



## 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. 46 OF 2005**

In the matter of Raising Supplementary / Amendment Bills

M/s. Chamundi Finvest Pvt. Ltd. .... Appellant

Versus

Brihanmumbai Electric Supply & Transport Undertaking..... Respondent

Present:

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

On Behalf of the Appellant:

1. Shri Nitin Goel

On Behalf of the Respondent:

1. Shri Yunus Mirza, Asst. Engineer, B.E.S&T Undertaking
2. Shri Arun Bodke, Law Officer, B.E.S & T Undertaking
3. Shri Mohan Kadam, Office Superintendent, B.E.S & T Undertaking

**Date: 18<sup>th</sup> January, 2006**

1. Chamundi Finvest Pvt. Ltd. is a consumer of electricity supplied by Brihanmumbai Electric Supply and Transport Undertaking. The Consumer (hereinafter referred to as the Appellant) has filed the representation on 19<sup>th</sup> December, 2005 against the order issued by the Consumer Grievance Redressal Forum of B.E.S & T Undertaking (hereinafter referred to as the Respondent). The order issued by the Forum on 25<sup>th</sup> October, 2005 has directed the Respondent to revise the present amendment bill and to restrict the charges for a period of 3 months preceding 2<sup>nd</sup> February, 2002. The Forum further directed that the amendment bill should be worked out on the average consumption recorded for 12 months immediately preceding the 3 months in which the bill is contemplated. M/s. Chamundi Finvest Pvt. Ltd., the Appellant, being aggrieved with the said order, filed the appeal and has stated its case as under:

2. The Appellant states that the order of the Forum is contrary to facts and law. Acceptance and payment of average bills do not prove that the consumer has used electricity. The Respondent has not produced any evidence to show that the consumer has actually consumed electricity during the period when the average bills or no bills

were issued. The Appellant also states that the Forum should not have given any relief to B.E.S. & T Undertaking and allowed raising of bills even for 3 months as there was no appeal from the Respondent Licensee to the Forum.

3. The Appellant is also aggrieved with the fact that the Forum has not awarded any cost on the Respondent No. 1 and not awarded compensation to the Appellant. The Appellant's case is based on the plea that raising of bills for the year 2001-02 are now time barred and the Respondent should not be allowed to raise the bills at this stage. The Respondent had initially raised the bill for Rs. 57733.32 on 3<sup>rd</sup> November, 2004 which was subsequently reduced to Rs. 19589.87 in accordance with the Forum's order. The Appellant objects to raising of this bill on the ground that the claim is time barred and the Respondent has not proved that the Appellant has consumed any electricity during the period.

4. By further submission dated 22<sup>nd</sup> December, 2005 and 10<sup>th</sup> January, 2006, the Appellant has denied the liability of Rs. 19589.87 referred to above on the ground of limitation. It has further stated that the Consumer Grievance Redressal Forum is an internal grievance redressal procedure of the Undertaking and is neither a court of equity (enquiry) nor of law and therefore the order of the Consumer Grievance Redressal Forum dated 25<sup>th</sup> October, 2005 cannot be interpreted against the statutory law of limitation. It has further objected to take on record the submissions made by the Respondent on 04.01.2006, being beyond the date stipulated for reply by the Ombudsman.

5. The Respondent vide its submission dated 04.01.06 submitted that the meter no. G802173 was found stopped on 23.04.02 and that it was replaced by new meter no. G014701 on 27<sup>th</sup> May, 2002. Stopped meter did not record any consumption right from 17<sup>th</sup> August, 2001 till it was replaced. Average bills showing a consumption of 1420 units were issued to the Appellant on two occasions, on 17<sup>th</sup> August, 2001 and 18<sup>th</sup> October, 2001. However, the meter continued to show zero readings for the next 3 to 4 billing cycles during which time, the Respondent did not raise any bills for that period. Further, the Respondent failed to issue the bills for this period until 3<sup>rd</sup> November, 2004 when it issued the bill for Rs. 57,733.32 towards arrears. This was worked out on the basis of average consumption recorded by the new meter for 12 months after 27<sup>th</sup> May, 2002.

6. Aggrieved with the above action of the Respondent, the Appellant filed the grievance with the Respondent and followed up for redress. Not satisfied with the action taken by the Respondent, the Appellant, thereafter, filed the grievance with the Forum. After hearing the matter, the Forum issued the order as referred to in paragraph 1 above. The Respondent in its submission justified issue of bills on average basis on the ground that the consumer had indeed consumed electricity during the period under dispute although the bills are issued subsequently. The Respondent did not comment on the point of limitation raised by the Appellant in its submission.

7. The matter was heard on 17.01.2006. The Appellant argued that the Respondent did not produce any evidence to show that the energy was actually consumed during the

period when the bills were issued on average basis or when the meter reading indicated zero consumption for several months. It is for the Respondent to produce proof in this behalf. He declined to either confirm or refute whether he had actually consumed any energy during the period or not. He left the issue to be argued and proved by the Respondent.

8. The Appellant reiterated its stand that the Respondent cannot levy and raise any bills belatedly as they become time barred. The Appellant vide its submission observed that the Consumer Grievance Redressal Forum is not a court of enquiry and that its order cannot be interpreted against the statutory law of limitation. At this stage, it was brought to its notice that the Consumer Grievance Redressal Forum is a statutorily constituted body under the Act. The Forum is fully competent to examine and entertain the grievance of the consumer against the Respondent Licensee and make an appropriate order as provided under the Electricity Act, 2003. It was patently undesirable to implicate the Forum as Respondent no. 2 by the Appellant. It is in this background that adding the Forum as Respondent no. 2 by the Appellant is considered to be improper and unwarranted. Therefore, I have no hesitation to remove the name of the Forum as Respondent no. 2, being improperly joined party. The Respondent has submitted its reply dated 4<sup>th</sup> January, 2005 to the notice dated 20<sup>th</sup> December, 2005 within the stipulating time of 15 days for giving reply. Appellant's objection that the reply was submitted beyond the date stipulated by the Ombudsman has no substance and therefore stands rejected.

9. During the hearing, the Respondent was asked to explain as to why the bills for the energy consumed during the year 2001 and 2002 were not issued until November, 2004. There was no satisfactory explanation offered by the Respondent. The Representatives of the Respondent conceded that the bills for the above period actually became first due immediately in the next month / billing cycle after the energy was consumed. As such, the issue of bills belatedly, in the year November, 2004 would attract the provisions of Section 56(2) of the Electricity Act, 2003.

10. The Appellant had raised the issue of supplementary / amendment bill in the light of Maharashtra Electricity Regulatory Commission's orders dated 23<sup>rd</sup> February, 2005 in the Case No. 19 of 2004. The Respondent agreed that the Commission's order dated 23<sup>rd</sup> February, 2005 does not allow raising of supplementary / amendment bills after 10<sup>th</sup> June, 2003 (till 20<sup>th</sup> January, 2005) except in the situation explained in paragraph 42 and 43 of the said order. Non issue of bills without any proper reason at appropriate time, does not give any liberty to the Respondent to raise such bills belatedly in contravention of the provisions of the Electricity Act, 2003 and the Commission's order.

11. Material on record and submissions and arguments during the hearing make it clear that the consumer's meter no. G802173 did not record any consumption after 17<sup>th</sup> August, 2001 till it was replaced on 27<sup>th</sup> May, 2002 i.e. for over nine months. The bills issued on average basis on 17<sup>th</sup> August, 2001 and 18<sup>th</sup> October, 2001 by the Respondent were duly paid by the Appellant. The meter, which did not record any consumption for nine months, was clearly a 'stopped meter' as was observed by the Respondent on 23<sup>rd</sup>

April, 2002 though after a long period. Recording of zero readings between 17<sup>th</sup> August, 2001 and 27<sup>th</sup> May, 2002 does not necessarily lead to the conclusion that there was no consumption of electricity by the consumer. The Appellant did not wish to confirm or refute any thing on the consumption of electricity and left it to the Respondent to prove the consumption. This approach appears to be casual and non-cooperative as the matter relates to consumption of electricity in his own office. It was indeed a failure on the part of the Respondent, not to take any action either by replacing the meter in time or raising bills for the “stopped meter period” after 20<sup>th</sup> December, 2001 to 27<sup>th</sup> May, 2002 by the appropriate method permissible under the prevailing law. Lapse on the part of the Respondent does not, now, allow it to raise the said bills after the period of two years as provided under Section 56 of the Electricity Act, 2003. The Respondent failed to put forth any satisfactory explanation for not raising the bills in time.

12. The Forum, while deciding the case, has apparently relied on the provisions of the Regulations 15.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 which allows billing upto the maximum period of 3 months based on the average metered consumption for 12 months immediately preceding the 3 months prior to the month in which the billing is contemplated. The logic relied upon by the Forum is in order, except the fact that the provisions of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 came into force only on 20<sup>th</sup> January, 2005 and not before. In this case, the Respondent raised the bill on 3<sup>rd</sup> November, 2004 for the period way back in the year 2001-02. Moreover, it must be understood that provisions under Section 56(2) of the Electricity Act, 2003 puts a bar on recovery of arrears of any bills belatedly which are not in consonance with the said provisions. Thirdly, the order in the case of 19 of 2004 issued by the Commission on 23<sup>rd</sup> February, 2005 makes the position very clear regarding issue of supplementary / amendment bills. It is in this background, that I am not able to appreciate the views and concur with the order issued by the Forum.

13. It is in this background that action of the Respondent in raising the bills belatedly has to be struck down. Also the Commission’s order dated 23<sup>rd</sup> February, 2005 in the Case No. 19 of 2005 is very clear on this issue. The Respondent was expected to take a note of the Commission’s order and withdraw the bill raised on 3<sup>rd</sup> November, 2004, which is not in consonance of the said order. There would have been no need for the Appellant to file the grievance either with the Respondent, or with the Forum. Incorrect and belated action on the part of the Respondent led to the avoidable proceedings before the Forum and the present appeal under consideration. The Respondent not only failed to raise the bill in time but also did not take care to replace the meter for 8 to 9 months.

14. As regards to the other prayers put forth by the Appellant, there is no case for putting any cost on the Respondent or to award compensation to the Appellant, as there was no such prayer made by the Appellant with the Forum. New prayers or issues, which had no foundation either, in the evidence or in the pleadings before the Forum cannot be allowed, to be raised or entertained during the appeal. Moreover, the Appellant has not shown any thing to indicate any loss to him or harassment by the Respondent. As regards

the prayer to direct the Respondent not to issue any average bills to any consumer, it must be made clear that the procedures laid down in the Regulations and various orders of the Commission are quite explicit and no further directions in this behalf are necessary to the Respondent.

### **ORDER**

1. The Consumer Grievance Redressal Forum's order dated 25<sup>th</sup> October, 2005 directing the Respondent to revise the amendment bill for the period of three months is liable to be and is hereby set aside for the reasons elaborated in the preceding paragraphs.
2. The Respondent shall withdraw the amendment bill raised on 3<sup>rd</sup> November, 2004 for the period of 20<sup>th</sup> June, 2001 to 27<sup>th</sup> May, 2002 for the reasons explained in paragraph no. 12 above.
3. No order as to cost or compensation.
4. This order must be implemented within two weeks and the compliance reported within a month from the date of the order.

Sd/-  
(W.G.Gorde)  
Ombudsman

Sd/-  
(S.N.Yadwad)  
Secretary