

**Before Maharashtra State Electricity Distribution Co. Limited
Consumer Grievances Redressal Forum, Pune Zone, 925, Kasabapeth
Building, IInd flr. Pune-11**

Case No.16 of 2008

Date: 05/11/2008

**In the matter of M/s.Venco Research & Breeding - Complainant
Farms Ltd.**

V/S

M.S.E.D.C.L. Pune Rural Circle

- Opponent

Corum

Chair Person

Mr. A.V.Bhalerao

Member,

Mr. T.D. Pore

1- M/s. Venco Research & Breeding Farms Ltd. (Complainant for short) obtained supply of electricity of high tension from Maharashtra State Electricity Distribution Co. Ltd. (Opponent for short). At the Premises of the complainant CT PT unit was installed on 24/01/02 . The electricity bills issued by the opponent were being paid regularly by the complainant. The complainant received a bill dt. 12/06/07 for total units 13014 claiming Rs. 73,259/- The complainant by its letter dt. 22/06/07 to the Superintending Engineer of the opponent made a grievance about the said bill. The complainant did not receive any reply to his letter dt. 22/06/07 but he received another bill dt. 10/06/07 for total units 9965 amounting to Rs. 54,920/-The complainant paid the amounts demanded by the bills dt. 12/06/07 and 10/07/07 under protest. Though the consumer had paid the amounts of the above refered two bills under protest he did not get any relief or explanation from the complainant as to how suddenly the consumption of the electricity was raised from the average but received a supplementary bill dt. 13/07/07 with a notice of demand dt. 17/07/07 for Rs. 20,02,150/- for the electricity used during the period from Feb-2002 to May-2007 on the basis that multiplying factor while raising the bills for the said period was inadvertently taken as one instead of two. The

complainant by issuing a notice dt. 14/09/07 to the opponent asked the explanation as to how units consumed were suddenly increased as against its monthly average consumption. It was also contended in the same notice that the charges claimed for the period from Feb-2002 to May-2007 by bill dt. 13/07/07 being barred by time under Sect- 56(2) of the electricity Act-2003 were not recoverable as they were not recovered within two years from the date when those sums became first due or they were never shown in the next bills continuously as recoverable as arrears of charges. The complainant approached the Internal Grievance Redressal Cell (IGRC) by making an application dt. 05/10/07 but IGRC did not take any cognizance of the application made by the complainant. Apprehending supply would be disconnected the complainant made payment of the supplementary bill in installments of 5,00,000/- on 10/10/07, Rs. 7,52,150/- on 29/11/07 and Rs. 50,000/- on 20/12/07 and thereafter filed writ petition No.8341 of 2007 in the High court of judicature Bombay. The said petition was disposed of by order dt. 26/08/08 with direction to the complainant that he should make a grievance which he had made in the writ petition to the forum within three weeks and the forum to decide it in accordance with Law as expeditiously as possible within a period of 6 months. The complainant has therefore approached this forum for quashing the bill dt. 13/07/07 alongwith a notice of demand dt. 17/07/07 by which amount Rs. 20,02,105/- has been claimed towards supplementary charges for electricity consumed from Feb-2002 to May-2007 on registration of the grievance notice was sent to the opponent to file its say. The opponent filed its say contending that initially C.T. ratio of the complainant's metering unit was 2.5/5 Amp. due to which MF was 1. The R phase of C.T. of combine CT PT unit was replaced by separate CT & PT units and CT ratio was 5/5 Amp. means MF was 2 as shown in the report of testing division dt. 11/01/02 (which is produced by the opponent with its written statement). Though the R phase of CT of combine CT PT units was replaced by separate CT PT units as shown in the testing report dt. 11/01/02, the change of MF was not effected in the energy bill due to

clerical mistake. On 03/05/07 when Y phase of CT of the complainant failed it was repaired & it was found that CT ratio was 5/5 Amp. In consequence of the mistake discovered the bill of Rs. 20,002.150/- for the period 2002 to May-08 was claimed. The said bill is not barred by time as two years period is yet to be over from the date when it became first due the day on which bill dt. 13/07/07 was raised and demand was made by letter dt. 17/07/07.

- 2- On the date of the argument Shri.A.S.Tikekar on behalf of the complainant did not dispute that metering system with CTR 2.5/5 Amp. having multiplying factor-1 was replaced with metering system CTR ratio 5/5 with MF-2 in the month of Feb-2002. It was also not disputed on behalf of the complainant that the electricity bills were raised during the period from Feb-2002 to May-2007 applying MF-1 instead of MF-2. The correctness of the calculation of the difference of the amount of electricity bill from Feb-02 to May-2007 as Rs. 20,002.150/- is also not disputed. The claim made by the opponent of the difference of amount for a period 14/09/05 to 14/09/07 is also not opposed. The complainant has disputed the recovery of the difference of amount for the period beyond 14/09/05 contending that the same is barred by time under the provision of Sect 56 of Elect- 2003. On behalf of the complainant the written notes of argument are also produced.
- 3- On behalf of the opponent Mrs.N.D.Joshi, Executive Engineer argued the case and contended that the amount of difference of the electricity bill for the period Feb-02 to May-07 was first claimed by bill dt. 13/07/07 payable before 30/07/07 the period for payment was subsequently extended by notice dt. 03/09/07 and by another notice dt. Oct-07 upto 14/09/07 and 5/10/07 respectively. It was argued that the amount of difference for the period Feb-02 to May-07 became first due on 30/07/07 or 14/09/07 or 05/10/07 the period of 2 years as prescribed in Sect-56(2) of the Elect.Act-2003 commence from 05/09/07 or at the most on 30/07/07 which even till today is not over and therefore not barred by time. On rival contentions following point arises for consideration.

- 1- Is complainant entitled to get refund of the amount of difference of the electricity charges of the period beyond 14/09/05 on the ground that opponent's remedy to recover it is barred by time.
- 2- The above point is answered in the negative for the reasons given below.

REASONS

4- POINT NO.1- The opponent has produced the report of the testing division (R) Pune dt. 11/01/02 which shows that C.T. ratio of the metering unit installed was 5/5 Amp. The opponent has also produced a letter dt. 02/06/07 from A.E. to the Executive Engineer bringing to his notice that CT ratio as regards the complainants meter units was 5/5 Amp(MF-2) however, on MR-9 it was recorded as 2.5/5 Amp. (MF-1). The complainant did not dispute that though MF was 2 the electricity bills were raised from Feb-02 to May-07 applying MF-1. For the electricity consumed from 18/05/07 the bills are being raised within MF-2 and complainant is paying them and does not want to dispute the application of MF-2.The opponent is challenging the recovery of the amount for the period from Feb-02 upto 14/09/05 contending that when demand was first made by bill dt. 13/07/07 it did not fall within 2 years preceding the date of demand 13/07/07. In support of this contention the complainant has relied upon the decision in representation No.21/08 given by Hon. Ombudsman on 5th May-2008, however, there is a judgment delivered by Hon. Justice Dr. D.Y. Chandrachud in Brihanmumbai Municipal Corporation V Yatish Sharma & Others in Writ Petition No. 264/2006 on 18th January 2007/07 wherein full elaborate discussion referring to Sect. 56 (2) of the Electricity Act-2003 and relevant provisions of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply)Regulations,2005(of MERC ESC Reg.2005) a ratio has been laid

down as to when the amount becomes first due, 2 years after which date the amount cannot be recovered from the consumer. The facts involved in Yatish Sharma's case were that the bills were raised for the period Jany-2000 to May-2000 on the assumed basis as the meter had stopped working which was detected on 27/05/2000. Supplementary bill for the period 19/01/2000 to 27/05/2000 for the amount Rs. 7818.17 was raised and debited to the A/c in the bill for the month of April-2004 . The consumer approached the forum. The forum directed the licensee to restrict the amendment of the bill to a period of three months based upon an average to be taken of the period prior to the disputed period relying upon the directives of MERC ESC Reg.2005 The consumer approached the Hon. Ombudsman. The Hon. Ombudsman by his order set aside the order of the forum and held that since the supplementary bill was raised after a period of 4 years from the date when it first become due the amount was not recoverable under the provision of Sec.56(2)

- 5- On this background, the question arose for the decision was as to on what date the amount becomes first due after which within two years, the amount due is to be recovered otherwise the remedy of recovery becomes barred by time. Relying upon the provision of Sect-56(1) and (2) of Electricity Act-2003 and relevant provisions of MERC ESC Reg.2005 it was observed "though the liability of the consumers arises or is occasioned by the consumption of the electricity the payment falls due only upon the service of the bill. Thus for the purpose of Sub Sect (1) & (2) of Sect.56 sum can be regarded as due from the consumer only after a bill on account of electricity charges is served upon him"

While observing as above the ratio laid down in H.D. Shouries case by Mr.Justic B.N.Kripal was relied upon which is as follows.

"Even though the liability to pay may arise when electricity is consumed by the petitioner nevertheless it becomes due and payable only when liability is quantified and bill is raised."

Holding as above the claim for supplementary bill raised for the period 19/01/2000 to 27/05/2000 by debiting it to the account in the bill for the month of April-04 was held within time . It was restricted as provided under Reg. 54 of MERC ESC Reg.2005 as it was a case of defective meter.

6- In the instant case in the month of January 2002 the consumer's metering equipment with CTR 2.5/5 with MF-1 was replaced with CTR 5.5 Amp. With MF-2 however, necessary correction in the record to reflect the installation of the new CT unit with MF-2 was not made till May-07 due to which bills were raised for the period Feb-2002 to May 2007 applying MF-1 after the said mistake became first known the supplementary bill dt. 13/07/07 for the period Feb-02 to May-07 was prepared and by notice dt. 17th July-07 the consumer was asked to pay it before 30/07/07. In the light of High Court decision the amount of difference of the electricity charges for the period Feb-02 to May-07 became first due on 30/07/07 and the complainant is expected to recover it within two years thereafter. The said period of two years from 30/07/07 is yet to be over and therefore the recovery of the said amount is not barred by time. The time to recover the amount of difference can not be counted from the date of the bills which were raised after each billing period from Feb-02 as under those bills the difference of amount was never demanded and unless demand is made it does not fall due. In this case the bill period needs no restriction to the period of three months as this is not a case of defective meter.

Though it has been held that the recovery of the amount by the supplementary bill is not barred by time it is very serious that for years together the bills were raised for much less amount due to which the opponent was deprived of a large sum. Such gross negligence on the part of the employees put the opponent to a great loss of revenue.

ORDER

The claim made by the complainant of the refund of difference of amount for the energy charges from Feb-02 to May-2007 is dismissed.

Sign:

Mr. T.D.Pore,

Member

Mr. A.V. Bhalerao

Chair Person

Date: 05/11/2008

