



Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
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No. K/E/740/884 of 2013-14

Date of Grievance : 28/10/2013  
Date of order : 12/02/2014  
Period Taken : 108 days.

**IN THE MATTER OF GRIEVANCE NO. K/E/740/884 OF 2013-14 IN RESPECT OF SHRI JAYANT H. SHAH EARLIER NAME ANIL SHAH, GALA NO.05, SHAKTI IND. ESTATE, WALIV, VASAI (E) 401 208, DIST. THANE, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING EXCESSIVE ENGERY BILL.**

Jayant H. Shah (Earlier name Anil Shah),  
Gala no.05, Shakti Ind. Estate. Waliv,  
Vasai (E), Pin-401 208 , District –Thane. .... (Hereafter referred as Consumer)  
Consumer No.001840851091

Versus

Maharashtra State Electricity Distribution  
Company Limited though its  
Dy.Exe.Engineer, Vasai Road, Sub.Divn, .... (Hereinafter referred as Licensee)

Appearance : For Consumer – Shri Harshad Seth.  
For Licensee - Shri Umberje -Deputy Executive Engineer,  
Shri Vaze – Account Officer

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003.(36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of

section 42 of the Electricity Act, (36/3003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other conditions of supply) Regulations 2005'. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005.' Hereinafter referred 'SOP' for the sake of convenience.

2] Consumer is having supply to the industry, tariff application is LT-V. Consumer was paying bills as per the said classification till June 2013 as demanded.

Dispute commenced as per letter sent by Officer dated 31/7/2013 along with supplementary bill dated 2/8/2013, seeking recovery of Rs.1,35,784.46, on the ground that consumer's old meter was replaced on 23/6/2009 and in its place new meter which was installed, it was of 50/5 amps. Though it was of M.F-2 mistake crept in and calculation was not done as M.F-2, but bills were issued treating as MF-1. Accordingly, it was noticed during review and hence from August 2009 to October 2010, calculation was done as per M.F-2 and bill for 23,820 units, to the tune of Rs.1,35,784.46 was issued.

3] The aforesaid bill was further carried forward in the regular bill issued on 14/8/2013, showing the arrears to the tune of Rs.1,25,734.33 and total bill including current charges was to the tune of Rs.1,66,430/-, it was to be paid on or before 28/8/2013.

Consumer till then replied on 22/8/2013 to the Licencee letter dated 31/7/2013 and to the supplementary bill dated 2/8/2013. Said reply is given by Jayant Shah, mentioning in the earlier name Anil Shah. In the said letter, it was contended that claim is wrong, claim is out dated and is invalid. Thereafter, consumer continued the

said nomenclature as Jayant Shah (Earlier name Anil Shah) and filed complaint to IGRC on 26/8/2013, as there was no response, consumer filed Grievance before this Forum on 28/10/2013, continuing the same nomenclature. Present consumer has filed objection complaint/ grievance, stating his status, citing his name putting in the bracket the name of Anil Shah as he is new consumer in bracket Anil. Anil Shah is in fact not complainant in this matter. He has not filed any grievance.

Notice of grievance was given to the Licencee's Nodal Officer on 28/10/2013 and Licencee filed reply on 16/11/2013. It is contended by Licencee that by mistake M.F-2 was not noted due to oversight and when it was noticed, dues for the relevant period sought. It is contended that it is a human error. There is no illegality or bill not invalid. On the point of limitation, it is contended that claim is not barred by limitation as it is arising out of human error, hence it can be recovered.

4] Consumer filed additional contention on 26/11/2013, and it is contended that earlier Anil Shah was the consumer, he had filed Grievance No.566 which was decided by this Forum on 10/5/2011, directing the Licencee to pay an amount of Rs.63,927.23 and thereafter said Anil Shah has transferred the unit in the name of present consumer i.e. Jayant Shah and said change in name, due to transfer approved by Licencee on 28/11/2011. It is the contention of the consumer that due amount to said Anil Shah would have been considered by Licencee while seeking recovery of this amount, but, it is not done. Secondly, it is contended that though, there was change in the name, at that time also Licencee not dealt the aspect of arrears. Lastly, it is contended that Jayant Shah is not legal heir of Anil Shah and hence no any amount can be claimed from him and at the most from such transferee, electricity charges for six months prior to date of transfer can be sought. Accordingly, it is contended that claim itself is old one and he is not bound to pay any amount. It is contended that by entering his name, in the record on 28/11/2011, if any period prior to it for six months considered then there will not be any liability on him.

5] On behalf of Licencee in further reply dated 22/11/2013 filed on 25/11/2013, it is contended that aspect of change in the name, cropped up during the hearing before this Forum and though previous consumer's name changed on 28/11/2011 and name of present consumer is replaced. The bills are issued to present consumer thereafter from time to time. It is contended that the payment towards grievance No. 566 of Anil Shah is complied by the Licencee, transferring the amount in consumer's account in the bill of July 2013 and at that time, present consumer taken it's benefit and hence said adjusted amount has gone to Jayant shah i.e. present consumer and hence he has availed that credit, now he cannot deny the responsibility of paying arrears out standing in the account of said consumer number. On this basis, it is contended that present consumer is required to pay the amount now demanded.

6] Further , on 1/1/2014, on behalf of Licencee, one more submission is made, contending that at the time of effecting change in the name, present consumer Jayant Shah has given an undertaking on the stamp paper of Rs.100/- that he will keep Licencee indemnified against all the claim in respect of claim against previous consumer and transfer of deposit etc. and hence, he is liable to pay amount now sought. On the other hand, on behalf of Licencee, it is submitted that there is no any material to show that in fact amount which was transferred in the consumer's account towards compliance of grievance No. 566, which is done in July 2013 is given to Anil Shah, who has filed the Grievance No. 566.

We tried to enquire whether present consumer has paid said amount to Anil Shah, whether Licencee has taken care to enquire with Anil Shah, whether he has received the amount. This aspect was sought as Grievance No.566 was filed by Anil Shah, hence, he was entitled to said amount. Ultimately he was entitled to the said payment, but said payment is not actually given to Anil Shah, but it is shown in the account of consumer in July 2013, at that time, Anil Shah was not consumer, but Jayant Shah i.e. present consumer was shown in the bill. In response, consumer Jayant Shah

placed on record, communication of Anil Shah that amount of refund shown in the July 2013, bill, is, received by him from Jayant Shah. Accordingly, consumer succeeded in showing that amount which was transferred by Licencee in the consumer number payable to Anil Shah is paid by Jayant Shah. Under such circumstances, question comes up whether it can be said that present consumer has utilized the due amount payable to Anil Shah which was transferred by Licencee on the consumer's number. The aforesaid aspect clearly speaks that amount of Anil is no more available with the present consumer i.e. Jayant Shah and hence claim of Licencee loses its force.

7] During the course of argument, it was pointed out that admittedly present consumer's name is shown in the bill due to change of name, which is given effect on 28/11/2011. As admitted by the consumer's C.R. Liability if any, arises, pertaining to previous consumer, it is, limited to six months prior to the transfer on transferee as per Clause 10.5 of Supply Code. The undertaking is not as per MERC Regulation, it is to be read ignoring the Clause which is in conflict with regulation. Accordingly, it is contended that if, six months prior to the date of change in the name is considered, then amount now demanded is for the period from August 2009 to October 2010 and hence this period is, prior to the date of transfer, is, not covered in this span.

8] After noting the aspect that Jayant Shah is not beneficiary of any amount which Licencee was to pay towards grievance No. 566 and on that count, he cannot be asked to pay the total liability of previous consumer.

9] The main dispute which is canvassed by both sides pertains to the recovery of such M.F-2 which occurred due to human error is to be made limited for two years that too referring section 56 of Electricity Act. No doubt, in this regard, both sides placed on record precedents of Hon'ble Ombudsman, Hon'ble High Court and said position is, as under:

In this regard both sides right from beginning are relying on the legal precedents. Consumer right from initial complaint to Licencee i.e. from Assistant Engineer of License till to this Forum relied on various orders of Hon. Ombudsman of our State and other States, some orders of CGRF and ultimately referred to the judgment of our High Court (Single Bench) in Writ Petition No. 10764 of 2011 dt. 17/01/2012 wherein the gist of consumer's argument are covered and almost all previous judgments of our Hon. High Court are considered and Hon. Justice requested Hon. Chief Justice to refer the matter to Larger Bench. No doubt in the said judgment two views are noted, those are expressed by Division Benches one in favour of recovery limited to two years and other expressed view that when there is a human error in applying appropriate M. F. then there is no bar of limitation. It is a fact that those two views are considered by single Judges of the Hon High Court and given judgments. However, as noted above in Writ Petition No. 10764 of 2011 vide order dt. 24/01/2012 Hon. Single Judge sought a reference not accepting the view expressed in the Division Bench judgment of AIR 2009 Bombay 148 M/s. Rototex Polyester V/s. Administrator , Administration of Dadra and Nagar Haveli (U.T.) Electricity Department & others dt. 20/08/2009 and agreeing to the Division Bench judgment of our Hon. High Court AIR 2007 Bombay 52 Mr. Awadesh Pandye V/s. Tata Power Co. Ltd. For the sake of convenience herein-after these two judgments of Division Bench are referred as 'Rototex' & 'Awadesh Pandye'.

Secondly, it is not in dispute that in the present case of consumer M.F. – 2 is applicable and M. F. – 1 is not applicable.

It is a fact that though M. F. – 2 was not applied and bills are issued as per M. F. – 1 which were paid by consumer. Accordingly one thing is clear that consumption of consumer is there but recovery is only on the calculation of M. F. – 1 and not M. F. – 2. This aspect Licensee claims as human error but consumer claims it is the act of officers of Licensee for which consumer cannot be punished. This aspect is already

dealt by our Hon. High Court and the reliance placed by Licensee on the judgment of 'Rototex' (supra) and even the reliance placed by consumer on the order in Writ Petition No. 10764 of 2011 are clear. It is a fact that in the Writ Petition 10764 of 2011 all judgments of Hon. High Court considered inclusive of 'Rototex'. We tried to have information from both sides whether in fact as per the order in said Writ Petition whether Larger Bench is formed by Hon. Chief Justice and whether there is any progress in it. However, that position is not made clear to us. In result we are required to consider the legal position. Said legal position pertains to two Division Bench Judgments of our Hon. High Court in force as on this date, there is no any stay as such to any of the Division Bench judgment by any higher court or any Larger Bench. Hence we are required to consider which of the precedent is to be accepted. In this regard legal position is just required to be noted, unless any judgment is set aside, it is having binding force. Accordingly two judgments of Division Bench are available and those are AIR 2007 Bombay 52 Mr. Awadesh Pandye V/s. Tata Power Co. Ltd.. and AIR 2009 Bombay 148 M/s. Rototex Polyester V/s. Administrator , Administration of Dadra and Nagar Haveli (U.T.) Electricity Department. It is seen from the judgment of 'Rototex' reference is made to the previous judgment of our Hon. High Court i.e. AIR 1978 Bombay 369 Bharat Barrels V/s. Municipal Corporation of Greater Bombay (Division Bench), further referred to Single Bench judgment i.e. AIR 2000 Bombay 264 U. A. Thadani V/s. B.E.S.T. Undertaking upholding the views in these two judgments Hon. High Court in 'Rototex' further upheld view taken by our Hon. High Court in AIR 2007 Bombay 73 dt. 18/01/2007 Bombay Municipal Corporation V/s. Yatish Sharma (Single Bench). However, it is a fact that while deciding the 'Rototex' there is no reference to the judgment of AIR 2007 Bombay 52 Mr. Awadesh Pandye V/s. Tata Power Co. Ltd. Even it is a fact that the judgment of Awadesh Pandye i.e. AIR 2007 Bombay 52 is not reflecting the previous judgments of our Hon. High Court i.e. U. A. Thadani AIR 2000 Bombay 264 or AIR 1978 Bombay 369 Bharat Barrels case. Accordingly 'Rototex' and 'Awadesh Pandye' are the two judgments on this particular

point. In this light we find both Division Bench judgments are available but question will be which of the judgment is to be now followed.

Legal position in respect of precedents needs to be borne, in mind. As noted above Division Bench Judgments of 'Awadesh Pande' and 'Rototex' are now available. Those two are Judgments of Division Bench but this is perceived as a conflict by Hon. Single Judge that too while admitting the Writ Petition and granting Interim Relief. Hon. Single Judge not accepted the view of 'Rototex' and requested the Hon. Chief Justice for forming Larger Bench. Till matter is referred actually by Hon. Chief Justice to the Larger Bench and till Larger Bench decides the matter, existing position of two Division Bench Judgments subsists. Accordingly 'Rototex' is a recent Judgment whereas 'Awadesh Pande' is earlier. In 'Awadesh Pande' case previous view of Hon. High Court in 'Bharat Barrel' case (Division Bench) and 'U.A. Thadani' case (Single Bench) is not brought to the notice and not referred therein but these two Judgments are referred by the Divisional Bench in 'Rototex'. No doubt those two cases were under the previous Act i.e. Electricity Act 1910, however in 'Rototex' about old act and new act i.e. Electricity Act 2003 their Lordships observed as under in Para 09 :

“The principle which can be deduced from the above Judgments is that in case consumer is under billed on account of calculation mistakes such as the present case, where M.F. changed from 500 to 1000, but due to oversight, the department issue bills with 500 as M.F. instead of 1000, the bar of limitation cannot be raised by the consumer. Though Section 26 (6) of the Indian Electricity Act 1910 is not parimateria with Section 56 (2) of the Electricity Act 2003. In our opinion the present case could be governed by the above principle hence the challenged raised by Petitioner must fail.....”

These observations are self speaking in respect of the principle under lying in the previous Act and it is applicable even to the present Act.

The aforesaid legal position if considered, then question comes up if these are two Judgments of Division Bench, then which will be accepted.

In this regard we are guided by our own Hon. High Court wherein such position is dealt in 1995 (2) Bombay C. R. 640 Kamaleshkumar Patel V/s. Union of India (Full Bench) wherein their Lordship dealt the binding force of conflicting decision of equal strength and laid down that appropriately matter needs to be dealt applying a test of decision which appears to have better authority on reason and latest in time. Precise portion from said Judgment wherein their Lordship re-produced the observations from the Judgment AIR 1988 Calcutta -1 (Para 14) are as under.

“We are inclined to think that a five-Judge Bench of the Supreme Court in (Atma Ram v. State of Punjab) 20, A.I.R. 1959 S.C. 519, has also indicated (at p. 527) that such a task may fall on and may have to be performed by the High Court. After pointing out that when a Full Bench of three Judges was inclined to take a view contrary to another Full Bench of equal strength, perhaps the better course would have been to constitute a larger Bench, it has, however, been observed that for otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another, both equally binding on them. According to the Supreme Court, therefore, when confronted with two contrary decisions of equal authority the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task “of preferring one view to another”.

We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated hereinbefore, and as has also been indicated by the Supreme Court in Atma Ram, A.I.R. 1959 S.C. 510 (supra), the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter, of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not

always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction.”

The law as enunciated in that Special Bench decision, as quoted hereinabove, has our unqualified concurrence.”

Accordingly this is a point for consideration.

Even we have come across the Judgment of Hon. Supreme Court AIR 2008 SC 2796 Kusuman Hotels (P) Ltd. V/s. Kerala State Electricity Board wherein Hon. Apex Court in para No. 12 noted arguments advanced by the Counsel during hearing which are as under :

(iii) ‘In view of the provision in Sub-Section (2) of Section 56 of the Electricity Act 2003, no bill can be raised after a period of two years’

This particular submission is further replied by the Lordship in Para No. 13 which reads as under :

‘We however, are not in a position to accept the contention that bills cannot be issued having regard to Sub-Section (2) of Section 56 of the Electricity Act “. Accordingly it is seen that Sec. 56 (2) was before the Hon. Apex Court , this is one of the guide line available to us as on this date.

In view of the above discussion, legal position is clear as per the view of Hon. Apex Court, and even Judgment of our Hon. High Court, Judgment in ‘Rototex’ fulfills both criteria required for accepting it in absence of any other Judgment of a Larger Bench. Accordingly we are required to accept the said view of the Hon. High Court expressed in ‘Rototex’ and the bill in dispute is to be upheld.

11] Accordingly, one thing is clear that if, there is any human error in mentioning M.F-I instead of M.F.-2 and when the error noticed, then arrears for the said period can be claimed. This is on the analogy that already consumer utilized the supply and by mistake he is not charged for it. Secondly, this aspect is appropriately dealt by our Hon'ble High Court long back, which is noted above. Though different views are there, matter is already sought to be dealt by larger bench still it's development is not clear. The Judgment of our Hon'ble High Court which is initially decided by Divn. Bench, right from beginning, has it's own force and hence we find legally, dues of previous period, not raised that too due to human error, if noticed subsequently, those can be sought, and there cannot be bar limitation for it.

12] Though, we have concluded that arrears on the count of human error due to mistake, not entering M.F. can be recovered totally, in this matter, the factual aspects needs to be considered. It is necessary, to note that consumer Mr. Jayant Shah is a transferee of the property of Anil Shah. He sought change in the name of consumer due to transfer. For the said purpose, society wherein said plot is situated given no objection and that no objection letter is placed on record, it is of dated 3/2/2011. No doubt, immediately, there is no change effected by Licencee, it is allowed on 28/11/2011. Accordingly one thing can be considered that on or about 3/2/2011, property was transferred to the present consumer Jayant shah by Anil Shah. Even the said transfer is supported by Anil Shah, as per the letter placed on record by consumer before this Forum on 28/1/2014. Accordingly, at the most, if the date of no objection is given by the society is considered then date of transfer, will be 3/2/2011. No any transfer deed of the premises is placed on record, but considering the fact that Anil Shah has stated that aspect, society has given no objection and change in the name is effected by Licencee due to transfer, hence transaction of transfer cannot be denied. But for want of precise the date of transfer, it is required to be inferred that society has given no objection only when there was transfer from Anil Shah to

Jayant Shah. Accordingly, no objection letter of society dated 3/2/2011, can be the date to be considered.

13] If date of transfer 3/2/2011 is considered, then period of six months prior to it, comes to 3/9/2010 and any liability for the six months from 3/9/2010 to 3/2/2011 transferee Jayant Shah is required to bear liability of previous consumer, as per the Provisions of Supply Code 10.5. Accordingly, it is seen that arrears of M.F.2 are for the period from August 2009 to October 2010. Then hardly limited for two months i.e. September and October 2010, those dues can be recovered from the present consumer Jayant Shah. Accordingly, Licencee is entitled to recover from the present Consumer Jayant Shah, arrears towards M.F.-2, covering the period from 3/9/2010 to 31/10/2011. Accordingly grievance of consumer is to be partly allowed.

Hence the order.

### **ORDER**

1] Grievance of the consumer is partly allowed.

2] Recovery sought towards arrears from August 2009 to October 2010 is now made restricted only for the period from 3/9/2010 to 24/10/2010 for this present consumer i.e. Jayant Shah that too on the basis of Supply Code Clause 10.5.

3] Licencee to work out dues and raise demand for the aforesaid period now directed i.e. from September and October 2010 towards MF-2 within 45 days of receiving this order and consumer to pay it thereafter within further 30 days. Thereafter, Licencee to submit its compliance within 15 days.

Dated:12/2/2014

**I agree**

**I agree**

(Mrs.S.A.Jamdar)  
Member  
CGRF,Kalyan

(Chandrashekhar U.Patil)  
Member Secretary  
CGRF,Kalyan

(Sadaashive S.Deshmukh)  
Chairperson  
CGRF, Kalyan

**Note**

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

*“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”*

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

*“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”*

- c) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

