January, 2005 for 11 working days without giving proper notice and refusing average payments cheque presented as per Section 56(2) of The Electricity Act, 2003. The Respondent shall pay compensation of Rs. 10000/- to the Appellant as elaborated in paragraph 22 above.
 7. Appellant's objection regarding entry of Respondent's officers for inspection has no merit. This has been elaborated in paragraph 24.
 8. Cost of meter Rs. 725/- towards not returning consumer's own meter to him should be paid with interest as elaborated in paragraph 18 above.

Sd/-
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary