MAHARASTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.
KONKAN ZONE RATNAGIRI
Consumer Grievances Redressal Forum Ratnagiri

Consumer case No – 78/2011 **Date :- 07.04.2011**

Sub Divisional Officer,
BSNL - Devgad
Dist – Sindhudurg. } **Complainant**

V/S

Executive Engineer,
Maharashtra State Elec.Dist.Co.Ltd.
O&M Division Kankawali } **Opposite Party**

Quorum of the Forum

1) **Mr. D. S. Jamkhedkar**
Chairman

2) **Mr. V.B.Jagtap.**
Secretary Member

3) **Mr. N. A. Kulkarni**
Member

On behalf of consumer **:-** **Mr.Candrakant Gajanan Jadhav.**
S.D.O. ,BSNL -Devgad

On behalf of opposite party

1) **Mr.Magan Kisan Vale**
Assistant Engineer
Kankawali Division

2) **Mr.Dhaku R. Bodekar (A. A.)**
Kankawali Division

3) **Mr.Kiran G.Vesanekar (A.A.)**
Sub Division Devgad

Maharashtra State Electricity Regulatory Commission Consumer Grievance Redressal Forum and Ombudsman Regulation 2003 Vide Clause No.8.2

The Sub Divisional Officer, BSNL Devgad, having Consumer No. 232513018531 and holding the three phase Industrial Connection has come before the Forum for getting stay and the final relief in view of the notice of Disconnection issued by Mahavitaran.

The grievances of the Consumer run as follows:-

Consumer is a service provider and holding the Industrial Connection stated above since 09.09.2003. It is the case of the consumer that since the time of getting connection, he has paid the bills regularly but to it's surprise, it received the notice claiming huge arrears for a total period of 7 years or more. It was so informed that in case of nonpayment, the supply will be disconnected.

According to the consumer, the bill raised and the recovery claimed is illegal in view of the provisions of S.56 of Electricity Act 2003. It is submitted that due to the fault on the part of Mahavitaran the Multiplying Factor was applied as '1' instead of '2' for which Mahavitaran should thank itself and the consumer cannot be penalized for the fault on the part of Mahavitaran. It is submitted that no recovery of arrears for the period of more than 2 years is permissible under the law, so the bill raised and the notice issued be quashed.

In view of the peculiar facts of the case and looking to the urgency in the matter, as the consumer is a public utility service, the Interim Stay was granted as prayed.

A notice of the complaint came to be issued to the Mahavitaran, to which Mahavitaran has filed it's say on 3rd May 2011. The grievance of the consumer was contested and denied. It is submitted that through oversight 'MF-1' was feed to the computer instead of 'MF-2'. The meter installed in the premises of the consumer was having meter capacity of 50/5 AMP and C.T. ratio 100/5 AMP and as such the multiplying Factor should have been '2' instead of '1' and so till 2010 the consumer was mistakenly under billed by applying 'MF-1', being so feed. This mistake had come to the notice of the department in December 2010 and immediately thereafter the bill of correct amount after deducting the amount already paid was issued to the consumer. It is submitted that S.56 (2) of Electricity Act 2003 has no application in this case. This is the main contention of the Mahavitaran to contest the claim.

The matter was fixed for hearing initially on 18.05.2011 and on the request from consumer it was adjourned to 1st June, 2011 and was heard in detail.

It was argued by the consumer that whatever the claim has been raised is the outcome of the fault on the part of Mahavitaran. The consumer has regularly paid the bills since beginning and now the arrears for a period of 7 years and more cannot be claimed by the Mahavitaran in view of the provision of S.56(2)of Electricity Act 2003.

Mahavitaran has submitted the rejoinder and again tried to put emphasis on the point that S.56(2) of Electricity Act 2003, has no role to play in the matter and heavy reliance was placed on the ratio lied down in Writ Petition No.7015 of 2008 delivered by the Division Bench of Hon'ble High Court. With this submission mahavitaran had requested the Forum to reject the application.

In view of the rival claims and submission, the points arise for our consideration are as follows and findings are given against each of them for the reasons given below.

Point	Finding
1. Whether Mahavitaran is entitled to recover the amount claimed in the notice.	Yes
2. Whether complainant is entitled to the injunction and quashing of the notice.	No
3. What order.	As per Final order

Reasons

Point No.1

From the facts of the given case the debatable point in this case revolves around the provision of S.56 (2) of the Electricity Act 2003. It will be beneficial to reproduce the provision of S.56 and the relevant provision runs as follows:-

> "56. Disconnection of supply in default of payment –
>
> (1) xxx xxx xxx
>
> (2) Not withstanding 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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

Sub section 2 of S.56 provides for limitation of two years. It introduces the concept of "The date when such sum becomes first due. In short, a sum which is due can be recovered within a period of two years from the date it became first due and not thereafter. In the case in our hand, the same problem creeps in and we will have to find out as to when the amount claimed in the notice or in the bill, became "first due".

The above referred judgment of the Division Bench of the Hon'ble High Court has given kind consideration to the aspect and the word "First Become Due" in Para No.18 of the judgment which runs as follows

" While dealing with this submission, Learned Single Judge referred to Delhi High Court's judgment in ***H.D.Shourie v. Municipal Corporation of Delhi, AIR 1987 Delhi 219,*** *where the Delhi High Court was considering the expression "due" appearing in Section 24 of the Electricity Act, 1910. The Delhi High Court observed that if the word 'due is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then event without a bill being issued, a notice of disconnections would be liable to be issued under Section24, which could not have been the intention of the legislature. The Delhi High Court observed that the word 'due' in this context would mean due and payable after a valid bill has been sent to the consumer. Learned Single judge followed this view and set aside the Ombudsman's order which has taken a contrary view. We are in respectful agreement with learned Single Judge." And has come to the conclusion that the amount cannot become "Due" or "First Due", unless the bill is raised and valid bill has been sent to the consumer.*

By respectfully following the ratio of the case referred above we are of the view that the amount, which may be for the 7 years or more "first became due" when the bill was raised in the year 2010 and as such mahavitaran in entitled to recover the amount claimed in the notice.

This is the case in which the consumer has consumed the electricity and it is a profit earning institution. Mistakenly or through oversight the Multiplying Factor was wrongly applied by the billing section and when the mistake came to the notice the corrected bill was sent to the consumer. This mistake has come to the notice of the Mahavitaran in 2010 and as such the date of knowledge of the mistake could be said to be in the year 2010. So even if the facts are considered with different angle by taking in to the consideration the provision of general law i.e. Indian Limitation Act, even then the claim could be made within three years from the date of the knowledge of a particular fact. So even otherwise the claim made by Mahavitaran is squarely within limitation and mahavitaran is entitled recover the amount claimed in the notice.

Considering the facts of the case the legal point involved and the above referred judgment of the Division Bench of the Hon'ble High Court. We are of the view that the amount claimed by Mahavitaran is quiet legal and proper, so the point is answered in the affirmative.

Point No.2

In view of our findings to the point no.1 it must be said that the claim made by the Mahavitaran is correct and proper. So the point is answered in the affirmative

Point No.3

In view of the finding to the point no.1 and point no.2 the grievance of the consumer fails and deserves rejection. However the consumer is a service provider and in a way, it is

public utility service. So if disconnection is done immediately that will have worst repercussions. Hence it is desirable that sufficient time be given to consumer to deposit the amount and till then disconnection of supply is stalled. Hence the following order is passed.

Order

1. **The grievance of the consumer Stands Rejected.**
2. **However the consumer is given two months time to deposit the amount, claimed by the Mahavitaran and till then no disconnection of supply be effected.**
3. **In case consumer desires to appeal against this order he should file his appeal to the following addresses.**

Secretary,
OMBUDSMAN, Maharashtra State Electricity Regulatory Commission,
606/608, Keshava Building,
Bandra Kurla Complex,
Mumbai – 400 051.
Phone No.022 – 2659 2965.

D.S.Jamkhedkar	**V.B.Jagtap**
Chairman ,C.G.R.F	**Ex.Engineer,C.G.R.F**
Konkan Zone	**Konkan Zone**

Date : 13.07.2011
Place : Ratnagiri

I, the undersigned Mr.N.A.Kulkarni in my capacity as a Member of this Forum don't agree with the above order and a Separate Finding is drawn which Forms part of the said order.

The Consumer BSNL Kankavali is having 'Industrial' classification and all the bills are paid regularly. During the year 2011 Mahavitaran came to know and found that the while billing Multiplying Factor '1' is applied instead of Multiplying Factor'2' and in to order correct / amend this, revised bills are issued for a total period of 7 years amounting to Rs.28.37 Lacs . It was also reported that the meter was replaced twice for which details never communicated. In view of the facts of the case, and considering the arguments advanced by both the parties, I am of the view that this is a clear violation of the provisions of S.56 of the Electricity Act 2003. The recovery itself is time barred, since the period of limitation is also expired. It is needless to say that the billing, it's system and subsequent recovery plays a very vital role on the part of revenue of Mahavitaran. Mahavitaran totally failed in the system process and hence other alternatives of recovery are to be followed by them within the applicable norms.

The rules & regulation are also specific and the procedural part is laid down vide Rule 15.1 to 15.5 of the Supply Code and Conditions of Supply. No exception is provided under any of the rule or provisions of the said Act. Therefore it would be necessary and

fair to consider the Consumer Grievances in terms of the provisions of S.56 of the Electricity Act 2003.

It was also held by the Hon'bel High Court and Electricity Ombudsman on this issue having the identical facts. The reliance is placed on the following judgments.

a) Rep. No.27 of 2006 – Mr.Awedesh S.Pande (of M/s Nand/A/15) V/s Tata Power Co.Ltd – Electricity Ombudsman.

b) Rep.No.72 of 2009- M/s Seasons Polymers Pvt.Ltd. V/s Maharashtra State Electricity Distribution Co.Ltd. – Electricity Ombudsman.

c) Awadesh S.Pande V/s Tata Power Ltd. - Division Bench of Bombay High Court, Bombay.

d) Mahesh Oil Mills V/s Sate of West Bengal Writ Petition No.WP516 /2005 decided on 19.02.2007

e) Venco Research & Breeding Farm Pvt.Ltd. V/s Maharashtra State Electricity Distribution Co.Ltd. – Rep No.7 of 2009 – Electricity Ombudsman.

Thus respectfully Following the above Judgments, it is concluded as – Issue of the bills belatedly by the Distribution Licensee and that too because of their own mistake connot be approved to provide additional leverage to the license against the consumer protection in the light of the provision under Electricity Act 2003. In fact S.56 (2) balances the interest of both Distribution Licensee and the consumer. 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 a quite a adequate period to raise the bills towards the arrears if remained unclaimed for any reason which in the case was due to human/ manual error. Under these circumstances it would not be fair, reasonable to interpret the provision of S.56 in a manner to give a blanket authorization to the Distribution Licensee without any time limit to claim the old arrears. The Distribution Licensee is free to recover such dues permissible under law including by way of Suit as provided U/s 56(1) of the Electricity Act 2003. It is also the admitted position that the claims of the Distribution Licensee does not extinguish even beyond the period of limitation but only the remedy gets barred. Considering the various provisions including the regulations only those charges for a period of two years previous to the demand could be recovered and Distribution Licensee can act accordingly in order to satisfy the relevant provisions of law. In view of this it would be incorrect to allow the Distribution Licensee to raise supplementary bills for the period of more than two years preceding the date of bill or otherwise, I am afraid to conclude that the basic intention of the legislation would be defeated.

N.A.Kulkarni
Member (CGRF)
Konkan Zone, Ratnagiri

Date : 13.07.2011
Place : Ratnagiri