



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. 05 OF 2006

In the matter of Recovery of Past Arrears

Shri Noshir S. Dhabhar..... Appellant

V/s.

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 Noshir S. Dhabhar

On behalf of the Respondent:

1. Shri A. R. Talegaonkar, Assistant Engineer, Consumer (N),
B.E.S.& T Undertaking

Date: 6th March 2006

Shri Noshir S. Dhabhar, resident of 685, Sunville, Khareghat Road, Parsi colony, Dadar, Mumbai – 400 014 has filed the representation on 23rd January, 2006 against the order passed by the Consumer Grievance Redressal Forum of B.E.S. & T Undertaking. The Forum, in its order dated 20th December, 2005 observed that Shri Dhabhar (hereinafter referred to as the Appellant) has not contested the claim made by B.E.S.& T Undertaking. It further says that the Order in Case No. 19 of 2005 passed by Maharashtra Electricity Regulatory Commission does not apply to the present case and that Shri Dhabhar, the consumer, had agreed to pay the claim made by the B.E.S.& T Undertaking in instalments of Rs. 10,000/- per month. The Forum made further observations that the matter is beyond its jurisdiction in terms of the provisions under Regulations 6.4 (4) of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 since in this case the bill amount is not disputed.

2. Shri Noshir Dhabhar, the Appellant filed the representation with a prayer that temporary connection bill given after six years period by the B.E.S.& T Undertaking should be withdrawn and the amount of Rs. 40,000/-paid against these bills should be refunded to him. The representation is registered at Serial No. 5 of 2006. The Appellant has stated his case as under:

3. On 17th May, 1995, the Appellant applied to the B.E.S.& T Undertaking for temporary electricity connection for construction purpose which was sanctioned in June, 1995. Deposit of Rs. 60,590/- was paid to the B.E.S.& T Undertaking. After completing the construction, the Appellant requested the B.E.S.& T Undertaking (hereinafter referred to as the Respondent) to change the connection to residential tariff instead of as temporary supply. Since the building was occupied by the residents, temporary meter numbers 903117 and 8601138 were removed on 21st March, 1997. The new meter number Q961162 with an initial reading as 40 units was installed. This meter continued to work till 2nd March, 1998 when a new meter no. 950345 was connected with the opening meter reading as 34. Closing reading of the earlier meter no. 961162 was 67833.

4. The Appellant says that he did not receive any bills for meter no. 950345 from the Respondent upon installation of the meter on 2nd March, 1998. He received the first bill on 3rd December, 1998 for the period ending 16th November, 1998 for the amount of Rs. 302.89 based on the average units. Second bill for the period ending 13th January, 1999 amounting to Rs. 2,50,494.24 was received after 11 months showing the consumption of 62227 accumulated units which were not billed earlier. This was paid in 3 instalments.

5. The Appellant says that there was no further bill until on 8th December, 2003 when he received a bill for Rs. 4,38,545.64 for meter no. 850714 connected to the water pump. This included an actual bill of Rs. 229/- towards consumption of electricity for previous billing cycle and the balance of Rs. 4,38,092/- shown as old outstanding, with no details given. On further follow up and enquiries made with the Respondent, he was informed that the bill pertains to the years 1996, 1997 and 1998 for the temporary connections sanctioned during those years. The Appellant claims that he has fully paid the bills as and when raised. The Appellant questioned on raising the bills after a span of 6 / 7 years without the details of meter reading and the copies of bills. He leaves it to the Respondent to prove that he has not paid the bills for the earlier period, if ever, that are raised.

6. On 16th February, 2004, the Respondent physically removed the meter from the building which was protested by the Appellant by writing a letter to the General Manager, B.E.S.& T Undertaking. He quoted series of correspondence letters exchanged with the Respondent on this issue and raised question as to why it took 7 years to raise bills for the past period. The Appellant says that if at all the bills have not been raised, then it is not his fault.

7. In absence of any satisfactory explanation to his protest about the bills, he approached the B.E.S.& T Undertaking's officials. Upon meeting with the Dy. General Manager of the Respondent on two occasions, the Respondent granted permission to pay the arrears in instalments of Rs. 10,000/- per month. The Appellant paid 4 instalments of Rs. 10,000/- each between November, 2004 and March, 2005. The Appellant came to know about the Maharashtra Electricity Regulatory Commission's order in case no. 19 of 2004 in respect of supplementary bills. Based on this order, he understood that the Respondent cannot raise the supplementary bills and therefore stopped paying further

instalments of arrears. He approached the Internal Consumer Grievance Redressal Cell of the B.E.S.& T Undertaking with this request, which was turned down.

8. The Appellant then approached the Consumer Grievance Redressal Forum on 7th November, 2005 and submitted his grievance. The Forum heard the matter on 13th December, 2005. According to the Appellant, the Forum advised the Appellant to approach the Ombudsman in the matter and did not pass any orders. The Appellant prays that in absence of copies of the old and new Electricity Act, 2003 with him, he relied on the provisions under the Indian Penal Code and the Consumer Protection Act, 1986 and the Law of Limitation that restrict a claim beyond 3 years. He further prayed that the demand made by the Respondent is unjustified and therefore should be deleted in toto and the amount of Rs. 40,000/- paid by him by way of 4 instalments, should be refunded along with the compensation for causing of anxiety and stress.

9. The Appellant enclosed with the representation, the three sets of documents containing the Forum's order, his correspondence with the Respondent, copies of the bills and the say of the Respondent put forth before the Forum.

10. Notice was issue to both the parties to submit their say in the matter especially on the points raised by the Appellant. They were also called upon to explore the possibility of working out the proposal to facilitate a settlement through conciliation or mediation. No such proposal is received either from the Respondent or the Appellant.

11. The Respondent submitted its reply on 15th February, 2006 to the points raised by the Appellant in his Representation. The reply says that the consumer had obtained three temporary supply connections with temporary account numbers TIN-478-695, TIN-082-196 and TIN-191-397. According to Respondent there is a total outstanding amount of Rs. 3,98,092.77 from the three temporary connections in the name of Shri N.S. Dhabhar. The billing carried out on temporary account no. TIN-478-695 and TIN-191-397 is in order. As regards account no. TIN-191-397, meter no. Q961253 was installed on 21st March, 1997 but was replaced by the meter no. Q961162 on 28th March, 1997 for the reason "stopped meter". The intimation of change of meter was not received in the Consumers (N) Department and therefore the consumer was not billed during the period.

12. The Respondent further adds that the meter no. Q961162 was removed on 2nd March, 1998 with the final reading as 67833. The consumer was billed for these units between 28th March, 1997 to 2nd March, 1998. Total bill raised for this period amounts to Rs. 2,73,654.98. The consumer has paid part amount of Rs. 1,26,500/- and the balance remaining unpaid.

13. As regards the temporary connections no. TIN-478-695 and TIN--082-196, the consumer was billed Rs. 4,27,729.14 and Rs. 1,94,304.61 respectively. The consumer paid part of the amount during the period from 1995 to 1997 and the balance amount of bills remain unpaid. The Respondent states that the first intimation of outstanding dues of Rs. 438092.77 was given to the consumer vide letter dated 4th March, 2003, followed

by another letter dated 21st July, 2003. The consumer did not pay the dues and therefore the same was debited to the consumer's existing permanent account no. 589-620-031.

The Respondent claims that statements of billing of all the three temporary accounts were handed over to the Appellant on 6th March, 2004 on his request. It agrees to have disconnected the permanent account of the consumer (meter no. L850714 – account no. 589-620-031) on 5th February, 2004 for non payment of dues. The Respondent says that the consumer was requested from time to time to clear off the dues.

14. The consumer along with Shri Ravi Raja, Municipal Corporator and BEST Committee Member approached and met on 24th June, 2004, the then Dy. General Manager (Electric Supply), Shri Lendhe requesting to resolve the issue. The Respondent, on the request of the consumer, granted monthly instalments of Rs. 10,000/- to him due to his financial constraints. This was communicated to the Appellant on 25th June, 2004. The consumer's electricity supply, which was disconnected earlier, was restored immediately thereafter. The outstanding amount of Rs. 4,38,092.77 was withdrawn subsequently from the permanent account no. 589-620-031, on agreeing to the above arrangement.

15. The Appellant by his letter dated 25th November, 2004 confirmed the arrangement of payment by instalments but, however, mentioned that he has not received a single regular bill for the amount of Rs. 10,000/- as agreed. Accordingly, the Respondent on the same day sent him six number of electricity bills for Rs. 10,000/- each towards the instalment of outstanding dues from the month of June, 2004 to November, 2004.

16. The Appellant paid four instalments of Rs. 10,000/- each on 29th November, 2004, 31st December, 2004, 7th February, 2005 and 28th March, 2005. No further instalments were paid. Therefore, the Respondent reminded the Appellant on 8th June, 2005 to pay the instalments as per the promise.

17. The Respondent states that after paying four instalments as mentioned above, the Appellant did not keep his promise and instead approached the Internal Grievance Redressal Cell of the B.E.S.& T Undertaking on 15th July, 2005. The Internal Grievance Redressal Cell, in turn, on 31st August, 2005 disposed off the request and advised the Appellant to abide by the arrangement already arrived at for clearing off the dues, as the bills raised are towards the actual energy consumed by him and not the supplementary bills.

18. The Appellant did not pay any further instalments and instead, approached the Consumer Grievance Redressal Forum on 7th November, 2005. The Forum considered the matter and observed that the consumer approached the Forum with the intention that he will get relief due to Maharashtra Electricity Regulatory Commission's order of 23rd February, 2005 in respect of the Case No. 19 of 2005. The Forum further observed that the said order applies to only supplementary bills that arise out of the defective meters. In this case, accuracy of the meter was never questioned. The Forum concluded that the recovery of arrears in the present case being undisputed, the case is excluded from its

jurisdiction in terms of the Regulation 6.4(4) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003.

19. The matter was heard on 20th February, 2006. The Appellant narrated the sequence of events that took place right from the year 1995 to date and claims that the B.E.S.& T Undertaking gives permission for the new connection only if the consumer pays all outstanding amounts. He agreed that he had two temporary connections during the year 1995 and 1996 which was obtained for construction activity of the building. The construction work was completed and the building was fully occupied by the end of the year 1996. He had applied for change of tariff to residential instead of temporary supply, which was granted by the Respondent. New meter was connected on 2nd March, 1998. He did not receive any bills for the new meter until 3rd December, 1998. Again the bill was issued on average basis. He conceded that the second bill was received on 2nd February, 1999 amounting to Rs. 2,50,594.24 almost after 11 months, which included the unbilled accumulated units, which was paid.

20. The Appellant states that he received another bill for Rs. 4,38,545.64 on 8th December on the meter no. L850714 which is meant for water pump. This bill included the balance dues of Rs. 4,38,092.77 as old outstanding but without details. He sought complete details of the amount and claims that he has never defaulted for the last so many years on the payments of bills. The Appellant reiterated all the points, which are already submitted in his representation. He questioned as to how and whether the Respondent can claim the sum of Rs. 4,38,092.77 from a consumer after a span of 6 or 7 years without any copies of the bills and other details. He doubted whether the bills were actually raised earlier. He puts it on the Respondent to prove that the consumer has not paid any bills of the year 1996, 1997 and 1998 if, however, raised by the B.E.S.& T Undertaking. He reiterates that he has paid all bills raised and it is not his fault if some bills were not raised by the Respondent earlier.

21. He agreed during the hearing that he approached the Dy. General Manager, Shri Lendhe to resolve the issue who in turn granted permission to pay the dues in the monthly instalment of Rs. 10,000/- each. He stated that he paid 4 such instalments (Rs. 40,000/- total) till March, 2005 but did not pay any further instalment, after he came across the news that supplementary bills cannot be raised. He approached the Internal Grievance Redressal Cell of the B.E.S.& T Undertaking on 15th July, 2005 and claims that as per the Maharashtra Electricity Regulatory Commission's order, all supplementary bills should be withdrawn and the amount paid against such bills should be refunded to the consumers.

22. Both the parties were given an opportunity to file rejoinders to make further submissions in respect of the points that arose during the hearing. The Respondent, by its letter dated 23rd February, 2006 filed the rejoinder to say that there is no provision in the Indian Electricity Act, 1910 which provides the period within which time the bill for electricity charges must be sent and claims that the Respondent is at liberty to send the bill even three years after the electricity consumption. It cited the judgement reported in the AIR 1987 DELHI 219 in the Civil Writ Petition No. 2004 of 1983 between H.D.

Shourie v/s. Municipal Corporation of Delhi and another in support of its say. The Appellant submitted the rejoinder on 27th February, 2006 to say that the law will not permit the Respondent to claim bills that are more than three year old. It further says that no bills were received from the Respondent for the past period under reference. He reiterated that he has not created any excuse for non payment. No attempt was made by the B.E.S.& T Undertaking to send any bills if pending and it was the administrative lapse of the Respondent. It claims that the Limitation Act, 1963 prescribes a limit in respect of suits or claims relating to accounts, as three years.

23. In view of the detailed submissions made by both the parties during the hearing and the documents submitted, it is necessary to verify whether the claims of the outstanding dues made by the Respondent were undisputed as observed by the Consumer Grievance Redressal Forum. Sequence of events and the documents on record show that the consumer had three temporary connections between the period from 19th June, 1995 to 2nd March, 1998. Duration of the connections and the amounts of outstanding bills claimed by the Respondent appear as under:

| S.N | Connection No. | Period | Bill Amount | Amount Paid | Balance |
|-----|-------------------|--|-------------|-------------|-------------|
| 1 | TIN/478/695 | 19 th June, 1995 to 1 st March, 1997 | 4,27,729.14 | 2,42,224.53 | 1,85,504.61 |
| 2 | TIN/082/196 | 27 th January, 1996 to 21 st March, 1997 | 1,94,304.61 | 87,081.43 | 1,07,223.18 |
| 3 | TIN/191/397 | 21 st March, 1997 to 2 nd March, 1998 | 2,73,654.98 | 128290.00 | 1,45,364.98 |
| 4 | Total Outstanding | | | | 4,38,092.77 |

24. The above three temporary connections were existing as mentioned above at different points of time. The payments made as above are acknowledged by the Respondent as shown in the ledger. The Appellant during the hearing confirmed the above position on the payments made. There is, therefore, no dispute as regards to the payments made and acknowledged. The Appellant agreed that the Respondent furnished him the above details by way of ledger extracts. The Respondent during the hearing also conceded that the copies of the ledger extracts showing the above details of bills raised and payments made were given to the Appellant. The Respondent clarified that as a matter of procedure, duplicate copies of the bills are not maintained or retained by the Respondent after the bills are issued to the consumer. However, all the details regarding consumption, amounts raised and the payments made, are reflected in the ledger accounts. It is, therefore, not possible or practicable to produce the copies of the bills issued to the consumer at that point of time. There is no dispute between the parties about the entries shown in the ledger account. Perusal of the ledger accounts indicate details of meter reading consumption of energy units, amount of bills raised and the

payments received from time to time. This leads to the conclusion that the Respondent had issued the bills on several occasions as seen in the ledger although there are some missing months during which the bills are apparently not issued. In view of this, the arguments of the Appellant that he has never received the bill earlier during the disputed period does not sound to reason and therefore cannot be accepted. It is possible that the Respondent failed to raise the bills in certain months. But it does in no way prove the point of the Appellant that no bills were issued and therefore he could not pay at that time. It is also pertinent to note that the Appellant has not claimed to have paid the outstanding amount shown in the ledger. His argument is limited to not receiving the bills earlier, and thus to demonstrate that if the bills have not been raised and therefore remained unpaid, it is not his fault.

25. As regards the period subsequent to 2nd March, 1998 when the meter no. 950345 was installed, it is seen that the first bill appears to have been issued on 3rd December, 1998 for only Rs. 302.89, which was paid. The subsequent bill issued on 2nd February, 1999 for Rs. 250494.24, which included the earlier consumption of unbilled units was raised by the Respondent and paid by the consumer. There is clearly no dispute in respect of this payment.

26. The point, however, remains that the ledger extract clearly show the details of the bills raised, payments made and the balance outstanding against each temporary connection. Payments made against these bills stand adjusted and shown in the ledger. Outstanding amount after these adjustments are not clearly paid. The entries in the ledger remain undisputed. Defence put forth by the Appellant is limited to non receipt of bills and delayed raising of claims.

27. Sequence of events from 4th March, 2003 is important in this case, when the Respondent first issued the letter to the consumer calling upon to pay Rs. 4,38,092.77 as outstanding dues. This was acknowledged by the Appellant. Therefore, it cannot be said that the Appellant first came to know about the outstanding bills only on 8th December, 2003 as claimed. In addition, the Respondent followed up the matter by its letter on 21st July, 2003 reminding the Appellant to pay off the outstanding bills/ dues. This letter is also acknowledged by the Appellant. Subsequent action leading to disconnection of electric supply taken by the Respondent, B.E.S.& T Undertaking appears as a sequel to non payment of the outstanding dues despite its follow up. The Appellant, in the series of correspondence has conceded that he has never disputed the outstanding dues but merely stated that the demand lacks details of the bills. It becomes clear from the Appellant's letters dated 12th June, 2004 and 25th June, 2004 to the Respondent that he was willing to clear off the entire outstanding dues by instalments of Rs. 10,000/- per month. He actually paid four instalments of Rs. 10,000/- each from November, 2004 to March, 2005 indicating his willingness to pay off the total dues.

28. It was only after the Appellant came across in the newspaper about the order of the Maharashtra Electricity Regulatory Commission, issued on 23rd February, 2005 in respect of supplementary bills that he decided to approach the Internal Grievance Redressal Cell of the Respondent. The Appellant took the plea that this being a

supplementary bill, order of the Maharashtra Electricity Regulatory Commission applies and therefore he would not like to pay any more instalments and claimed the refund of the amount of Rs. 40,000/-, which was already paid in instalments.

29. The question whether the outstanding dues in this case were raised as a supplementary bill in terms of the order of the Maharashtra Electricity Regulatory Commission is crucial. This issue is examined in detail by the Forum and concluded that the Commission's Order referred to above applies only in case the meter was defective and the supplementary bills are issued in the situations as explained in the said order. By no stretch of imagination, the outstanding dues in this case, can be treated as supplementary bills as contemplated in the order of the Commission in the referred case. The Forum clearly concluded that in this case, the bill amount was never disputed, the accuracy of the meter is also not disputed. Therefore, the directions contained in the order of the Commission, did not apply in this matter. On the contrary, the amount of the outstanding dues being undisputed, the case falls within the provision of the Regulation 6.4(4) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 rendering it beyond the jurisdiction of the Forum. This being so, the Forum has rightly concluded that such cases where the recovery of arrears when the bill amount is not disputed, are excluded from the jurisdiction of the Forum. Under these circumstances, the Forum disposed off the matter without any order on the merit of the case.

30. The sequence of events, documents on record and the submissions made during the hearing undoubtedly lead to the conclusion that the consumer never disputed the amount of the outstanding bills raised by the Respondent. The Respondent had first informed on 4th March, 2003 about the outstanding bill amount and called up on the Appellant to pay. It is also seen from records that the Appellant was willing to pay the dues. He approached the Respondent to resolve the issue and got the instalment facility for payment of outstanding dues. Moreover, he made payment of 4 instalments as per the agreed arrangement. In the light of this the sequence of events, the outstanding bill amount cannot be said to be disputed and therefore the Forum has taken the correct view that the case falls outside its jurisdiction. I do not have any reason to deviate from the views expressed by the Forum in its order. It is, therefore, not necessary to go in to the merit of the case.

ORDER

The Representation is rejected being beyond the jurisdiction of the Consumer Grievance Redressal Forum and the Ombudsman in terms of Regulation No. 6.4 (4) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003.

Sd/
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary