

**CONSUMER GRIEVANCE REDRESSAL FORUM,
AMRAVATI ZONE, AKOLA.**

*“Vidyut Bhavan”,
Ratanlal Plots,
Akola: 444 001
Tel.No.2434476*

Dt- 02/08/2013

Complaint No.57/2013

**Complaint in the matter of grievance for setting aside the bill of Rs.67870/-,
refund/adjustment of the amount with interest, applicability of commercial
tariff from 19/1/2013, compensation, costs etc.**

Quorum :

Shri T.M.Mantri,	Chairman
Shri P.B.Pawar,	Secretary
Shri A.S.Gade	Member

M/s Smt.Jaya Ashok Daryani (Con.No.310073209900) ... Complaint No. 57

...VS...

Executive Engineer, Akola, Urban Division ... Respondent

Appearances:

Complainant Representative: Shri D.M.Deshpande, Akola

Respondent Representative: Shri D.M.Mankar, Executive Engineer, Urban Dn

1 The complainant has approached this Forum being aggrieved by the order of IRGC whereby the complainant's application in respect of assessment has been rejected. In nutshell, the matter can be summarized as under:

2 That the complainant is owner of the shop carrying on trading business applied for change of the purpose and conversion of single phase to three phase meter in December 2009 on payment of requisite charges. As per the averments made in the application, prior to December, 2009 the connection of single phase used for residential purpose. It is alleged that, though, three

phase meter was installed so also connection was released for commercial purpose, the requisite entries have not been recorded for change of tariff from LT-1 to LT-2 whereby issuing of LT-1 bill continued from December, 2009 till inspection of vigilance department on 19/1/2013. It is alleged that in the bills from December, 2009 the meter number of three phase is entered but without other entries. It has been averred that it is the responsibility of the N.A. to apply proper tariff and failure there upon, the consequences are to be borne by it and not the consumer for its lapses.

3 It is alleged that on 19/1/2013, the Flying Squad visited the complainant's premises and detected the lapses about the issuing of bill as per single phase domestic connection, though the connection is for three phase commercial. The said squad submitted the report to the concerned Deputy Engineer and N.A. by letter 13/2/2013 intimated to the complainant for payment of tariff difference of Rs. 67870/-. Reference has been made to assessment sheet for inspection report dated 19/1/2013. It is alleged that neither notice as per the regulation was given to the complainant nor the assessment was carried out in her presence. Even, no Panchanama/ Assessment given to the complainant on 19/1/2013. The alleged signature of Ashok Daryani on the assessment sheet, received through the concerned Deputy Engineer of 20/2/2013, is forged and it is not signed by Ashok Dayani. On that date he was not present on spot and was out of town. It is alleged that apparently both the signatures are writing of the same person.

4 According to the complainant the said bill of Rs. 67870/- was disputed and further averred that the bill for February-2013 received after 21/2/2013 showing credit balance of Rs.6730/-, copy of which is annexed. It is alleged that the complainant approached the Dy.Engineer in March, 2013 making

grievance in respect of the bill and expressed willingness to pay future bills as per the commercial tariff. According to the complainant the grievance with the IGRC has been rejected without any reason and there was commission of error of law. So also, it is averred that till the filing of grievance with IGRC i.e. upto 16/3/2013, the supply was not disconnected. However, within an hour of submission of grievance, the supply has been disconnected by removing meter. It is alleged that even the meter has been removed in absence of the complainant, thereby contravened the regulations.

5 Reference has been made to the regulations of Supply Code with further averments that the provision for assessment is under section 126 and 135 of Electricity Act. Even the supply was disconnected without mandatory notice and the complainant was forced to pay the bill of Rs. 67870/- under protest alongwith Rs. 100/- as reconnection charges. On depositing the amount, the supply was restored. On both the occasions the meter replacement report was not signed by the complainant.

6 Averments have been made as to how the order of IGRC is not correct. There was no due shown as arrears against the complainant. The alleged sum was never shown as due, at any time earlier. On the contrary, in the bill of February-2013 credit balance of Rs. 6732/- was shown. By referring to the provisions of Section 56 of Electricity Act it is alleged that the disconnection is illegal hence the complainant is entitled for compensation of Rs. 5000/- by making reference to order of Electricity Ombudsman, Nagpur in representation NO. 24 of 2013.

7. It is further alleged that no retrospective recovery is permissible by referring to the order of MERC in case NO. 24 of 2001. The complainant

therefore accepted the change of tariff as commercial after 19/1/2013. Reference has been made to order of IGRC in complaint No. 322 dated 2/3/2013 wherein in the similar case, the tariff assessment for 24 months has been set aside directing the N.A. to recover the tariff difference from 1/8/2012, the date since the new tariff has been made applicable. According to the complainant the IGRC has given contradictory verdict in similar type of cases clearly showing the act that it is functioning against the interest of the consumer and as per the directives of superiors. It is contrary to the principles of Consumer Protection under the Act.

8 Reference has been made to order of Electric Inspector in E1/AAKL/2013 dated 29/4/2013 in appeal case NO. 1/2012 the said assessment under 126 has been set aside for 24 months. On that basis, the complainant is seeking similar type of relief vide complaint. Alongwith the complaint copies of bunch of documents came to be filed.

9 In spite of notice the N.A. did not file reply but subsequently i.e. on 16th July, 2013 written submissions have been filed and the learned representative submitted that it be treated as reply to the complaint also. If one goes through the reply/notes of arguments, it is clear that it is mainly in the form of denial of averments of the complainant. It has been denied that no mandatory notice as per S.O.P was given to the complainant on the contrary the question of providing copy of assessment sheet on 19/1/2013 did not arise as it was not carried out on the spot. Similarly, it is denied that the bill of February-2013 was received after 21/2/2013. So also it is denied that the complainant approached the Dy.Engineer showing his unwillingness to pay assessment bill. As far as approaching to IGRC and passing order by the said authority are matters of record and it is stated that copy of said grievance was not

submitted to the Dy.Engineer on 16/3/2013 and the said officer has immediately disconnected the supply. It is stated that the N.A. has right to rectify human error and recover charges. It has been denied that the N.A. committed series of illegalities as alleged with further averments that at the time of disconnecting the supply meter was removed but it was disconnected from pole. Averment of showing willingness to pay the tariff difference is by way of after thought. Neither there is illegal disconnection nor reasons to set aside the assessment made. The complainant's other claims are also denied.

10 It is stated that the complainant has applied for single phase residential connection in 2009 and after compliance on 15/12/2009 the bills for residential category have been issued. In December-2011 the complainant applied for three phase supply. Conversion of category and enhancement of load estimate was prepared, quotation was given and the complainant remitted the amount as per its report on 16/12/2011. After compliance, replaced the meter bearing No. 76/-76339 was installed in the consumer's premises on 17/12/2011. Accordingly, entry was recorded in F1 register but due to manual mistake of the concerned clerk change of category was not recorded in the F1 register and the bills issued under residential category. In January-12 the Meter Reader having not found the single phase meter on spot submitted missing report and bill on average basis was issued till March-2012, which was continued. In April-2012 the meter replacement report was recorded without changing the category whereas in May-2012 the reading of three phase meter was recorded which was prepared for 5 months by average consumption.

11 Averments have been made in respect of inspection carried out by the flying squad on 19/1/2013 and it was noticed that the supply was being used

for shop since inception. The said flying squad charged the bill under commercial category for single phase from December-2009 to March-2012 and for three phase from April-2012 to January-2013 by showing credit of amount deposited during this period and thereafter informed the N.A. to issue bill. On the basis of the letter, bill has been issued alongwith letter dated 13/2/2013 specifically informing to pay within 15 days. In spite of receipt of bill the complainant failed to deposit the amount, so the supply was temporarily disconnected from pole. Thereafter, complainant deposited the bill but even that time not shown the readiness to deposit electric bill even under protest. The complainant did not given copy of grievance to Sub-Dn. N0.3. Lastly pressed for dismissal of the complaint.

12 The matter was then posted for arguments. Heard Shri D.M.Deshpande, learned representative for the complainant and Shri D.M.Mankar, Executive Engineer, the learned representative for the N.A. During the course of arguments certain documents came to be filed and the learned representative for the N.A has agreed to produce certain documents such as 3 phase new connection supply report alongwith relevant documents. Admittedly, the initial connection to the premises in question was for residential single phase connection and the complainant sought for 3 phase connection. The relevant documents thereof are on record such as deposit receipt, electric supply report, test report etc. So from the documents filed by the N.A. it is clear that on 12/12/2011 the complainant has deposited Rs. 3000/- as per the demand note alongwith other charges. It is further clear that the connection of 3 phase supply was provided to the premises of the complainant and in Para 14 of the reply of the N.A. it has been reiterated that after making necessary compliance 3 phase meter was installed at the premises of the complainant on

17/12/2011. Similarly, in Para No.3 of the reply averments have been made in respect of residential connection in 2009 and issue of bills accordingly for residential category, upon release of supply on 15/12/2009. So from the reply itself it is clear that the change of user and conversion of single phase to 3 phase connection was effected on 17/12/2011. In the light of such facts, the controversy is to be dealt with. Admittedly, the flying squad visited the premises on 19/1/2013 and on seeing the billing of the consumer under residential tariff instead of commercial, letter dated 1/2/2013 came to be issued to Dy.E.E. Akola Urban Sub Dn. No.3 The assessment sheet with the said letter disclosed that it is for Rs. 67870/- and accordingly bill to that effect has been prepared and sent to the complainant. It is pertinent to note that letter dated 13/2/2013 came to be issued giving the details of the bill of Rs. 67870/- calling upon the complainant to remit the amount within 15 days failing which the electric supply will be disconnected. The assessment sheet of flying squad as referred to above mentions the period from December, 2009 to March,2012 for 28 months and from April, 2012 to January,2013 for 10 months i.e. total, for 38 months, giving bifurcation of units, rates etc. Though on behalf of the complainant it has been tried to contend that the said inspection and assessment by flying squad was made in absence, however the learned representative of the N.A. pointed out that the spot inspection report dated 19/1/2013 bears the signature of complainant's representative Shri Ashok Daryani. No doubt, on behalf of the complainant an attempt has been made to submit that the said signature of Ashok Daryani is forged one and it is not signed by him. However, nothing has been brought on record in that respect. Ashok Daryani is the husband of the complainant, as has been submitted on behalf of the N.A. Neither any statement nor any Affidavit of said Ashok Daryani has been filled on record. There was no reason for the flying squad to

make forge signature of Ashok Daryani, as tried to be alleged. Said Ashok Daryani being husband of the complainant could have thrown light on such controversy and the complainant could have brought sufficient evidence to that effect, there is failure in that respect from the side of the complainant.

13 Here it is pertinent to note that even according to the complainant, the user of the premises was changed hence 3 phase connection was sought but the bills continued under residential tariff. The learned representative of the N.A. has submitted that the complainant has intentionally not raised any objection for the bills under the residential tariff even after the change of user and by mistake the staff of N.A, this has been continued. Had the complainant brought this mistake to the knowledge immediately, there could not have been problem and it could have been rectified. According to the learned representative, the complainant is also at fault. No doubt, on behalf of the complainant this has been disputed saying that the complainant is not aware of such niceties of the bills. As already observed above on 19/1/2013 the flying squad has inspected the spot and found issuing of bills under residential category so asked to rectify this mistake. One has to keep in mind the stand in defense from the N.A's side as quoted above more particularly in Para No.13 and 14. The concerned documents thereof are also filed on record which also clearly shows that after quotation the complainant has deposited the amount on 16/12/2011 with test report and the 3 phase meter was installed at the consumer's premises on 17/12/2011, the relevant documents are in consonance therewith. However, it is pertinent to note that in the assessment sheet the calculations has been made for the period December, 2009 to March,2012 and April,2012 to January,2013 i.e. for 38 months showing the recovery of Rs. 67870/-. When enquiry was made, even according

to the defense reply, 3 phase connection and change of user was from December 2011, how the assessment made from December,2009 can be justified. There was no satisfactory reply except saying that since the inspection the said tariff has been made applicable. Admittedly, initially the user was for residential purposes. In view thereof there seems to be some substance in the grievance made by the complainant in respect of the said assessment, consequently the bills issued on that basis. Even assuming that the complainant has not raised the query of issuing of bill at residential tariff, one who expects just and fairness from the other side has to be equally just and fair. Here it is pertinent to note except letter 13/2/2013 no other communication has been made to the complainant from the side of the N .A. Even according to the N.A. for the first time the bill of Rs. 67870/- was issued to the complainant alongwith that letter, admittedly, till that time there were no arrears against the complainant. On the contrary the bill of February, 2013 (Annexure A6) filed by the complainant clearly shows that there was credit of Rs. 6732.50 in the name of the complainant. From the copy of the CPL filed on record it is clear that since May, 2012 it shows credit balance of the complainant continuously till March, 2013. Admittedly, the complainant has deposited Rs. 67870/- on 16/3/2013 and Rs. 100/- towards reconnection charges on 16/3/2013, as per the receipts filed on record (Annexure A10 and A11 respectively) though the alleged bill of Rs. 67870/- does not show any particular data but even according to the N.A. it was sent with letter dated 13/2/2013 after receiving of information from the flying squad vide letter dated 1/2/2013 (Annexure A3). The said letter bears the seal of Inward on 6th February, 2013 with endorsement of the concerned authority of N.A. on 11/2/2013. So it is clear that the said bill in question was prepared and thereafter sent on 13/2/2013. However, the copy of CPL filed on record does

not disclose any entry of the said bill in February, 2013 and March,2013 but in April,2013 the CPL entry shows the credit balance of Rs. -73988.35 and last receipt amount as Rs. 67870/- and at the bottom of the CPL for that month there is a entry of Rs. 67870/- in front of "Adj. to past period". So one thing is clear from the CPL that the entry of the said bill has been made in April, 2013. Even thereafter, there was shown credit balance of Rs. 5017.63 in May, 2013. So admittedly, from these documents it is clear that in February, 2013 or March, 2013 there were no arrears shown payable by the complainant on the contrary there was credit balance. In light of such facts, the attack of the complainant on the ground of non-compliance of Section 56 of Electric Act before disconnection of the electric supply needs to be considered.

14 From the record it is clear that the complainant has approached the IGRC by application dated 16/3/2013 (Annexure A7) the copy of the said letter was also given to the Dy.E.E. Urban Sub.Dn. Akola with request not to disconnect the electric supply till the dispute is resolved. Reference has been also made about issue of bill of 38 months i.e. for Rs. 67870/- The learned representative of the complainant has submitted that immediately after submission of the said grievance with IGRC within an hour the electric supply has been disconnected by removing the meter and thus there was non-compliance of statutory provisions on the part of the N.A. He has referred to Section 56 of the Electric Act and submitted that, even according to the N.A. the complainant was not in continuous arrears and for the first time, the bill as per the flying squad assessment came to be issued, which has been disputed by the complainant. No doubt, on behalf of the N.A. an attempt has been made to submit that there was temporary disconnection. However, the fact remains that after depositing of Rs. 67870/- on 16/3/2011 alongwith Rs. 100/-

towards reconnection charges the supply came to be restored. So when the complainant approached the IGRC immediately steps have been taken. No doubt, the N.A. tried to justify the action under the pretext that there was compliance of Section 56 in view of letter dated 13/2/2013 (Annexure A1). If one goes through the provision of Section 56 of the Elect. Act, the wordings of the Section 56 are clear and there is no ambiguity. The submission of N.A. that letter dated 13/2/2013 is in compliance with the provisions of Section 56 cannot be accepted. It is an admitted position from the documents that in February, 2013 there was credit balance of the complainant as referred to above and even subsequent thereto from the CPL itself it is clear that the entry of the alleged bill in the CPL was made subsequent thereto. So the record clearly show that there were no continuous arrears which have been shown payable by the complainant at the relevant time. For the first time on the basis of assessment made by the flying squad the bill in question came to be issued. Even according to the N.A. there were no arrears on the contrary there was credit balance of the complainant. As already observed above, in reply of the N.A. it is stated that conversion of the category and enhancement of the load was requested by the complainant in December, 2011 and as per the quotation the amount was deposited on 16/12/2011, 3 phase meter was installed on 17/12/2011. In light of such facts, the alleged assessment for alleged 38 months i.e. from December, 2009 has not been justified or properly explained. The learned representative of the complainant has submitted that the complainant shown willingness for payment of the bills under the tariff from January, 2013 in pursuance to the new tariff order as per Case No.19/12, but that has not been accepted. Suffice to say that even the said stand cannot be said to be justified. Now doubt, the learned representative of the complainant has vehemently submitted for such relief. Suffice to say, even

according to the application made before IGRC, the complainant is ready to pay the dues from 1/8/2012 as per the tariff order in case No.19/12 till the dispute is resolved.

15 The learned representative of the complainant has referred to and relied upon the order of the Hon. Electricity Ombudsman, Nagpur in the matter of 24/2013 in support of his submission of providing compensation for illegal disconnection, giving of credit of the amount deposited and costs He also relied upon the order of Hon'ble MERC in case NO.24/2001 in support of submission that no retrospective recovery of arrears can be allowed on abrupt reclassification. According to the complainant the IGRC and authorities have dealt with similar matters, differently. Reference has been made to complaint No. 322 of M/s Khandelwal Vehicles Pvt. Ltd against the N.A. in similar type of controversy and submitted that the same IGRC has given relief to the complainant therein, in the form of direction to carryout plane assessment from industrial to commercial w.e.f. 1/8/2012 i.e. new tariff order. Whereas in Appeal Case No.1/12 before the Electrical Inspector and appellant there in has been given relief including that of cancellation of penal assessment u/s 126 alongwith setting aside the bill in question with other reliefs. As against this the learned representative of the N.A. has referred to the judgment of the Hon. High Court reported in A.I.R. 2000 Bombay Page No.264 U.A. Thadani and another. Vs. B.E.S.T. Undertaking and another -

“ A Electricity Act (9 of 1910) S.26- Dispute as to electricity bill- Limitation for claim – Human error while raising electricity bills in as much as reading on meter not multiplied by multiplying factor which was essential to arrive at actual electricity consumed- Debit notes issued by Electricity Board for correction of bills – Amount claimed by debit notes cannot be held to be

not the amount due since applicants had consumed electricity but were under billed – Six months restriction of claiming bills as contemplated by S.26 – Not applicable in such case where consumer was under-billed due to clerical mistake or human error or such like mistake.”

According to the representative of N.A.licensee the complainant has also not acted bona-fidely alongwith the error/mistake committed by the concerned staff of the N.A. licensee in not issuing, correct bill under the correct category.

16 As already observed above, there is, admittedly mistake on the part of the concerned staff of the N.A. licensee. Had the said staff acted diligently and issued correct bill under correct tariff, this controversy could not have been arisen at the same time, it is to be noted that the complainant has not pointed out the mistake and allowed the bills to be continued when the complainant is making claim of non-compliance of the provisions on the part of N.A. licensee and submitted that she is ready to pay the bills on commercial tariff under new tariff order from January, 2013. This itself shows that she is aware of the provisions as well as tariff orders. Admittedly, the new tariff order has been made applicable from 1/8/2012 and during the course of submissions the learned representative of the complainant has submitted that from that date the complainant is ready to pay the difference. This has been also referred to in Para 5 of the order of IGRC.

17 As already observed above, because of mistake the correct bill under the correct category has not been issued to the complainant, which resulted in this litigation resulting in monitory liability against the N.A. licensee. Hence it will be proper for the N.A. licensee to recover that monitory liability from the erring staff apart from other action under the service regulations.

18 Keeping in mind the rulings referred to above as well as the judgment of the Hon'ble High Court, this forum thinks that proper suitable order will meet ends of justice by setting aside the bill for Rs. 67870/- issued for 38 months and in its place to issue correct revised bill at commercial tariff from 17/12/2011 to 31/7/2012 at the then prevailing rate and from 1/8/2012 onwards as per the new tariff order. It will be also necessary to grant some relief in the form of compensation for dis-connection of electric supply abruptly as apparently statutory provisions have not been followed before disconnection relying on order of Ele. Ombudsman in matter No. 24/13 so also to consider the other reliefs claimed in respect of interest and costs. This forum therefore proceeds to pass the following unanimous order:

ORDER

- 1) Complaint NO.57/2013 is hereby partly allowed. The bill of Rs. 67870/- issued with letter dated 13/2/2013 is hereby set aside and the N.A. licensee is directed to issued revised and correct bill under commercial tariff from 17/12/2011 to 31/7/2012 as per earlier tariff and from 1/8/2012 onwards till date under new tariff as per 19/2012, After adjustment of electric bills, accordingly, whatever balance shall remain with N.A. will carry interest @ 6% per annum from this order till the entire adjustment thereof, in the forthcoming electric bills.

- 2) The N.A. is also liable to pay an amount of Rs. 2000/- towards the compensation for abrupt disconnection of electric supply and costs.

- 3) The licensee to take appropriate action against the erring staff for the monetary liability imposed against it and to recover the said amount from the concerned staff, apart from other action as per rules.
- 4) Compliance report to be submitted. Within period of one month from this order.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman