



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO.K/E/103/0117 OF 07-08 OF M/S
NAHUSH TEXTILE INDUSTRIES TARAPUR REGISTERED WITH
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE
KALYAN ABOUT CLAIM OF ARREARS.

M/S Nahush Textile Industries

(Here in after

Plot No. N-17, Tarapur MIDC

referred to

Boisar Dist;- Thane 401506

as consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Assistant Engineer, O & M Sub Division
Boisar (M)

(Here in after
referred to
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under regulation of “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers. This regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conformed on it by section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).
- 2) The consumer is a L.T. consumer of the licensee connected to their 415-volt network. Consumer is billed as per industrial tariff. Consumer registered grievance with the Forum on dated 24/08/2007.
The details are as follows: -
Name of the consumer:- M/S Nahush Textile
Address: - As above
Consumer No: - 073010012934
Reason of dispute:-Consumer disputed claim of arrears of Rs 97523/- of the period from November 2000 to February 2005 claimed by licensee vide letter dated 27th February 2006.
- 3) The batch of papers containing above grievance was sent by Forum vide letter No.1093 dated 24/08/2007 to Nodal Officer of licensee. The letter, however, remained unreplied.
- 4) All three members of the Forum heard both the parties on 10/09/07. Shri S. K. Shah, Shri N. S. Shah representatives of consumer & Shri R. P. Ingole Nodal officer, Shri D. T. Telhakar Executive Engineer, Shri U. P. Sinha, Assistant Engineer, Shri A. S. Warke Divisional Accountant, Shri U. J. Wartak LDC representatives of the licensee attended hearing.
- 5) The consumer approached Internal Grievance Redressal Cell (IGRC) on 28/11/06 disputing claim raised by licensee vide above letter dated 27th

February 2006. IGRC passed order on 3rd August 2007 directing consumer to pay the entire claim of Rs 97523/-. Being aggrieved with the decision passed by IGRC, consumer filed grievance with this Forum.

6) Shri S. K. Shah & Shri N. S. Shah took part in hearing. They made certain submissions. Brief summary of submissions made in consumer's application & during hearing, which has relevance & direct bearing in the matter of grievance, is reproduced.

a) Consumer was engaged in the business of textile industry. There was a lock out in factory in 1993 due to strike & recession in business.

b) In a suit filed against consumer, Hon. High Court Mumbai ordered consumer to start small business to repay loan of bank.

c) Accordingly consumer started cloth manufacturing in November 2000 but due to recession they changed the activity in July 2003 & started chemical manufacturing on job work basis & intimated this change to licensee on 10th December 2003.

d) On 3rd January 2004 they wrote to licensee about their faulty meter, which had burnt. The meter was changed on 22nd January 2004. In the mean time on 15th January 2004 licensee's staff inspected their premises & found that meter was not working properly. They received arrears bill of Rs 31130/- on 10th August 2004 for the period from July 2003 to February 2004, on an average of 1790 units per month, which was paid by them.

e) Again on 1st January 2005 licensee's staff visited their premises & found that meter installed on 22nd January 2004 was faulty &

concluded it to be 23.80% slow. They agreed to this demand & were ready to pay for less recorded consumption.

- f) In the month of March 2006 they received letter dated 27th February 2006 from licensee claiming arrears of Rs 97523/- from November 2000 to February 2005.
 - g) They claim that their consumption after installation of meter on 22nd January 2004 was 1293 in February 2004 & 1376 in March 2004. The consumption of 7 months shown by licensee in statement of arrears claim from July 2003 to January 2004 was 43080 units while their consumption of 7 months from February 2004 to August 2004 after installation of new meter was 13052 units. This indicates that arrears claim is unjustified.
 - h) They prayed that the licensee's above demand of arrears of Rs 97523/- from November 2000 to February 2005 is not only unjustified but also time barred & should be set aside.
- 7) Shri Ingole & Shri Sinha during hearing made submissions. The abstract of submissions are given below.
- a) Shri Ingole submitted that consumer's supply was permanently disconnected in 1994 but the meter number 10108188 at consumer's premises could not be removed due to locked premises. The supply was restored in November 2000 with the same meter.
 - b) Shri Sinha submitted that this meter was having a multiplying factor (M.F.) of 10 but billing from November 2000 was being done ignoring this M.F. This fact was noticed on 01/01/2005 by their flying squad staff. Similarly the tariff applied to consumer was of power loom but the consumer changed the activities from July 2003 & started job work in chemical industries field. The arrears on two counts i.e. one

on the count of M.F. (considering 10 instead of 1) for the period from November 2000 to January 2004 i.e. from date of reconnection to date of removal of meter No 10108188 & other on the count of change in tariff for the period from July 2003 to January 2004 was claimed. The net amount works out to be Rs 79513/-.

- c) Shri Sinha also submitted that new meter No 48802 installed in February 2004, in place of meter No 10108188, was found slow by 23.8% when tested in laboratory on 18/01/05 in presence of Shri S. K. Shah consumer's representative. The arrears for slow meter recording of 23.8 % for the period from October 2004 to February 2005 amounting to Rs 18010/- was also claimed. The total arrears claimed works out to be Rs 97523/- This was first claimed from consumer vide their letter No 393 dated 27th February 2006.
- d) Shri Ingole submitted that licensee should not be deprived to recover arrears of Rs 79513/- from November 2000 to January 2004 arising now on account of application of correct M.F. of 10 & change in tariff from July 2003 to January 2004, for change in activity of consumer from July 2003, as these are legitimate claim.
- e) He also made submission that consumer has agreed 23.8 % slow recording of meter No 48802 & hence arrears of Rs 18010/- claimed for the period from October 2004 to February 2005 i.e. till replacement of meter be allowed & consumer should be directed to pay the same.
- 8) Licensee, in support of their claim that meter No 10108188 connected to supply in November 2000 was having a M.F. of 10, could not produce any evidence. This meter remained at consumer's premises till January 2004. Admitting the claim of licensee of meter having M.F. of 10,

question arises whether arrears can be claimed for the period from November 2000 to January 2004 as claimed by the licensee belatedly in February 2006. The answer is certainly in negative in view of provision contained in Section 56 of the Electricity Act, 2003 (EA, 2003).

- 9) We examine the present case in the light of the Section 56 (2) of the EA, 2003, which came into force from 10th June, 2003. Section 56 (2) which deals with recovery of past arrears reads as under.

“Section 56(2):- 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 section 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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

Careful reading of the above sub section reveals that no sum due from any consumer shall be recovered after the period of two years from the date when such sum becomes first due unless such sum has been shown continuously as recoverable as arrears as charges of electricity supplied and the licensee shall not cut off the supply of electricity. The argument of the licensee that it should not be deprived to claim and recover the arrears after lapse of any period, as it is their legitimate claim, has to be examined and evaluated in the light of the above sub section. Electricity was supplied and consumed in the relevant months against which the correct bills were expected to be issued. Such sum against the consumption recorded was necessarily due at the end of each month or billing cycle as the case may be. Licensee failed to generate correct bills, may be due to manual error. But, it cannot mean

that the bills were never due at that point of time and become due only when they were raised in February, 2006. If, it is so interpreted, the bills would never become due unless they are physically and actually issued. It is not the intention of the EA, 2003 to allow the licensee unfair liberty to raise the bills without any time limit. Section 56(2) has put a definite restriction on recovery of old arrears. No such stipulation was there in the earlier Indian Electricity Act.1910. This has given a sense of protection to the consumers so that they cannot be exposed to sudden recovery shocks by getting the bills raised by the licensee after lapse of stipulated period of 2 years.

10) Electricity Ombudsman has decided, on 18th July, 2006, a similar issue in the Representation no. 27 of 2006, between M/s Nand A-15 (Appellant) V/s Distribution Licensee i.e. Tata Power Co. Ltd (Respondent). The issue of recovery of old arrears was exhaustively dealt with in the said order. In Paragraph no. 25 and 26 of the said order, it was observed that:-

“The issue of the bills belatedly by the Distribution Licensee and that too because of their own mistake cannot be approved to provide additional leverage to the distribution licensee against the consumer protection in the light of the provisions under Electricity Act, 2003. It should also be understood that Section 56(2) balances the interest of both the Distribution Licensee and the consumer. On one hand, it empowers the Distribution Licensee to disconnect supply of electricity in case of neglect to pay. On the other hand, the responsibility is cast upon the Distribution Licensee to claim and recover the arrears within two years from the date when such sum becomes first due. Two years is quite an adequate period available to the Distribution Licensee to raise the bill

towards the arrears if remained unclaimed for any reason, which in this case, was due to manual error. In such a situation, it would be unreasonable to interpret the provision of Section 56 (2) in a manner to give a blanket authorization to the Respondent without any time limit to claim the old arrears, if any. Moreover, upon issue of the bills in keeping with the provisions of the Section 56(2), the Distribution Licensee is free to recover the same by any remedy permissible under law including by way of suit as provided under Section 56(1) of the Electricity Act, 2003. This gives sufficient latitude to safeguard the interest of the Distribution Licensee. It is also an admitted position that the claim of the Distribution Licensee does not extinguish even beyond the period of limitation but only the remedy gets barred. It will be observed that the cases cited by the Respondent would help in claiming and recovering the past arrears but only to the extent permissible and in conformity with the provision of the Section 56 (2) of the Electricity Act, 2003. In view of this, I have no hesitation to conclude that the Respondent is free to recover the arrears upon correction of the bills as per the proper MF but limited to only two years past as provided in the Section 56 (2) Act. In the present case, the Respondent has raised the bills on 23rd January, 2006. It would, therefore, perfectly be in order to claim the arrears which became first due from 23rd January, 2004 onwards and not before. To conclude, the arrears, if any, which became first due prior to 23rd January, 2004, more specifically for the month of October, November and December, 2003 would be non recoverable under Section 56 (2) of the Act since such sums become first due at that time and were not raised or shown as arrears as required under Section 56 (2) of the Act. In other words supplementary bills towards the arrears for 23 months (from Jan. 04 to

Nov. 05) are recoverable as being in consonance of the provision of the Act.”

Incidentally the above order happened to be considered by the Honorable High Court at Mumbai in Writ Petition no. 2221 of 2006 decided on 5th October, 2006. The Honorable court, while considering the said petition, has noted:--

“We then come to the next issue as to whether the demand made by respondent no.1 is contrary to the provision of section 56 of the Electricity Act. We have already narrated the facts. The Electricity Ombudsman by his order of 18th July 2006 held that the respondent no. 1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the recovery could be made for entire period of 26 months i.e. for a period from October, 2003 to November, 2005 and that too belatedly in January, 2006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January, 2004 became first due in February, 2004 as supplementary bill was raised in 2006 and these dues been within two years are recoverable under the provisions of section 56(2) of the Electricity Act. Submission of counsel for the petitioner is that the provisions Section 56 do not empower respondent no. 1 to recover any amount if the period of two years has elapsed nor can electricity supply be cut off for non payment of those dues. In other words what is sought to be contended is that if the demand or part of the demand is time barred the provisions of the section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition.

Section 56(1) is a special provision, enabling the generating company or the licensee to cut off supply of electricity until such charges or sum as demanded under Section 56(1) is paid. Replying on sub-section (2), it was strenuously urged that Section 56 (1) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, sub-section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum become due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its power of coercive process of recovery by cutting of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its due expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and enables the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the face of the record and consequently there is no merit in this petition.”

- 11) In the present case the arrears of Rs 79513/-, claimed by licensee vide their letter dated 27th February 2006 on account of M.F., which became first due from November 2000 to January 2004 & arrears on account of change in tariff which became first due from July 2003 to January 2004, would be non recoverable under Section 56 (2) of the EA, 2003 since such sums became first due at that time and were not raised or shown as arrears as required under Section 56 (2) of the Act.

12) We now proceed to decide the claim of arrears of Rs 18010/- claimed by licensee vide letter dated 27th February 2006 for the period from October 2004 to February 2005 on account of 23.8 % slow recording of meter No 48802. Licensee is certainly entitled to claim this arrears as per Section 56 (2) of the EA, 2003 but subject to Regulation 15.4.1 for billing procedure in the event of defective meter of “Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005” (ESC, 2005). Licensee first claimed arrears in the billing month of February 2006 when ESC, 2005 was in force. We take a look on Regulation 15.4.1 of ESC 2005 for billing procedure in the event of defective meter. It reads as: -

“Subject to the provisions of Part XII and Part XIV of the EA 2003, in case of a defective meter, the amount of the consumer’s bill shall be adjusted, for a maximum period of three months prior to the month in which dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill”.

In the present case the meter was defective i.e. slow by 23.8% as tested in licensee’s laboratory on 18/01/2005 in presence of consumer. Licensee’s claim of arrears on 27th February 2006 for the period from October 2004 to February 2005 based on 23.8% slow running of meter is, hereby, set aside & quashed.

13) Licensee can claim arrears for a maximum period of three months prior to date of testing of meter on 18/01/05, based on 23.8% slow running of meter. Consumer claimed that final reading in the billing month of January 2005 was 331343 & not 337343 as shown in the bill. Licensee accepted this error of final reading of meter number 48802.

The consumer was billed 6000 units more in the billing month of January 2005 due to meter reading error. The credit of these 6000 units was given to consumer in the billing month of May 2006. This meter was replaced by meter No 24185 in February 2005. The consumer's personal ledger shows 81 units as adjustment units in the billing month of February 2005. Thus the final reading of meter number 48802 at the time of replacement was $331343+81= 331424$. The initial reading of meter three months prior to replacement i.e. in the billing month of November 2004 was 322683. The difference in reading is the consumption of $(331424-322683) = 8741$ units recorded in meter during three months prior to replacement. Since this meter was 23.8 % recording slow, actual consumption during these three months would be $8741/0.762 = 11471$ units. Licensee, however, has charged 8741 units during three months period in billing months of November 2004 to February 2005 as consumption recorded on meter No 48802. Licensee can now claim arrears of $(11474-8741) = 2733$ units only.

14) After carefully taking the stock of entire situation, we are inclined to pass the following order.

O-R-D-E-R

1. The claim of Rs 97523/- claimed by licensee from consumer vide their letter No 393 dated 27th February 2006 is, hereby, set aside & quashed.
2. Licensee can claim only 2733 units for 23.8 % slow recording by meter number 48802 as explained in detail in Para 12 & 13 above.
3. Consumer can file appeal against this decision with the Electricity Ombudsman at the following address.

Maharashtra Electricity Regulatory Commission, 606/608,

Keshav Building, Bandra Kurla Complex, Mumbai 51

Appeal can be filed within 60 days from the date of this order.

4. Consumer, as per section 142 of Indian Electricity Act 2003, can approach Maharashtra Electricity Regulatory Commission at:-

Maharashtra Electricity Regulatory Commission,

13th floor, World Trade Centre, Cuffe Parade, Colaba, 400005.

for non-compliance, part compliance or delay in compliance of this decision issued under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressed Forum & Ombudsman) Regulation 2006".

Date: - 20/09/07

(Sau V. V. Kelkar)

Member

CGRF Kalyan

(I. Q. Najam)

Chair person

CGRF Kalyan

(D. B. Nitnaware)

Member Secretary

CGRF Kalyan