



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. 9 OF 2005
In the matter of High Average Electricity
bills and Delayed Payment Charges.

M/s. Panchshila Pulverising Mills
4, Messant Road, Sewre (E),
Mumbai – 400 015.....

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 D. L. Shah
2. Shri L. N. Shah

On behalf of the Respondent:

1. Shri Ibrahim I. A. Fakih, Supdt (E.S.) Con (N)
2. Shri Shivaraj M. Sakpal, Supdt (Energy Audit)
3. Shri P.R.B. Nair, Div. Engr (Energy Audit)
4. Shri S.S. Joshi, Supdt. (E.S.) Con (N)
5. Shri A. R. Talegaonkar, Asstt. Engr Con (N)
6. Shri E.E. Jacques, Administrative Officer

Dated 23 June, 2005

The Appellant, M/s. Panchshila Pulverising Mills situated at 4, Messant Road, Sewree (East), Mumbai – 400 015, is a consumer of electricity supplied by the Respondent, B.E.S. & T. Undertaking, BEST Marg, Colaba, Mumbai - 400 005. The Appellant has filed the representation against the order of the Consumer Grievance Redressal Forum, B.E.S.& T Undertaking, Mumbai in connection with the grievance of high electricity bills raised by the Respondent on average basis inspite of a correct working meter installed and levy of delayed payment charges. The Forum in its order dated 1st March, 2005 upheld the decisions taken by the Respondent and ruled that the

Respondent is free to use any legitimate means to recover the arrears and should send detailed account of bills, adjustments, delayed payment charges, etc in easily understandable form to the Appellant as a matter of courtesy. Being aggrieved by the decision of the Forum, the Appellant filed his representation dated 29th April, 2005 before this office and has stated his case as under:

2. On or about 17th March, 1999 a new electronic meter was installed by the Respondent at the premises of the Appellant. From 17th March, 1999 to 31st October, 2001 most of the bills were issued on average consumption basis which were in excess of the actual consumption recorded by the correct meter. The Appellant complained to the Respondent orally as well as in writing. The Respondent accepted adhoc payment of Rs. 120,305/- in September 1999 against the bills of May, 1999 of Rs. 2,28,305/-.

3. Thereafter, the Respondent continued to issue wrong bills without any rectification. Since the bills were not issued on actual meter readings and were on average basis, the Appellant did not make any further payment. The Respondent disconnected the electricity supply on 17th July, 2001. The Appellant then approached the General Manager of the Respondent who permitted payment in monthly instalment of Rs. 1,00,000/- with initial payment of Rs. 2,00,000/-. The Appellant addressed various letters to the Respondent saying that the average bills raised are not according to meter readings and hence the Respondent cannot demand any delayed payment charges and interest. The Respondent maintained that the delayed payment charges and interest cannot be waived without explaining what makes "correct bill". The Respondent referred the matter to its internal "Review Committee". Further, without informing about the decisions and observations of the Review Committee Report, the Respondent demanded arrears of Rs. 16,97,242/- inclusive of DPC and interest. Request of the Appellant to exempt from payment of DPC was not favourably considered by the Respondent. The Forum in its order did not consider any relief requested towards the arrears and DPC. The Appellant does not agree with the conclusion and the order of the Forum and has prayed mainly for following reliefs in its representation:

- a) Directions be issued to the Respondent not to disconnect the electricity supply.
- b) The entire amount of DPC / Interest be recalculated as per due date and actual consumption.
- c) DPC and interest charged for the period between 17.03.1999 to 31.12.2000 be withdrawn.
- d) DPC and interest charged on excess billing done for January, 2001 to October, 2001, September, 2002, October, 2002 and July, 2003 be withdrawn and these bills be treated as payable from the date they are rectified.
- e) DPC and interest on correct bills between January, 2001 and October, 2001 be withdrawn, as the payment could not be made due to pending disputes.
- f) DPC and interest may be charged only on "correct bills" issued if payment is not made within due date.

4. The Respondent filed written statement dated 13.05.2005. It is stated that first bills for the period of 17.03.1999 to 01.04.1999 of Rs. 30161/- was issued on actual meter reading basis. The Appellant did not make any payment. Further, bill for 01.05.1999 to 01.06.1999 on actual meter reading was issued for Rs. 2,28,305/- including arrears of previous months. The consumer made a part payment of Rs. 1,20,000/- towards this only in September, 1999. Thereafter, bills were issued on average basis. Total units billed upto 01.01.2001 after corrections, were 250480 kwh which tallies with the actual meter reading. However, the Appellant did not make any payment except one part payment of Rs.1,20,000/- as stated above. Upto January 2001, total arrears amounted to Rs. 18,91,523/-. Electricity supply was disconnected in March, 2001 but was restored as per directives of its Chief Engineer. The Appellant also approached the General Manager of the Respondent with a request to allow payment of arrears in instalments. It was then decided to accept initial payment of Rs. 2,00,000/- and instalment of Rs. 1,00,000/- plus current bill plus DPC per month. However, the Appellant did not stick to the payment schedule. The Respondent did not accede to the request of the consumer for waiving delayed payment charges as the consumer is defaulter and several cheques towards payment of bills returned dishonoured. Against the total amount of Rs. 60,36,469/-, payable towards bills including DPC, the Appellant from time to time made payment Rs. 55,59,743/- by cheques. Out of the cheques issued, 19 cheques amounting to Rs. 18,27,233/- bounced. Outstanding arrears upto the billing period ending 01.03.2005 is Rs. 18,45,255/-.

5. The Appellant filed his rejoinder dated 26.05.2005. The matter was heard in this office on 31.05.2005. The Appellant stated that he has submitted his say in the representation and the rejoinder but sought more time to present his case on legal aspects such as definition of "correct bill", "period of bill", "date of bill for calculation of DPC" etc. The Respondent pleaded that it has raised bills and levied delayed payment charges in accordance with its "conditions and miscellaneous charges for the supply of Electrical Energy" and "Schedule of Electricity Tariff" approved by the Government of Maharashtra. Units of energy billed from March, 1999 to January, 2001 also tally with the total number of units consumed as per the monthly record maintained by the Appellant. The case was adjourned to 10th June, 2005 to enable both the parties to submit their say and revised calculation of basic unit cost and delayed payment charges.

6. The matter was again heard on 10.06.2005. During the hearing, the Appellant reiterated his earlier stand on the issue of levy of DPC. It was contended that the late payment charges are leviable only on the "correct bills", which are based on meter reading reflecting actual consumption. Since Respondent has not taken any meter readings and issued bills on assumed or average basis on most occasions, DPC should not be levied. The Appellant was asked whether he has any say now on the definition of correct bill for which the Appellant had sought certain time. However, there was no further explanation from the Appellant on the definition of correct bill. Still, he reiterated that no DPC is leviable on the bills not based on actual readings and further stated that the delayed payment charges even if levied should be calculated from time of rectification of the bills based on actual meter readings and not from the time the bills are issued on average or assumption basis.

7. In view of the written and oral submissions made by both the parties, it is necessary to examine the request of the Appellant on definition of correct bill. Bills in respect of consumption of energy units are generally issued as per the billing cycle stipulated by the Respondent. In some cases, the meters are read once in two months or even once in a quarter. In the present case, meters are expected to be read on monthly basis. It is an established practice of the Respondent to issue bills on average or assumed basis in case meters are not read during a particular month or billing cycle. The readings are taken during the next month or cycle and adjustments are carried out based on the actual readings. In the meantime, bills are issued either on average basis or on assumed basis. Bills so issued are required to be paid on the due dates specified in such bills. The fact that any bill is based on assumed or average basis does not grant immunity, exemption or excuse to the consumers for non payment, merely on the ground that the bill is not based on actual meter readings. The argument of the Appellant that the delayed payment charges cannot be levied on such bills does not have any merit and the consumer cannot escape his liability to pay on or before the due dates to avoid delayed payment charges.

8. The Appellant has raised the issue of rectification of bills and payment of DPC on unrectified bills and argued that DPC cannot be levied on bills not based on meter readings and DPC should be levied only from the date of rectification or correction of the bills based on meter readings. Adjustment of energy units and the bill is bound to be carried out subsequently on meter readings. This does not mean that the consumer is exempted from payment of DPC for non payment till then. The Appellant's prayer in this behalf is also devoid of merit.

9. The Respondent furnished the statement of bills and payments for the period of 17.03.1999 to 01.01.2001 recalculated as per the actual meter readings maintained by the Appellant. Similarly, bills for subsequent period issued on average consumption were corrected on receipt of actual meter readings. The Appellant agreed with the calculation of units of energy and cost but differed with the calculation of DPC.

10. During the hearing certain anomalies and mistakes were brought to our notice wherein the delayed payment charges were not correctly calculated or levied on correct number of days.

11. The Respondent has calculated DPC at 2% per month by straight method for the period between April 1999 to December 2000. Total DPC so calculated, appears to have incorrectly shown more amount by around Rs. 5000/-. The error need to be corrected.

12. It is also observed that the Respondent has levied DPC in the month of April 2001 considering 41 days of delay (6 weeks @ 3%) from 15.05.2001 to 25.06.2001. This needs to be rechecked and rectified. It had levied DPC of Rs. 79088.73 erroneously on arrears of Rs. 1790529.19 and then given credit of Rs. 17157.15 in November 2001. However, this credit given also appears to be erroneous as the credit if correctly worked out would be more by around Rs. 8200/-. The error needs to be corrected.

13. The Respondent has considered due dates for payment of bills for April, May and June 2001 as 25.06.2001, 27.07.2001 and 27.08.2001 respectively. However, due date for May 2001 bill was subsequently changed to 31.07.2001. The Respondent ignored shifting of due date from 27.07.2001 to 31.07.2001 and charged DPC for May bill from 27.07.2001 instead of 31.07.2001. This has resulted in overcharging DPC for 4 days i.e. for one week @ ½% on the entire arrears. Actual DPC charged thus, is on higher side, which needs to be corrected.

14. Respondent has confirmed that payment of bills, instalments, and part payments are credited on actual dates and DPC is levied on reducing balance.

ORDER

1. In the light of the observations made in paragraph 11 to 13, it is necessary to recalculate the delayed payment charges / interest in the months referred to above and revise the bills accordingly. The Respondent is directed to revise the bills on the above lines after accounting for all payments, on the date of receipts.
2. Request of the Appellant not to levy any DPC on the bills, which are not based on actual meter readings, is not reasonable and is therefore rejected.
3. The Appellant has requested withdrawal of DPC and interest on bills between January and October 2001 on the ground that payments could not be made due to disputes. The request is not reasonable and is therefore rejected.
4. It is noted with concern that the Respondent did not bother to read the meter for over a year and half and resorted to issue of bills on average or assumed basis. The Respondent is directed to take corrective steps in this behalf to avoid such recurrences and report compliance.
5. Corrections, as directed above should be carried out within a week and revised bills issued to the Appellant. No DPC should be levied for next 30 days on the arrears to enable the Appellant to make the payment. The Respondent may also consider granting suitable instalment for this purpose in view of the accumulated arrears.

Sd/
(W.G.Gorde)
Ombudsman

Sd/-
(S.N. Yadwad)
Secretary