



## 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. 13 OF 2005** **In the Matter of Recovery of Past Arrears**

M/s. Rahath Silk Mills,  
Rahath Commercial Centre,  
Globe Mills Passage,  
Off. Pandurang Budhkar Marg,  
Worli, Mumbai-400 025.....

Appellant

V/s.

B.E.S. & T. Undertaking  
BEST Marg Colaba,  
Mumbai – 400 005.....

Respondent

Present:

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

On behalf of the Appellant:

1. Shri K.B. Makharia
2. Shri Rajesh Maravoor

On behalf of the Respondent:

1. Shri R. G. Ambekar, A.E. (G/South), Consumers (North)
2. Shri K. A. Kulkarni, A.E.
3. Shri J.A. Mulla, Dy. E.
4. Shri M.M.Ambre, D.E.
5. Shri P.D. Gunjal

**Dated: 14<sup>th</sup> July, 2005**

1. M/s. Rahath Silk Mills, the consumer of B.E.S. & T Undertaking is located at Globe Mills Passage, Worli, Mumbai. The consumer has submitted the present representation on 12<sup>th</sup> May, 2005 against the order of Consumer Grievance Redressal Forum at B.E.S.& T Undertaking issued on 15<sup>th</sup> April, 2005. M/s. Rahath Silk Mills (hereinafter called as Appellant) in this representation requested to set aside the order passed by the Forum and to reverse the order on additional charges mentioned in the bill

dated 17<sup>th</sup> April, 2003 and the subsequent bills issued by the B.E.S.&T Undertaking. The Appellant has also sought refund of excess amount paid to the B.E.S. & T Undertaking (hereinafter called as Respondent) after arriving at the correct figure of consumption. The Representation is registered at Serial No. 13 of 2005 in this office. The Appellant has stated its case as under:

2. The Appellant states that prior to March 1999, it had four meters installed in the premises. Last bill with these meters on assumed basis was received on 26<sup>th</sup> April, 1999 and was duly paid. The Appellant in the meantime requested for converting from C1 to C2 tariff after completing the required formalities. The Respondent after verification installed two new meters in place of earlier four meters, one for recording KWH units and the other one for recording RKVAH units. The meters were replaced on or about 15<sup>th</sup> March, 1999. The Appellant says that the Respondent did not send any bills for the new meters from March 1999 till 23 September, 1999 when it got a bill showing nil amount payable with a credit of Rs. 4614.21 in favour of the consumer. The RKVAH energy meter consumption was shown blank and the KWH 841 units were billed on average basis. The Respondent did not take any meter readings for about 6 months from March 1999.

3. The Appellant thereafter, received a cumulative bill dated 25<sup>th</sup> November, 1999 showing consumption of 33062 KWH and 39477 RKVAH units for approximately 8 months. No bill was received in the meantime (and no readings were taken by the Respondent). Aggrieved by the high bill, the Appellant protested in December, 1999 about faulty meters followed by the request in February, 2000 to change the meters.

4. The Respondent accordingly replaced the meters on 7<sup>th</sup> March, 2000 by an electronic meter with Serial No. P001885 but continued to include the arrears raised in the earlier bill without testing the meters inspite of request made by the Appellant. In the meantime, the Appellant made payment of Rs. 2,50,000/- under protest. After the bill dated 26<sup>th</sup> April, 2000, B.E.S.&T Undertaking did not show any arrears in the subsequent bills issued to the Appellant for next 3 years. During this time, bills on actual reading basis for the new meter installed on 7<sup>th</sup> March, 2000 were issued and paid by the Appellant from time to time.

5. The Appellant says that thereafter, it did not get any bills showing the arrears against the old meters and continued to receive bills for the consumption recorded by the electronic meter until 17<sup>th</sup> April, 2003. There was no mention of any arrears during the period between April 2000 and April 2003. He received a bill dated 17<sup>th</sup> April, 2003 for the first time showing an amount of Rs. 287582.22 as "any additional charges" without giving any details. Thereafter, bills with arrears along with the current bill were continued to be sent to the Appellant. Since there was no response from the Respondent, the Appellant approached the Consumer Grievance Redressal Forum, in November, 2004. The Forum in its order dated 15<sup>th</sup> April, 2005 directed the consumer to pay Rs. 176145.57 as balance payment to the Respondent. The Forum upheld the stand of the Respondent in raising the arrears since they pertain to the period prior to the Electricity Act 2003 came in force.

6. The Appellant does not agree with the contention of the Forum about payment of arrears of Rs. 176145.57 and sought the relief. He says that he has already paid Rs. 2,50,000 towards the bill under protest. Bill should be reassessed as the meters were not correct and showed high consumption. Amount paid should be adjusted.

Moreover, there were no arrears shown in any of the bills after April 2000 and as such past arrears of the period prior to May 2000 could not be, now recovered. He has requested to invoke provisions under Section 56 (2) of the Electricity Act, 2003 and insisted that no arrears could be recovered at this stage.

7. The matter was heard on 24.06.2005. During the hearing, the Appellant stated that their office was working on regular basis consuming electrical energy during March, 1999 and May, 2000 and also thereafter but disputed the high consumption as charged by the Respondent without proper readings and testing of meters. The Appellant, however, expressed its willingness to consider making reasonable payment during that period subject to certain conditions and after adjustment of the payments made.

8. During the hearing on 24.6.05, the Respondent conceded that the arrears were not shown in the bills for about 3 years until 17<sup>th</sup> April, 2003. It also agreed that the meters removed on 7<sup>th</sup> March, 2000 were not tested despite the request of the Appellant. No readings were taken from March, 1999 to September, 1999. Similarly, the Respondent also agreed with the discrepancies in the meter readings shown in the months of February, March, April 2000.

9. It was brought to the notice of the Respondent that the Appellant was willing to consider making reasonable payment towards the energy consumption during the disputed period from March 1999 to March 2000 till the replacement of the meter. The Respondent was asked to react whether it is willing to consider such proposal for conciliation. The Representative of the Respondent replied in affirmative. In view of this, I considered the matter fit and appropriate for settlement by conciliation process. Accordingly, the Appellant and the Respondent were advised to submit their proposals in a week 's time to facilitate further process in the matter. The case was adjourned till then.

10. The Respondent and the Appellant submitted their proposals by their letters dated 29<sup>th</sup> June and 30<sup>th</sup> June, 2005 respectively. The Appellant expressed willingness for mediation and conciliation and furnished details. He says that after the new meter was installed on 7<sup>th</sup> of March, 2000, consumption recorded during the next 12 months could be taken as a basis for arriving at average consumption and the bills should be worked out on that basis for the disputed period starting from 15<sup>th</sup> March, 1999 to 7<sup>th</sup> March, 2000. This works out to Rs. 1,77019/-. After adjustment of Rs. 2,50,000 paid earlier, the Appellant seeks a refund of Rs. 72981/- upto March, 2005. He further suggests that bills for the next three months i.e. April, May and June 2005 amounting Rs. 56178/- should be adjusted from the above refundable amount, bringing the net refund to Rs. 16803/-.

11. The Respondent vide its letter referred to above submits that total arrears as on 1<sup>st</sup> April, 2005 are Rs. 5,30,344.00 which is brought down to Rs. 176,145.57 by the Forum's order. This amounts to granting a relief of Rs. 3,54,198.43. Further, power factors penalty amounting Rs. 77,737.03 is not included in the bill. Thus, the total relief to the consumer would be Rs. 431935.46. The Respondent has, therefore, prayed that the consumer may be asked to pay Rs. 176145.57 as per the order of the Forum.

12. In the light of the submissions received from both the parties as above, the matter was heard on 13<sup>th</sup> July, 2005. On going through the submission of the Respondent, it seems that the Respondent is not prepared to extend any more relief beyond the order passed by the Forum. Therefore, the proposal given by the Respondent

amounts to a 'no proposal' in the context of willingness expressed by the Respondent during the earlier hearing. The Respondent confirmed to this position.

13. In view of the above, there appears no point in continuing persuasion for settlement. As such, efforts for settlement were called off and the matter was taken up for hearing on merits.

14. Parawise comments submitted by the Respondent make it clear that it had removed the earlier four meters and replaced by two electronic meters on 15<sup>th</sup> March, 1999 and that the first bill with meter reading was preferred in the month of November, 1999 i.e. after 8 months from installation of meters. The Respondent agrees that the Appellant had requested to check the two meters on the pretext of being faulty. The Respondent took the stand that these meters were not faulty as per the laboratory test. After removal of these two meters, the Respondent says that there were arrears of Rs. 287466.79 after adjusting of Rs. 2,50,000/- paid by the Appellant. The arrears were debited by the EDP department to the consumer's account in the bill dated 17<sup>th</sup> April, 2003.

15. The Respondent further states that the electronic meter No. P001885 installed at the premises of the consumer on 7<sup>th</sup> March, 2000 was not of proper quality and the same was replaced on 22<sup>nd</sup> December, 2000 by another electronic meter with Serial No. P000259. The Respondent says that the amount of Rs. 287466.79 levied as 'additional charges' was explained to the consumer. It never waived this amount as claimed by the Respondent. The Respondent conceded that it took three years for debiting outstanding amount from old conventional account to the electronic account of the consumer. It further claims that the arrears were shown in the bill from March 1999 to September 1999. The Respondent agrees that the consumer was paying only the current bills and therefore the delayed payment charges were levied on the arrears. Appellant had disputed the debit of Rs. 287466.79 to his account. According to the Respondent, bill showing the levy of the "additional charges" was not an 'amended bill' but only a cumulative bill for 8 months during which the electricity was consumed by the Appellant and now shown in the bill dated 17<sup>th</sup> April 2003.

16. The Appellant has raised issue of amending bills by the Respondent after three years. The point was also agitated during the hearing before the Forum. The Appellant says that raising additional charge, amounts to issue of amended bills and it is not permissible in the context of the order issued by Maharashtra Electricity Regulatory Commission on 23<sup>rd</sup> February, 2005 in Case No. 19 of 2004 in the matter of "amendment" / "supplementary" bills. The Forum has observed that the said order applies to supplementary / amendment bills issued from 10<sup>th</sup> June, 2003 and upto notification of the Supply Code i.e. 15<sup>th</sup> January, 2005. In the present case, additional charges were levied and shown in the bills prior to 10<sup>th</sup> June, 2003.

17. In the present case it is seen that arrears claimed by the Respondent pertains to the period prior to May, 2000. They were not shown in the bills issued to the Appellant until 17<sup>th</sup> April, 2003 i.e. for over 3 years. The Appellant had taken up the issue of high bills right from November, 1999. In February, 2000, Appellant had requested to check both the meters in view of high readings and bills. The Respondent argued that the meters were not faulty but the meters were replaced in March, 2000. No explanation has been provided for replacement of the meters even if the Respondent believed that they were not faulty except mentioning that there was such a request from

the consumer. The meters were not subjected to test despite the request from the Appellant contrary to what was stated earlier. Copy of the test report, now furnished by the Respondent which is dated 17<sup>th</sup> March, 2005, shows that the tests were carried out on 9<sup>th</sup> and 12<sup>th</sup> March, 1999 i.e. before their installation and not upon the request or protest from the Appellant. The Respondent has also not provided any reasonable explanation for non-issuance of bills from March to September, 1999 except the statement that it is a cumulative bill for 8 months.

18. The Respondent in its written statement conceded that it took 3 years to transfer debit from earlier account to the new account of the consumer. As a result, arrears were not reflected in the bills for 3 years i.e. May 2000 to April 2003. Therefore, the argument of the Respondent that it has shown the arrears of the bills continuously from March 1999 to September 1999 carries no weight or relevance.

19. The Respondent during the hearing tried to explain that it was their mistake in not issuing the bills for 7-8 months till November, 1999 although they had the records with them. The Respondent claims that high consumption recorded by the RKVAH meter during March – November, 1999 was due to 'neglected maintenance or operation of capacitors by the consumer and not due to faulty meter. He, however agreed that since no meter readings were taken till November, 1999, power factor was worked out on the cumulative readings of KWH and RKVAH meters and this does not reflect the power factor on month to month basis. When asked, whether the power factor will fall to as low as 0.55 in users like air conditioners even if the capacitor is completely shut off, the Respondent replied in negative. He stated that it is possible only in highly reactive load like welding. He had no explanation to why atleast the RKVAH meter was not put to test as the main dispute has arisen because of high RKVAH units shown in the bill despite the request from the consumer. Thereafter he agreed with the view that there is a possibility of RKVAH meter not working properly. He also confirmed that the meters are already scrapped without any tests conducted.

20. Submissions made by the Appellant and the Respondent during the hearing leads to the strong possibility of the reactive energy meter being faulty during the disputed period. Since it was not tested, there is no way to determine the percentage error in the meter and therefore no adjustment of bills on that basis is possible. The Forum has worked out the arrears on the assumptions that both the meters were correct. In case the RKVAH (reactive) meter upon testing had shown lesser readings or in worst case, no reading, total arrears worked out by the Forum would have reduced substantially but in no case the possibility of any refund would arise after adjustment of Rs. 2,50,000/- paid by the Appellant. However, in any case fresh working of arrears in the absence of testing of meters is not possible. Moreover, the Appellant claims that any arrears are not now recoverable under the provisions of Section 56(2) of the Electricity Act 2003. It is, therefore not necessary to interfere in the assumption made by the Forum in working out the arrears.

21. The Appellant during the hearing insisted that there was no correspondence from the Respondent to indicate arrears if any of the past period until April, 2003. Arrears were also not shown any time after May, 2000 until April, 2003 and as such the provision under Section 56(2) of the Electricity Act 2003 would bar the Respondent from any recovery at this stage.

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

*Disconnection of Supply in default of payment: Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this sanction 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.*

23. The Respondent has not shown arrears for 3 long years. Provision under Section 56 (2) shows that no sum due from any consumer shall be recoverable after a period of two years from the date when such sum becomes first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity. In the present case, arrears were not shown on any occasion between May 2000 and April 2003, leave aside showing them continuously during the said period. It is also clear that if there are any arrears as claimed by the Respondent, they relate to the period prior to April 2000 even on assumption that both the KWH and RKVAH meters were correct and therefore became first due prior to April, 2000. No attempts are made on part of the Respondent to indicate or recover the arrears from the Appellant. The Respondent has not disputed the fact that these arrears are shown for the first time in April 2003 after April 2000. It is, therefore, non-permissible to the Respondent to recover the arrears now within the provisions of the Section 56 (2) of the Act.

### **ORDER**

1. Both the meters removed by the Respondent on 7<sup>th</sup> of March, 2000 were not tested inspite of the request of the Appellant. There is, therefore, no way to determine the assessment of units at this stage.
2. In view of the above, it is not necessary to deliberate or interfere in the order of the Forum in arriving at the arrears based on the meter readings last available.
3. In view of written and oral submissions made by the Appellant and the Respondent, it is clear that the arrears if any, pertain to the period prior to May, 2000 which are not shown at any time during the subsequent bills until April, 2003. Provisions under Section 56(2) of the Electricity Act, 2003 bars recovery of any arrears in such a situation. As such, the amount of arrears shown in the order of the Forum cannot be recovered now by the Respondent. The Order of the Forum to this extent is therefore set aside being contrary to the provisions under Section 56(2) of the Act.
4. It is clear that the Appellant has been paying current bills regularly and therefore action of the Respondent in disconnecting the energy supply is illegal in terms of the provisions under Section 56(1) of the Electricity Act, 2003. The Respondent is directed to restore the supply immediately.
5. The order should be carried out immediately and the compliance reported within one month of this order.

Sd/  
(W.G.GORDE)  
Ombudsman

Sd/-  
(S.N.YADWAD)  
Secretary