



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. 8 OF 2006

In the matter of Recovery of Past Dues

Shri Girdhari Singh Sukhlecha..... 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 N.G. Sukhlecha, Son of Shri Girdhari Singh Sukhlecha

On behalf of the Respondent:

1. Shri A. R. Sarmukadam, Assistant Engineer, B.E.S.& T Undertaking
2. Shri R. B. Prabhu, Deputy Engineer, B.E.S.& T Undertaking

Date: 20th March, 2006

ORDER

Shri Girdhari Singh Sukhlecha, resident of Room No. 1405, 14th floor, Panchratna, Opera House, Mumbai 400 004 is a consumer of electricity supplied by the B.E.S.& T Undertaking. The consumer has filed the representation on 6th February, 2006 against the order of the Consumer Grievance Redressal Forum, B.E.S.& T Undertaking issued on 23rd December, 2005. The Forum in its order directed the B.E.S.& T Undertaking to charge Rs. 19,989.98 to the consumer for the disputed period between 10th March, 1998 and 27th January, 2004. His representation is registered at Serial No. 8 of 2006. Shri Sukhlecha (hereinafter referred to as the Appellant) is aggrieved with the order of the Forum and has stated his case as under:

2. The Appellant says that the period of demands between 10th March, 1998 to 23rd September, 1999 and further for the period of 1st November, 2002 to 27th January, 2004, both together work out to Rs. 19989.98. In his premises, the meter no. O 925702 was tested on 23rd September, 1999 and found stopped while in subsequent period i.e. 1st November, 2002 to 27th January, 2004, the meter no. L 850335 was found to be slow-defective. The B.E.S.& T Undertaking (hereinafter referred to as the Respondent) initially worked out the demand as Rs. 36,776.54 on 16th December, 1999. The demand was subsequently amended to Rs. 34,154.42 and finally amended to Rs. 19,989.98 vide the Respondent's letter dated 2nd September, 2005.

3. The Appellant says that Section 26 of the Indian Electricity Act, 1910 makes it obligatory for the Respondent to maintain the meter in correct working order. Due to failure of the licensee to maintain the meter as correct, it cannot demand the dues for the periods ranging from 15 months to 18 months based on average consumption or assumption as is done by the Respondent. It has cited several cases in this behalf. The Appellant also cited the provisions under the Consumer Protection Act, 1986 to say that the defective meter amounts to deficiency in service and the Respondent is bound to take speedy action for rectification of the meter. If it is not done, the licensee i.e the Respondent cannot enforce its demand for payment of electricity dues.

4. As regards to billing for the period between January, 2004 and November, 2004, the Appellant says that the Respondent did not send him the correct bills for 11 months. Bills for nil amount were sent during the period without any reading. Therefore, the Respondent is not justified in raising the bills belatedly after 11 months for accumulated units. He has paid sum of Rs. 6316/- towards this payment for which the Appellant seeks to get refund from the Respondent.

5. The Appellant adds that he did raise the point before the Forum that the consumer cannot be held liable for payment of Rs. 19,989.98 and the demand should be quashed and also sought refund of the amount of Rs. 6316/- referred to above. In addition, the Appellant has prayed for the cost of Rs. 1000/- towards his suffering in the above process. The Appellant cited some case laws in support of his claim.

6. Notice was issued to both the parties on 10th February, 2006 calling upon the Respondent to file its written statement of defence. They were also advised to explore the possibility of working out the proposal to facilitate settlement through conciliation or mediation. There was no response to this suggestion from either of the parties. The Respondent filed its written statement of defence along with the documents on 23rd February, 2006. The Respondent, in its reply, narrated the brief history of the case.

7. According to the Respondent, the meter no. O-925702 was checked on 23rd September, 1999 and was found stopped. It was replaced by another meter no. L 850335 on the same day. The Respondent prepared an amendment bill from 10th March, 1998 to 23rd September, 1999 based on the average of 429 units per month. The Respondent says that there was a drop in consumption with effect for 10th March, 1998. This average was worked out for the past 12 months from March, 1997 to March, 1998. The bill amount so worked out was Rs. 36,776.54 at commercial tariff, since part of the premises was being used for commercial purpose.

8. The consumer disputed the basis for commercial tariff. In the meantime, the consumer had obtained an additional meter no O-657625 (on 28th January, 1999) for the portion of the premises which was used for commercial purpose. The Respondent then changed the tariff of earlier meter no. L 850335 to residential with effect from 3rd January, 2000. In view of this development, the Respondent amended the bills for two periods, one from 10th March, 1998 (date of drop in consumption) to 28th January, 1999 (installation of a separate meter for commercial purpose). This was done on the basis of average monthly consumption during the base period of past 12 months. The billing was at commercial tariff. The second period for amendment started from 28th January, 1999 to 23rd September, 1999

i.e. upto the date of meter replacement. This was done at an average of 219 units per month by assuming the base period between 23rd September, 1999 to 3rd January, 2000, at residential tariff. The amendments in bills carried out as above resulted in a net debit of Rs. 28051.94. The Respondent further amended the bills from 23rd September, 1999 to 3rd January, 2000 during which the consumer was wrongly billed at commercial tariff on both meters. Upon correction on this account, a credit of Rs. 2999.96 was given to the consumer.

9. Upon inspection of the consumer's premises on 15th February, 2003, the Respondent's staff noticed that the meter no. L 850335 was defective and slow by 40.95%. It was replaced by a new meter no. L 960116 on 22nd January, 2004. The Respondent raised the bill of Rs. 9102.44 assuming the date of drop in consumption as 1st November, 2002 and upto changing of meter on 27th January, 2004. This was done at the rate of 291 units per month recorded during the next three months after replacement of meter. This billing was again modified on the 40.95% slowness as observed at site. The amended bill on this account is now raised as Rs. 944.02.

10. The Respondent summarized the above events to say that the amendment bills were revised to Rs. 19,989.98, which includes billing of stopped meter period (10th March, 1998 to 23rd September, 1999), a credit of Rs. 2999.96 due to change in tariff and a bill for slow meter recovery from 1st November, 2002 to 27th January, 2004. The Respondent filed its parawise reply to the points raised by the Appellant in the Representation. It has defended its action of raising the bills for the stopped meter period as well as for the slow meter, which was tested on 15th February, 2003 at site. It further says that delay in replacement of defective meter L 850335 was on account of lack of cooperation from the consumer.

11. As regards to non billing for the period from 2nd January, 2004 to 1st November, 2004, it agrees that the meter was read on 1st November, 2004 and the consumer was billed for the cumulative units of 2794 per units recorded on that day. It defended the issue of bill of Rs. 6316/- on the basis of actual reading of the meter and the total consumption during that period. The Respondent on the basis of its submission, prayed that the consumer may be asked to make the payment of the amendment bill of Rs. 19,989.98 which has been revised in accordance with the order issued by the Forum.

12. The matter was heard on 14th March, 2006. Shri A.R. Sarmukadam, Assistant Engineer and Shri R. B. Prabhu, Deputy Engineer were present on behalf of the Respondent. Shri N. G. Sukhlecha, son of Shri Sukhlecha was present on behalf of the Appellant. The Appellant had submitted a request through a fax, a couple of days before the hearing requesting to postpone the hearing until 31st March, 2006. Request for postponement was based on some urgent work scheduled by the Appellant out of Mumbai. In this connection, it must be put on record that the date for the hearing was scheduled at the request, suiting to the convenience of the Appellant in the first instance. Therefore, it was not proper on the part of the Appellant to request for postponement of the date on the ground of his own engagement elsewhere. Shri N.G. Sukhlecha who was present on behalf of the Appellant, was made aware of the fact that the hearing can no more be adjourned. The Appellant has already submitted his representation with details and annexures. As such, the hearing was proceeded with.

13. The Appellant was asked to present his side especially on the ground on which the present appeal is submitted. Shri Sukhlecha explained that he was not very much aware of the matter and is simply representing his father in his absence. He further submitted that the representation filed in this behalf contains the grounds for appeal and the necessary documents in support thereof. He did not make any oral arguments during the hearing.

14. The Respondent put forth its arguments in response to the points raised in the representation. It was reiterated that the meter no. O 925702 installed at the premises of the Appellant, was observed as stopped, on 23rd September, 1999. The Respondent conceded that it is not aware of the exact date on which the said meter had stopped recording the consumption. It was argued that the billing on account of the 'stopped meter' period is done with effect from 10th March, 1998 on the basis of the observed drop in consumption. Upon query, the Respondent conceded that the meter was recording the energy consumption right upto 4th May, 1998 when the meter reading was observed as 49905 and consumption was recorded as 318 units during the cycle. The meter further recorded consumption of 3 units only when read on 2nd July, 1998 and thereafter stopped recording any consumption. This went on till the Respondent observed the meter on 23rd September, 1999 as 'stopped'. He conceded that since the meter recorded consumption up to the reading of 49905 on 4th May, 1998, the meter must have stopped shortly thereafter, when the reading was 49908. The Respondent further added that the billing during the stopped meter period was done on the basis of average consumption recorded in the past, as per their practice.

15. On the change of tariff issue, the Respondent submitted that it had corrected the over billing between the period from 23rd September, 1999 to 3rd January, 2000 and credit of Rs. 2999.96 was given to the Appellant. The mistake had occurred due to raising of bills for both the meters during the said period.

16. As regards to the meter no. L 850335, the Respondent submitted that the meter was found slow during the inspection carried out on 15th February, 2003. It was checked at site by accuchek meter and was found slow by 40.95%. The bill was raised from 1st November, 2002 to 27th January, 2004 to recover the arrears on account of slow meter. Upon query, he conceded that the said meter was checked at site by accuchek meter only and the meter was not subjected to the test in laboratory. It was mentioned that the Appellant was informed about the site inspection to be carried out on 15th February, 2003 but there was no cooperation from the Appellant who did not witness the test and also did not put his signature on the test report of the meter. He deposed that, on the contrary, the Appellant did not agree with the test at site. When asked why, in this situation, the matter was not referred to the Electrical Inspector as required under the provisions of Section 26(6) of the Indian Electricity Act, 1910, there was no explanation from the Respondent. He could not also explain as to why the period for which the supplementary bill was raised, extended beyond a period of six months as stipulated under the provisions of Indian Electricity Act, 1910 even when the meters are tested in accordance with the provision under Section 26(6) of the said Act.

17. As regards the billing during the period from 2nd January, 2004 to 1st November, 2004 i.e. after replacement of the meter no. L 850335 (by the meter no. L 960116). The Respondent conceded that this represents the cumulative consumption of units, since the meter was read only on 1st November, 2004, first time after its installation. Total bill of Rs. 6316/- for this period represent the amount for actual consumption of energy units (2794

units). However, the Respondent conceded that due to late reading of the meter, the bill was raised belatedly but it represents the charge for actual consumption of energy units.

18. Submissions made by both the parties and the documents on record, indicate that the dispute is focused around calculation of bills for the stopped meter period from 10th March, 1998 to 23rd September, 1999. This amounts to Rs. 22045.92 during which time the Respondent has raised the bill for the meter no. O 925702. The Appellant has objected to this bill on the ground that the Respondent has not taken the actual meter readings during that time and it has not maintained the meter in correct working order as required under the provisions of the Indian Electricity Act, 1910. The Appellant has also disputed the bill of Rs. 944.02 raised for slow meter recovery (meter no. L 850335) between 1st November, 2002 to 27th January, 2004. It has cited following judgements in support of its say

- a) M.P. Electricity Board V/s Shivkant Chaube – Appeal No. 463 of 1997.
- b) Bharat Barrel Drum Manufacturing Co. V/s Brihanmumbai Municipal Corporation 1985 Maharashtra L J 535 1985 BOM 2144
- c) Valsa George V/s Kerala State Electricity Board 1998 (1) KLT 175 at 176.
- d) Shri Krishna Rajendra Mills Ltd, Mysore V/s Kerala Electricity Board AIR 1991 KER 345.
- e) Hamidullah Khan V/s Chairman, M.P. Electricity Board 1982 MPLJ 623 at 625-626.
- f) H.D. Shourie V/s. Municipal Corporation, Delhi AIR 1987 Delhi 219.
- g) Radheshyam Khare V/s State of M.P. AIR 1959 SC 107 at 119,121.
- h) Kamala Shankar Upadhyaya V/s State Electricity Board, U.P. 1977 ALR (soc no 55)58, 1977 ALL.
- i) North India Tiles Corpn V/s DESU 1993 CCJ 136 of 9199211 CP 1008 (Delhi).

19. The Appellant has referred the above cases to broadly say that the Respondent cannot raise the bills, which are not based upon the actual meter readings and that the maximum period for which the bill could be raised in case of defective meter is six months. It relies basically on the provisions contained in Section 26(6) of the Indian Electricity Act, 1910.

20. The Respondent while replying to query, mentioned that the citations referred to by the Appellant should not be considered as they relate to the provisions under the Indian Electricity Act, 1910 and not under the Electricity Act, 2003.

21. Without going into the details of the judgements and orders referred to above, it is quite clear that the provisions of Indian Electricity Act, 1910 especially Section 26(6) is very much relevant in this case so far as it relates to defective meter observed by the Respondent, on 15th February, 2003. It is seen from records that the meter no. L 850335 was observed to be slow at site by the Appellant on 15th February, 2003 but was not subjected to test in the laboratory. It is also on record that the Appellant did not agree with the observations made by the Respondent during the accuchek test and did not witness the said test. It is in this background that it becomes all the way more important for the Respondent to get the meter tested in accordance with the provisions of the Section 26 (6) of the Indian Electricity Act, 1910. The Respondent not only failed to get the meter tested in their laboratory but also did not make reference to the Electrical Inspector as required under this section. The dispute in the case of slow or fast meters had to be decided by the Electrical Inspector. The Respondent had no valid authority to raise bills in such cases on average or any other basis. Therefore,

any bill raised on the basis of site observations about slowness of the meter no. L 850335 would not be in consonance with the provisions of the Act and is therefore invalid. The bill of Rs. 944.02 raised for slowness of this meter without a proper test cannot therefore be allowed and is liable to be quashed. This position is also corroborated by the Maharashtra Electricity Regulatory Commission in its order dated 23rd February, 2005 passed in case no. 19 of 2004. To this extent the order of the Forum is partially set aside and bill of Rs. 944.02 raised on this account is hereby quashed.

22. As regards the bill raised for the period between 10th March, 1998 to 23rd September, 1999 (meter no. O 925702) it is on record that the Respondent actually observed the meter only on 23rd September, 1999 and not before. Records of the consumption (CPL) submitted by the Respondent indicates that, it was on 4th May, 1998 when the meter recorded a consumption of 318 units in the billing cycle at the meter reading of 49905. Corresponding consumption in the earlier billing cycle were 438 and 556 units respectively. It was after 4th May, 1998 that the meter recorded only 3 units when the meter reading was 49908 indicating that the meter has clearly stopped recording after this reading. This leads to the conclusion that the said meter no. O 925702 was working upto 4th May, 1998 and stopped almost immediately after that day. Therefore, any calculation of bills on account of stopped meter cannot precede this date.

23. Therefore the billing during the stopped meter period, has to be worked out only for the period from 4th May, 1998 and upto 23rd September, 1999. There is otherwise no way to arrive at a consumption of energy units supplied through the stopped meter during this period. In such cases, consumption of energy cannot be estimated by making reference under Section 26(6) of Indian Electricity Act, 1910. The contention of the Appellant that no energy bills should be charged for the stopped meter period is not tenable. The Appellant cannot take a shelter behind the provision under Section 26(6) to escape making payment of charges for consumption of energy during the stopped meter period. The cases cited by the Appellant would not be of any help to the Appellant in his behalf. Supreme Court in its judgement in the civil appeal no. 3615 of 1996 between B.E.S.& T Undertaking V/s Laffans (I) Pvt. Ltd decided on 21st April, 2005 has observed very clearly as under:

“8 As to what would be a correct meter..... Where the meter is completely non functional on account of any fault or having been burnt, it will not register the supply of energy at all. Since a burnt meter does not record any supply of energy, it virtually means no meter.

9 What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied. There is an additional reason for coming to such conclusion. Section 26(6) confers power upon the Electrical Inspector to estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct. Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy supplied to the consumer by determining the extent or percentage of error in recording the supply, whether plus or minus. However,

where the meter is burnt or is completely non- functional, such an exercise is not at all possible. Therefore, Section 26(6) can have no application in a case where meter has become completely non-functional on account of any reason whatsoever.”

The judgement further reads: -

“12 In the present case,..... For the period for which the reading could not be recorded or retrieved because the meter was burnt there is nothing wrong in the licensee having raised the demand based on the average consumption for the similar period during the previous year. It is a reasonable basis.”

24. In view of the above position, action of the Respondent in raising the bill for the stopped meter period cannot be totally faulted. However, it is not proper on the part of the Respondent to levy bills for stopped meter period from 10th March, 1998, only on the assumption that there was a drop in consumption from that date. A bill of Rs. 20292.83 raised by the Respondent with effect from 10th March, 1998 therefore has to be accordingly corrected. The Respondent cannot levy any additional bill during the period from 10th March, 1998 to 4th May, 1998 by considering it as ‘stopped meter period’ and has to be in accordance with the actual consumption recorded during that period. The order of the Forum to this extent is set aside. The Respondent is directed to rework out the bill accordingly.

25. As regards the period from 23rd September, 1999 to 3rd January, 2000, the Respondent had raised bills at commercial tariff instead of residential tariff. It has corrected the mistake and gave a credit of Rs. 2999.63 to the Appellant. This is not objected by the Appellant and therefore need not be deliberated upon.

26. As regards the Appellant’s prayer for refund of Rs. 6316/-, the Respondent had conceded and clarified that it was due to raising the bills belatedly but for cumulative consumption of energy units during 2nd January, 2004 to 1st November, 2004. It represents the actual consumption of units. It is well taken that the Respondent should have recorded the reading at proper intervals according to the billing cycles. However, merely issuance of bills belatedly as above, do not make them illegal. The amount has already been paid. As such, there is no substance in the Appellant’s prayer seeking refund of this amount.

27. The Appellant has not made out any case to justify its prayer seeking compensation of Rs. 1000/-. The prayer in his behalf is rejected being unsubstantiated.

28. The Representation is disposed off with the directions as elaborated in the preceding paragraphs. The Respondent is directed to comply with this order and report compliance within 30 days from the date of this order.

Sd/
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary