



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. 33 OF 2005

In the matter of Amendment Bill

M/s. Hindustan Corporation.

Appellant

Versus

B.E.S.& T Undertaking.

Respondent

Present:

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

On behalf of the Appellant:

1. Shri Jitendra Jain

On behalf of the Respondent:

1. Shri S.S. Ghosh, Superintendent (Energy Audit)
2. Shri A.P. Bodke, Law Officer
3. Shri S.B. Sakpal, A.E.(Com-South)
4. Shri A. R. Sarmukadam, A.E.(Energy Audit)
5. Shri E.F. Jacques, Admn. Officer

Date: November 2, 2005

M/s.Hindustan Corporation is a consumer of electricity supplied by the B.E.S.& T Undertaking. The consumer's office is located at 14/A, Everest, 156, Tardeo Road, Mumbai and had the meter No. P990969 for the purpose of lighting the advertisement boards. The consumer (hereinafter called as the Appellant) has filed the present representation against the order of the Consumer Grievance Redressal Forum of the B.E.S.& T Undertaking (hereinafter called as Respondent) seeking waiver of additional amendment bill amount. The Appellant has stated his case as under:

2. The Appellant states that the Respondent has claimed Rs. 11.31 lakhs towards arrears of electricity bill for 7 years from April, 1997 to January, 2004 without submitting proper details. The claim thus made, is unwarranted as the amendment period is more than six months and cannot be debited as per Section 26(6) of the Indian Electricity Act, 2003. The Appellant says that the bills issued from April 1997 to February 1994 were final and not provisional. All payments thereof were made in full from time to time. Therefore the question of any payment of arrears for the said period is unjustified and untenable. The rate applied to them under C2 tariff is in accordance with the Rules and Regulations and therefore the tariff at C(D) rate is not applicable to

them. Therefore, no dues on account of arrears would accrue in this behalf. The Appellant sought redress from B.E.S. & T Undertaking vide its letter dated 23rd September, 2004. Having failed to get proper redress from the Respondent, despite the follow up, he filed the grievance on 26th June, 2005 with the Consumer Grievance Redressal Forum of B.E.S. & T Undertaking.

3. The Forum in its order dated 31st August, 2005 disposed off the matter with the directions to the B.E.S. & T Undertaking to restrict the amendment bill only for two years from 1st February, 2002 to 31st January, 2004. The Forum also directed B.E.S. & T Undertaking i.e. the Respondent to give three interests free instalments to the consumer to enable him to make payments. The Respondent filed its reply on 13th October, 2005. It says this is a case of incorrect tariff application. The Appellant by his letter dated 14th March, 2003 had informed that he was not able to maintain the proper power factor due to fluctuation in 3 phase supply and requested that the power factor surcharge levied under C2 tariff was not just and proper. The Respondent conducted site inspection of the consumer's supply and noticed that the supply was used for the purpose of advertising for which correct tariff applicable was C (D) instead of C2. The Respondent tested the meter on 10th April, 2003 and found the same in working order.

4. By letter dated 18th March, 2004, the Respondent informed the Appellant that he was wrongly billed on C1 and C2 tariff instead of C (D) tariff and that the tariff would be changed to C (D). The Respondent further informed that the correction in the tariff and the bills would be carried out retrospectively from 29th April, 1997.

5. The Respondent says that the Appellant upon correcting the tariff never disputed on this account and paid the bill towards C (D) tariff from February, 2004 to July, 2004. The past bills were amended and cumulative bill of Rs. 11,31,898.11 was issued in July, 2004. This was then disputed by the Appellant vide his letter dated 13th September, 2004.

6. The Appellant complained about the amended bill including the arrears from April, 1997 vide his letter dated 18th March, 2005. In response to this, the Respondent in the light of B.E.S. & T Undertaking's conditions of supply, revised the claim of arrears from 7 years to 3 years i.e. from 1st February, 2001 to 1st February, 2004. The revised arrears work out to Rs. 763409.88.

7. The Respondent further adds that the matter was decided by the Consumer Grievance Redressal Forum on 31st August, 2005. The Respondent in compliance of the said order further revised the amendment bill restricting the period of past arrears to only two years i.e. 1st February, 2002 to 31st January, 2004. The revised arrears now stand at Rs. 651045.62. The Respondent now prays that the amendment based on the C(D) tariff for two years as per the order of the Forum should be made applicable to the consumer and his request for waiver of the amendment bill may be rejected.

8. The matter was heard on 26th October, 2005. The Appellant reiterated his say to maintain that the B.E.S. & T Undertaking should not have issued the amended bill for the past period as it was their own mistake. He said that the consumer has been paying the bills regularly as raised by the Respondent. He should not, therefore, be penalised for the Respondent's error in not raising the bills in time at the correct tariff. He conceded during the hearing that electricity was used for the purpose of advertisement for which the tariff C(D) was applicable. He referred to Section 26(6) of the Indian Electricity Act, 2003 inadvertently and agreed that it should have been the Section from the Indian

Electricity Act, 1910. On query, he conceded that there was no problem with the accuracy of the meter and the issue was only application to tariff retrospectively.

9. The Respondent agreed during the hearing that it should have billed the consumer on C (D) tariff right from the year 1997 since the electricity was used exclusively for advertisement purpose. It could not substantiate that the mistake came to the notice in the year 2001 as quoted in their reply. It was the consumer's letter dated 14th March, 2003 seeking waiver of power factor surcharge that prompted the Respondent to undertake an inspection of the site. The Respondent agrees that the power factor surcharge and RKVAH units are not applicable to C (D) tariff. The mistake of levying wrong tariff came to the notice of the Respondent only in February, 2004 from which time the revised correct C (D) tariff was made applicable.

10. In view of the above, point of dispute between the parties is limited to applicability of the correct tariff retrospectively i.e. prior to February, 2004. There is no question of incorrect meter as referred to by the Appellant in submissions. Therefore, the question of invoking Section 26(6) of the Indian Electricity Act, 1910 to restrict amendment of bills to maximum six months does not arise.

11. The issue of amendment bill has been dealt by the Forum in the light of the provision contained in the Electricity Act, 2003. The Forum has concluded that the arrears cannot be recovered for more than two previous years.

Section 56(2) of the Electricity Act, 2003 reads as under:

"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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity".

12. In the present case, it is not disputed that the Respondent first intimated about the levy of the correct tariff in February, 2004 and not before. The Respondent has not levied the correct tariff earlier right from the year 1997. No correct bills were raised nor the arrears shown after the year 1997 upto February, 2004. In view of this, provision under Section 56(2) would apply and any arrears prior to February, 2002 would become non recoverable under the provisions of the above sub Section. The Forum has rightly taken this view in the light of the legal provision. In view of this, I do not find any reason to interfere in the order of the Forum.

ORDER

The order dated 31st August, 2005 passed by the Consumer Grievance Redressal Forum is in accordance with the Section 56(2) of the Electricity Act, 2003. The Representation of the Appellant is therefore rejected.

Sd/
(W. G. GORDE)
Ombudsman

Sd/
(S. N. YADWAD)
Secretary