



**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.38/2015

Date of Grievance : 02.12.2015

Date of Order : 16.01.2016

In the matter of exorbitant billing.

The Chairman,
Aishwaryam Co-Operative
Housing Ltd.,
Survey No.142/4, CTS No.5102,
Near Khandoba Mandir Chowk,
Akurdi, Pune-35.

Complainant
(Herein after referred to as Consumer)

Versus

The Executive Engineer,
M.S.E.D.C.L.,
Bhosari Division,
Pune.

Respondent
(Herein after referred to as Licensee)

Quorum

Chair person
Member Secretary
Member

Mr. S.N.Shelke
Mr. D.H.Agrawal
Mr. S.S.Pathak

Appearance

For Consumer
For Respondent

MrNitin Pingle
Mr. A.G.Shrigadiwar,
Addl. Ex.Engineer, Akurdi.

- 1) The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.
- 2) Being aggrieved and dissatisfied by the order dated 06.11.2015 passed by IGRC Gameshkhind Urban Circle, Pune thereby rejecting the grievance, the consumer above named prefers this grievance application on the following amongst other grounds.

- 3) The papers containing the above grievance were sent by the Forum to the Executive Engineer, M.S.E.D.C.L., Bhosari Dn., Pune vide letter no. EE/CGRF/PZ/Notice/38 of 2015/350 dtd. 03.12.2015. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 16.12.2015.
- 4) We heard both sides at length, gone through the contentions of the consumer and reply of the respondent and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) The consumer namely The Chairman, Aishwaryam Venture connected on 11.06.2011 vide consumer no.170140280057.
 - ii) The Licensee made spot inspection of the premises of the consumer on 17.06.2015 and found accumulated units were 427032 KWH. Previously wrong reading was punched.
 - iii) The Licensee issued provisional bill to the consumer on 18.6.2015 for Rs.51,61,210/-. The consumer made grievance to the Licensee about defective meter on 4.7.2015 therefore the Licensee tested the meter of the consumer at Ganeshkhind Testing Dept. and the said meter was found OK. Vide letter dated 24.8.2015.
 - iv) The Licensee issued notice to the consumer dated 27.08.2015 for depositing the arrears of bills of Rs.51,61,210/- within 15 days else supply will be disconnected.
 - v) The consumer deposited partly bill amount of Rs.11,45,060/- on 9.9.2015 under protest.
 - vi) Consumer made grievance to the IGRC, GKUC, Pune on 14.10.2015 about exorbitant billing. The IGRC rejected the grievance of the consumer vide impugned order dated 6.11.2015.
- 5) Consumer representative namely Mr.Nitin Pingle submitted that in premises of Aishwaryam Co-Operative Housing Ltd., there is common meter for passages, stair cases, club house etc. The promoter/builder constructed the buildings under the scheme of ownership flats. The consumer society was formed somewhere in the year 2012. Thereafter the builder executed conveyance with society on 16.12.2013. As per agreement the said builder has undertaken to maintain the said premises for three years i.e. from 1.4.2011 to 31.10.2014. The said builder handed over affairs to the society on 1.11.2014 as per agreement. Therefore the builder is responsible to pay arrears of the disputed bill during the above mentioned period. He further submitted that provisional bill of Rs.51,61,210/- is illegal. On the contrary, as per the provisions of Electricity Act, the Licensee is allowed to claim bill only for the period of two years preceding to spot inspection. The consumer has regularly

deposited all the bills and there is no fault on the part of consumer for payment of bills. Therefore consumer lastly submits that impugned order passed by the IGRC be set aside and the disputed exorbitant bill be also set aside.

- 6) On the other hand Mr.Avinash G.Shrigadiwar submitted for Licensee that the section officer, Chinchwad made spot inspection of the premises of the consumer on 17.6.2015 and found that accumulated units of the consumer meter were 4,27,032 KWH. He also found previously wrong reading was punched & therefore wrong bills were issued to the consumer. Thereafter the Licensee issued provisional bill to the consumer for said accumulated units to the tune of Rs.51,61,210 /-. Thereafter the consumer gives application for the said meter testing on 4.7.2015. Accordingly the meter of the consumer was tested at Ganeshkhind testing department in the presence of consumer. The result of the said testing was OK which was communicated to their office vide letter dated 24.8.2015. Thereafter the said consumer deposited arrears of bills of Rs.11,45,060/- on 9.9.2015. Thereafter another provisional bill of Rs.51,98,870/- for 4,44,716 KWH units was issued to the consumer. But the consumer did not deposit the said bill till 23.10.2015. Therefore notice of disconnection was sent to the consumer. Thereafter the consumer deposited bill amount of Rs.5,00,000/- on 30.10.2015. He further submitted that as per the request of the consumer provisional bill for the period Dec.2013 to July-2015 for Rs.40,54,790/- was issued to the consumer. He lastly submitted that the consumer is liable to pay bill amount of accumulated units.
- 7) Following points arise for our determination. We give our findings thereon for the reasons stated below.

Points	Findings
1. Whether consumer is liable to pay arrears of bills of Rs.51,61,210/- for accumulated units of 4,27,032 for the period from date of supply to the spot inspection, i.e. from 17.6.2011 to 17.6.2015 ? If no, what is the extent of liability of the consumer ?	No. Extent of liability is for 2 years previous to spot inspection.
2. What Order?	As per final order.

8)

: REASONS :

Admittedly, the consumer was connected on 16.6.2011 under tariff category LT - I B. The consumer has regularly paid the bills issued by the Licensee. As per the agreement between the consumer & the builder, the

builder has deposited the previous bills on behalf the consumer (Society). The Licensee made the spot inspection of the premises of the consumer on 17.6.2015 & found that previously wrong bills were issued as wrong reading was punched. Therefore the Licensee issued provisional bill to the consumer of Rs.51,61,210/- for accumulated units of 4,27,032 KWH. The said bill is disputed by the consumer on two grounds - i) that builder is responsible to pay said accumulated bill amount during the period prior to formation of society and also during the agreement period between society & builder upto 31.10.2014 and ii) the society(consumer) is not liable to pay arrears of bills for more than two years as per section 56(2) of the Act.

- 9) On perusal of record it is seen that the concerned builder has taken supply in the name of the chairman Aishwaryam venture i.e. prior to formation of the said Co-Operative Housing Society. It shows that the Licensee has released the supply in the name of artificial person before the artificial person has legally came into existence which is erroneous on the part of Licensee. It is seen that the consume society was formed somewhere in the year 2012 but supply was released in its name much prior on 16.6.2011. It is also seen that the builder handed over affairs of the premises to the society on 1.11.2014. It is also seen that after taking over the affairs of the society the consumer did not raise any objection with builder about its name being given to the Licensee prior to its formation. Therefore as per the rule of ratification the said consumer is responsible for the acts done by the builder previous to its incorporation. Therefore so far as liability of previous bills is concerned, as per record, the consumer (Society) is responsible. The consumer may recover bill amount from the builder as per agreement between them.
- 10) Now so far as arrears of bills for the period from 2011 to 2015 as per accumulated units are concerned, we have to consider provisions of Section 56(2) of the Act.

Section 56 of the Electricity Act, 2003 provides disconnection of supply in default of payment. Sub Section (2) of Section 56 provides that no sum due from any consumer under this section shall be recoverable after the period of two years from the date of when such sum became first due. It reads as under.

(2) 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.

11) The Licensee visited the premises of the consumer on 17.6.2015 and found that reading was wrongly punched and accumulated units were 4,27,032 from the date of connection i.e. from 16.6.2011. As per Section 56(2) as well as settled position in respect of recovery of bills Licensee cannot recover bill amount for more than 2 years preceding to spot inspection. Therefore the Licensee is required to issue revised bill to the consumer making it limited for the period of two years preceding to spot inspection as mentioned above. Hence we answer point no.1 accordingly. Date : 04.12.2015

I agree,

S.S.Pathak
Member
CGRF:PZ:PUNE

S.N.Shelke
Chairperson
CGRF:PZ:PUNE

Member Secretary, (Dinesh H.Agrawal)

I have gone through the above reasoning and my opinion in this matter is differ as :

In Case of M/s. Rototex Polyster & another V/s. Administrator Department of Dadra & Nagar Haveli (UT) Electricity Department of Silvasa & Others, reported in 2010 (4) BCR 456, Hon'ble High Court Bombay held that

“ A consumer is under billed due to a clerical mistake, bar of limitation cannot be raised. Hence challenge of petition is not tenable & Sec.56 (2) of E.A.is not a bar or recovery of due amount by Respondents”.

This case is case of admittance, as consumer has consumed 4,27,032 KWH since date of connection to till date of inspection (i.e.26.6.2011 to 27.6.2015) and admitted this unit was consumed during above period. Due to less reading bill of 50/51 units was billed during above period. As consumption was 4,27,032 for the above period is correct, it is recoverable

so that revised bill should be issued to consumer by bifurcating the bill for above period i.e. 26.6.2011 to 27.6.2015, installments for payment as per MSEDCL circular should be granted without interest & DPC.”

D.H.Agrawal
Member/Secretary
CGRF:PZ:PUNE

Hence the order by majority

ORDER

1. Grievance is partly allowed with costs.
2. Impugned order passed by IGRC, GKUC is hereby set aside.
3. The Licensee to issue the revised bill to the consumer making it limited for the period of two years preceding to the spot inspection dated 17.6.2015 excluding DPC & Interest.
4. The Licensee to take necessary steps against the meter reading agency and the concerned for punching of wrong reading and consequently issuance of wrong bills to the consumer.
5. The Licensee to report compliance within one month from date of this order.

S.S.Pathak
Member
CGRF:PZ: PUNE

S.N.Shelke
Chairperson
CGRF:PZ:PUNE

Note :- The consumer if not satisfied may filed representation against this order before the Hon.'ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg.,
Bandra Kurla Complex,
Bandra (E), Mumbai-51.