



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 22/10/2012
Date of Order : 07/01/2013
Period Taken : 75 days

IN THE MATTER OF GRIEVANCE NO. K/E/648/767 OF 2012-2013 OF
M/S. AVINASH EQUIPMENTS PVT. LTD., DOMBIVALI (EAST)
REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM
KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL

M/s. Avinash Equipments Pvt. Ltd.
W – 187, M.I.D.C. Phase – II,
Dombivali (East) : 421 204

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Assistant Engineer,
Kalyan East Sub-Division No. III

(Here-in-after
referred
as licensee)

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

- 1) This Consumer Grievance Redressal Forum has been established under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers. The regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred 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. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 22/10/2012, for Excessive Energy Bill.
The details are as follows :
Name of the consumer :- M/s. Avinash Equipments Pvt. Ltd.
Address: - As given in the title
Consumer No :- 021500011511
Reason of dispute : Excessive Energy Bill
- 3) The set of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/0725 dated 22/10/2012 to Nodal Officer of licensee. The licensee filed reply vide letter No. AE/KLN(E) S/Dn.III/Tech/12-13/4563, dated 21/11/2012 through their Assistant Engineer, Kalyan East Sub-Division No. III.
- 4) This complaint is replied by the Licensee on 22/11/2012. In between consumer placed on record additional contention on 19/11/2012. Initially on behalf of consumer Mr. Anil Sarda had made submissions and further submissions are made by Mr. B. R. Mantri during the hearings conducted

on 19/11/12, 22/11/12, 12/12/12, 31/12/12. On behalf of Licensee Shri Patil Nodal Officer, Shri S. M. Bharambe, Asstt. Engr., Shri K. M. Jadhav made submissions. Both sides are relied on the legal position under Section 56 (2) supported with precedents.

On the basis of arguments made by both sides following factual aspects are disclosed.

Consumer is having connection for the industry for the last so many years but meter was changed in February 2002. This aspect of meter changed is admitted by consumer in his reply dt. 09/06/2012 addressed to Assistant Engineer and those details are as under :

'That meter has been changed in February 2002, which is regularly checked and kept under seal by the MSEB. That the said meter has been checked during the visit by engineers from MSEB during the last ten years and nobody had found any mistake and irregularity'.

It is a fact that on 29/05/2012 Assistant Engineer of Licensee conducted inspection of consumer's meter. It is claimed by Licensee that it was a special inspection drive. It is a fact that concerned Engineer during inspection noted that meter C.T. is of 50/5 Amp. Whereas C.T. is of 100/5 Amp and noted that in fact Multiplying Factor (M.F.) - 2 was required to be applied and bill was to be issued, however, only calculation is done on the basis of M. F. – 1.

In the light of said report letter is written by the Engineer to the consumer on 01/06/2012 with supplementary bill for Rs. 21,52,026/-.

Disputing the said claim consumer addressed a letter to the Assistant

Engineer on 09/06/2012. Consumer being member of KAMA (Kalyan-Ambarnath Manufacturers' Association), said KAMA written to the officer of Licensee on 13/06/12 and 26/06/12.

Consumer addressed a detail letter to the Assistant Engineer on 28/06/2012 maintaining his stand that as per Section 56 (2) if at all any claim is to be done, it cannot be for the period more than two years and hence two years due amount is calculated by the consumer, worked out said figure to the tune of Rs. 3,95,812/- and sought concession in payment by installments that too in 20 monthly installments, each installment of Rs. 20,000/- and last installment of the balance due by sending cheque.

Said aspect of concession is turned down by the officer of Licensee contending that they have no such powers.

Consumer approached IGRC on 06/07/12 and placed before IGRC factual aspect, legal position and said IGRC considering the claim of both sides rejected the complaint on 21/08/12.

Aggrieved by said order of IGRC, consumer approached this Forum on 19/10/12 which is registered on 22/10/12. Accordingly Licensee placed reply on record on 22/11/12.

From the above sequence some factual aspects are clear.

- (a) Consumer's meter was checked in a special drive on 29/05/12 is the factual aspect.
- (b) It is also a fact that meter which was checked was already replaced in Feb. 2002.
- (c) It was time and again as contended by consumer was inspected and no any mistake or irregularity was noted.

- (d) This leads to conclusion that meter which was fixed in Feb. 02 was / is in tact till 29/05/12 when special inspection drive was conducted and at that time position was noted that C.T. was 50/5 Amp whereas C.T. was 100/5 Amp.
- (e) Admittedly considering these two aspects M. F. to be applied is of M. F. – 2, however, till that date i.e. till to the date of inspection 29/05/12 from Feb. 02 bills were issued applying M.F. – 1.
- (f) No doubt those bills are paid but now it is claimed that human error kept in while entering M. F. and it was entered as M. F. – 1 instead of M. F. – 2 which lead to the less billing though more billing was required as per M. F. – 2.
- (g) This aspect of human error is challenged by the consumer contending that this ought to have been noted at the earliest and on previous occasions it was not noted.

We find from the contentions in writing available on record right from the letter of consumer addressed to the Assistant Engineer of Licensee till to the submissions made before this Forum, there is no dispute that there is no defect in the meter. It is a fact that if there is a defect in the meter, position will be different but if there is no defect in the meter then question comes up entering in record M. F. while preparing the bill can be said to be a mistake which can be rectified. While time to time inspection of meter done we find error crept in while entering in the record. Accordingly we find factual aspect of human error is clearly demonstrated in this matter.

No doubt unsuccessful attempt is done by the representative of consumer during the course of hearing, who tried to find out previous report

of meter checking & previous report of meter changed in Feb. 2002. We find these aspects found not relevant in the light of factual aspect that meter changed is a admitted fact, secondly it is also admitted by consumer that no irregularity or fault is noted in the meter. Accordingly one thing is clear that meter was installed in Feb. 02 was available on the date of inspected conducted during the special drive and this fact noticed. We find it is to be accepted as it is.

After noting the factual aspect of human error second question comes up whether there can be any recovery by dues from Feb. 2002 till May 2012 as claim of Licensee quantifying the dues to the tune of Rs. 21,52,026/- . This aspect is denied contending that for the mistake of officers of Licensee consumer should not be punished, there cannot be recovery as per Section 56 (2) for the period more than two years. However, it is contended consumer has done the business having monthly turn over of hardly Rs. 2.50 lakhs per month and this demand of 21 lakhs and odd is totally harassive, unbearable and will bring the industry to a stand still. Mr. Anil Sarda in his persuasive argument explained how industry will be affected. In this regard Licensee maintained that power is supplied, power is utilized, by mistake M.F. – 1 was applied, thereby less charges are recovered but in fact M.F. – 2 was to be applied and now when error is disclosed, it is corrected by issuing the supplementary bill seeking the recovery of due amount which is legitimate. It is contended no other criteria can weigh in favour of consumer when amount was to be paid at a particular rate and if not paid it will not be waived but it is required to be paid.

It is contended Section 56 (2) will not be applicable as this aspect is involving human error, there is no any mechanical defect or defect in the meter and hence grievance raised by consumer can be accepted.

In this record both sides right from beginning are relying on the legal precedents. Consumer right from beginning 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'.

We at this stage find that factual aspects are clear, Licensee is coming with the case that meter was changed in February 2002 and hence now dues are claimed from February 2002 onwards till to the date of inspection. Aspect of meter changed in February 2002 is not denied and hence we find this aspect is to be noted.

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 underlying 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 pointer for consideration.

In this regard during hearing we made it clear to the consumer representative and representative of Licensee that 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. Appex Court in para No. 12 noted arguments advanced by the Counsel during hearing which are as under :

Para 12 :

(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. Appex Court , this is one of the guide line available to us as on this date.

Even learned representative of consumer Mr. Mantri tried to contend that there is no provision of issuing supplementary bill, accordingly he claimed that supplementary bill issued itself is illegal. On behalf of Licensee it is submitted when dues are noticed due to error crept in, then demand is to be made appropriately and if, in the form of supplementary bill, claim is raised, it cannot be said to be illegal. In this regard we find when consumer is coming with the contention that under Section 56 (2) at the most recovery can be there for two years, then amount is required to be demanded in one form or the other and if it is claimed by issuing a supplementary bill it cannot be illegal. No doubt supplementary bills are required to be issued when previously said claim is not noticed and demanded. We find this aspect is even dealt by our Hon. High Court in the judgment AIR 2007 Bombay 73 dt. 18/01/2007 Bombay Municipal Corporation V/s. Yatish Sharma (Single Bench) and said judgment is upheld by the Division Bench in 'Rototex'.

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.

Accordingly this grievance is to be rejected. The claim of consumer disputing the bill found not correct. Legal position under Section 56 (2) of Electricity Act is considered accepting the Division Bench Judgment of 'Rototex' read with the Judgment of our Hon. High Court on the point of precedents and even on the basis Judgment of Hon. Supreme Court referred above which considered Section 56 (2) of Electricity Act.

Matter could not be decided in time as one of member who heard it with us not available on the date fixed.

Hence we pass the following order :

ORDER

- 1) Grievance application No. K/E/648/767 of consumer is hereby dismissed.
- 2) The Consumer if not satisfied, can file representation against this decision with the Hon. Electricity 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”.

- 3) 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”

Date : 07/01/2013

I Agree

I Agree

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

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(Sadashiv S. Deshmukh)
Chairperson
CGRF Kalyan