

**OFFICE OF
THE ELECTRICITY OMBUDSMAN
ASSAM ELECTRICITY REGULATORY COMMISSION**

FILE NO. EOM. 28/2015

Petition No.: 2/2015

Name of Petitioner: **Hiranya Bharali,
Proprietor, College Studio & Colour Lab
Panbazaar, Guwahati – 781001
Represented by
Mr. Hiranya Bharali**

Hiranya Bharali,
Proprietor, College Studio & Colour Lab
Panbazaar, Guwahati - 781001
Represented by
Mr. Hiranya Bharali
Mr. R J Das Advocate for the
Petitioner

vs.

The Assistant General Manager
Industrial Revenue Collection office - I
APDCL, PaltanBazar
Guwahati - 781001

The Sub Divisional Engineer
PaltanBazar Electricity Subdivision
APDCL Guwahati.
Represented by Mrs. N Hussain Barbora
AGM IRCA - I APDCL, PaltanBazar

Mr. P. Bhowmik , Advocate
Mr. D. Nath Advocate for the
Respondent

ORDER

Date : 7-01-2016

Appeal petition dated 10th September,2015 received on 11th Sept,2015 with prayer to set aside the illegal bill dated 29.4.2015 amounting to Rs 11,58,409 for the period w.e.f 10.09.2007 to 31.10.2015 of in view of less calculation of energy consumption due to wrong indication MF (Multiplying Factor). The petitions earlier placed before the CGRF Guwahati Zone has not been accepted by the CGRF vide its order dated 19/08/2015. Hence the present appeal petition.

Hearing has been fixed on 30/9/2015 requesting the appeal petitioner Shri Hiranya Bharali, Proprietor, College Studio & Color Lab Panbazar Guwahati-1 and Respondents APDCL viz. 1) The Chief Executive officer Guwahati Electricity circle-1 Ulubari and 2) AGM IRCA-1 Paltan Bazar Electricity Subdivision Guwahati to present with records for conciliation under clause 6(3) of the Guidelines for Redressal of consumer grievances.

Hearing has been held on 30/9/2015. However the complaint could not be settled in view of difference of opinion. Therefore the proceeding started afresh as per clause 8(1) of the Guidelines.

The contention of the appellant is that petitioner under the present consumer no 6100000951 has been a regular payee of all bills that have been served upon him w.e.f. 11/10/2006. Appellant got the bill dated 16-03-2015 for the month of February, 2015. There was ten fold increase in the amount of bill charged in comparison to the earlier bills paid by the Appellant. The Appellant was informed on enquiry that his monthly billing was wrongly assessed at MF (Multiplying Factor) 1 instead of MF 10. The appellant also says that the concept of MF (multiplying factor) for the first time became familiar to him and he has understood that MF shall be 10 with regard to connected load of 25kw or above.

Thereafter bill dated 7.04.2015 for the month of March 2015 was generated with MF 10 amounting to Rs. 23,228.79 .The Appellant than applies for reduction of load from 25KW to 17.5 KW.

In the meantime the appellant was served upon bill dated 29.04.2015 with covering letter no. APDCL/AM/IRCA-1/(Paltan 4650)/2015/396 dated 29.4.2015 including statement showing the breakup of arrear energy charges claimed from 10.09.2007 to 31.01.2015 amounting to Rs. 11,58,497.00

The Appellant is now required to pay arrear amount of Rs 10,191 (Rs. 14390- Rs. 4199) in view of recalculation of MF as 10 instead of MF 1 which was shown earlier in the bill dated 8.10.2007 (For the period 10.9.2007 to 8.10.2007) Similar calculation was done for balance period upto 31.01.2015 (8.10.2007 to 31.01.2015) and total liability comes to be Rs. 11,58,497/- including the above amount of Rs 10,191/- and arrear bill amounting to Rs. 11,58,497 was served on 29.04.2015 after a gap of about 7 (seven) years.

The Appellant further says that it is not understood the fault of the Appellant wherein APDCL has imposed such huge financial liability and also the reason why after so many years. Appellant relied on the order of CGRF Guwahati Zone dated 18.08.2015 paragraph 3 which reads as follows -

"3. Therefore, from 10/09/2007 to 08/10/2007 a bill was prepared as 263 units (9.39 units/day) with MF 1 (one) the reason behind it was that during this period M/S Amtron was

awarded with the job of transforming the old Billing system to the then newly introduced Computer processing of data for billing purpose etc. including data entry. The error percolating into the process of Billing of the consumer was totally unintentional which had been carried out by M/S AMTRON and was found to be continued was such in subsequent period."

APDCL now cannot shift its burden on the Appellant. The Appellant is not responsible in any manner what so ever for the erroneous billing. The order of CGRF paragraph 3 has admitted that.

The Appellant also states that his requirement was only 17.5KVA and as such connected load of 29 KVA was actually never used. APDCL had "unintentionally" billed the appellant as observed by CGRF Guwahati and it is wrong to recover the amount after lapse of more than seven years. APDCL violates all the principles of natural justice and it is illegal on the part of APDCL to saddle upon such huge financial liability without being no fault of the Appellant.

The appeal petitioner further relies upon the Sec 56 (2) of the Electricity Act 2003 and said that the Bill dated 29.4.2015 is illegal and violation of provision contained at section 56(2) of the Electricity Act 2003 as the said section demonstrates a period of limitation of two years for a sum due from any consumer. Hence by the operation of 56(2) of the Electricity Act 2003 is illegal on the part of APDCL to claim a sum due date of which has crossed well over two years as the first due as per bill dated 29.4.2015 dates back to the period 10.9.2007 to 8.10.2007. Moreover the total amount or its constituent amount mentioned in the bill dated 29.4.2015 were never shown as recoverable as arrear charges for electricity supplied in any of the bills in the period in question.

The Respondent, Assistant General Manager, Industrial Revenue collection Area I APDCL Paltan Bazar Guwahati-I, on the other hand, denied all statement made in the affidavit submitted by the Appeal petitioner except the records submitted along with the affidavit.

The Petitioner consumer namely College Studio & Color Lab, Panbazar had connection of 16KW provided through a whole current meter No. 1057409 (GEC Mark). The load of the consumer was enhanced from 16KW to 25KW w.e.f October 2006. The whole current meter was replaced on 26/02/2007 by LTCT meter no 17205 & bill prepared accordingly with MF as 10 from 26/02/2007 onwards. The premises of the petition was inspected on 26-02-2007 and inspection report shows the multiplying factor (MF) for calculation of consumption energy as 10. The above said inspection was done in presence of the petitioner and a copy of the inspection report was handed over to the petitioner consumer where MF is recorded as 10. Thereafter monthly bill with MF 10 from 26.2.2007 to 10.9.2007 were raised and consumer was regularly paying the bill. However an inadvertent error occurred in raising monthly bill thereafter and bill period from 10.9.2007 to 31.01.2015 were raised taking MF as 1. The aforesaid wrong calculation of MF in the energy bills of the consumer came to the notice of the Respondent after inspection done by the APDCL on 25.02.2015 which reveals that MF has been taken as 1 instead of MF 10. After receipt of inspection report dated 25.2.2015 the energy bill w.e.f 01.02.2015 to 28.02.2015 was raised with MF 10 and consumer petitioner has duly paid the bill. Subsequent bills upto 28.8.2015 was raised with MF 10 and the consumer petitioner paid all bills.

Considering under billing due to wrong calculation by MF 1 instead of MF 10 for period 10.9.2007 to 31.01.2015, a supplementary bill dated 29.4.2015 amounting to Rs 11,58,497 was served to the consumer with statement of energy consume calculation w.e.f 10.9.2007 to 31.01.2015.

Respondent denied the fact that there is ten fold increased in the amount of bill in respect of electricity consumption for the month of Feb, 2015. Respondent reiterates that consumption bill in respect of the petitioner has been raised considering the MF as 10 which inadvertently w.e.f 10.9.2007 to 31.01.2015 was raised taking MF as 1. Therefore the bill dated 29.4.2015 for the amount of Rs. 11,58,497.00 was issued towards the differential amount.

After enhancement of load w.e.f 11/10/2006 and installation LTCT meter, the consumer was billed taking in to consideration the MF as 10 till 10.9.2007 and the consumer has duly paid the monthly bill raised with MF 10 up to 10.9.2007. Thereafter the bills were raised taking the MF as 1 wrongly and the inadvertent error continued till 31.10.2015. However the monthly bill raised taking MF as 10 for the month of February 2015 and subsequent months has been paid by the consumer without objection.

Respondent says that CGRF is right to uphold the legality of the supplementary bill for the amount of Rs 11,58,497 and also right to allow the consumer to deposit the bill amount in 20 monthly equal instalment with the waiver of surcharge.

Respondent stresses that it is right to raise supplementary bill dated 29.4.2015 even after seven years as the matter came to knowledge of the Respondent on 25.2.2015. The petitioner is liable to pay monthly energy bill considering MF as 10. He was served energy bills taking MF as 1. Although the consumer utilized the power during the period in question, he paid less for the same. It is also a fact that though the liability of a consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. The purpose of the sub sec (1) and (2) of Sec 56 of the Electricity Act 2003 is a sum can be regarded as due from the consumer only after a bill on account of the electricity consumption is served. As such the petitioner is liable to pay the supplementary bill amount.

Respondent further states that petitioner is well aware of the MF 10 as the petitioner was present on 26.02.2007 when inspection was done & it was specifically mentioned in the report the MF as 10. Respondent states that the supplementary bill issued on 29.04.2015 for the period 10.09.2007 to 31.01.2015 when the connected load of the petitioner was 25 KW.

The Respondent relies on the provision at sub sec (2) of the section 56 of the Electricity Act 2003 that the supplementary bill dated 29.04.2015 becomes due only from that date of issuance of the said bill. The petitioner having 25 KW load during the relevant period was billed lower rate than the actual rate due to an inadvertent error in calculating the MF as 1 instead of 10 and after detection of the mistake the supplementary bill was issued for the less billed amount. Therefore the same is liable to be recovered.

Observation & Findings: The above claims and counter claims of the Petitioner and Respondent are primarily relate to the sec 56 (2) of the Electricity Act 2003. The word "first due" appears in the said sub sec is the matter of dispute. Petitioner explains that first due date as per the bill dated 29.4.2015 dates back to the period 10.09.2007 to 8.10.2007. Therefore the bill dated 29.4.2015 has claimed sum due, date of which has crossed well over two years as

per sub sec (2) of the sec 56 of the Act. It appears date of consumption of electricity is the first due date as projected by the Petitioner.

On the other hand the Respondent says that the first due is the date of issuance of the bill i.e. 29.4.2015. Therefore the period of two years as per sub sec (2) of the section 56 of the Act will start from the date of the bill 29.4.2015 and the Respondent is within the period of limitation to claim the arrear amount. Respondent submitted to support claim the orders (1) passed by the Division Bench of the Hon'ble Bombay High Court in WP(c) No. 7015 of 2008 (M/S Rototex & Polyester & Anr vs. Administrator, Administration of Dadra & Nagar Havli (UT) Electricity- Date of order 20.8.2009) (2) Order of the Hon'ble Bombay High Court dated 18.1.2007 passed in WP(c) No. 264 of 2006. Brithanmumbai Municipal Corporation v. Yatish Sharma & Ors.

The above orders explain that the due date is the date of issuance of the bill claiming the amount for consumption of electricity.

Assam Electricity Regulatory Commission makes under section 80 read with Section 181 of the Electricity Act 2003, the electricity Supply code and related matters Regulation 2004 (1st Amendment 2007) vide - dates 8th May 2007.

Clause 4.2.2.1 of the Supply Code says "Bill frequency for all categories of consumers should preferably be one month. Bills shall be served to the consumers every month giving time of 15 days from date of presentation for payment. Any derivation from this should be recorded in the bill indicating reason thereof.

The Distribution Licensee shall intimate the consumer of the due date on which he will receive his energy bill and also the due date for payment of his bills. This will normally be the due date for all billing cycles for that consumer."

It appears APDCL shall serve bill to the consumer every month. Any deviation is allowed subject to recording the reason thereof.

Clause 4.2.2.3 says "If on investigation the Distribution Licensee finds the bill shall be furnished to the consumer indicating the revised due date. Excess amount paid by the consumer, if any, shall be adjusted would be treated as the date of refund" .This clause empowers the Respondent APDCL to issue revised corrected bill on investigation of any error in the demand.

Clause 4.3.3 of the supply code says "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 a 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." The said provisions are identical to the sub sec (2) and Sec 56 of the Electricity Act 2003.

The word "first due" of the sub sec (2) of the section 56 of the Electricity act 2003 has been extensively discussed in earlier mentioned orders of the Hon'ble High Court. It is now conclusively said that words "first due" shall be date of issuance of the bill to claim the charges for consumption of electricity and not the consumption itself.

The licensee is required to raise bill every month giving 15 days time from the date of presentation of bill for payment. Any deviation is now allowed indicating reason thereof. Further the Respondent is allowed to recover the old dues subject to conditions stated at clause 4.3.3 of the Supply code.

The Respondent issued the bill dated 29.4.2015 for the period w.e.f. 10.9.2007 to 31.1.2015 to claim the old dues which was due to wrong calculation of MF.

In view of above discussion and examination of records the first due date as per Respondent shall be date of issuance of the bill i.e. 29.4.2015 and period of limitation starts from 29.4.2015. The bill dated 29.4.2015 is required to be paid within 29.5.2015. The appellant has raised objection against the bill dated 29.4.2015 at various level including the CGRF. The CGRF in its order dated 18.8.2015 directs the appellant to make payment by rejecting their petition.

Thereafter the Respondent has shown the arrear amount in the subsequent bills (Bill date 17/8/2015, 8/9/2015)

The Petitioner also submitted all monthly bills including payment receipts covering consumption of Electricity w.e.f. 10.9.2007 to 31.1.2015.

Respondent raised two types of bills for the period of consumption of electricity w.e.f 10.9.2007 to 31.1.2015 and they are monthly bill for each month indicating bill date for each month and supplementary bill dated 20.4.2015 for the consumption period (10.9.2007 to 31.10.2015). The original bill was the monthly bill issued monthly for the consumption period (10.9.2007 to 31.10.2015). But the calculation of the monthly bill was by taking MF as 1 in place of 10 as shown in the monthly bill.

Thereafter supplementary bill has been raised on 24.4.2015 to claim the arrear for the said consumption period taking MF as 10.

The error in calculation by taking the MF as 1 instead of 10 was dictated on 25.2.2015 when inspection was done. Prior to this meter was inspected on 26.2.2007. Whereas clause 4.2.1.3.2 of the Supply code requires inspection of H.T. meter at least once in a year. The long gap in meter inspection leads to repeated mistake in calculation of actual consumption of electricity by the Respondent. On the other hand, Respondent has issued bill monthly for the consumption period (10/9/2007 to 31.1.2015) as per provision at clause 4.2.2.1 of the Supply code. Though the calculation of electricity consumption was not as per inspection dated 26.2.2007 but bills have been issued regularly during the said period by showing MF as 1 and the appellant petitioner paid all bills accordingly.

It appears whatever the calculation of consumption, bills has been raised regularly for each month for the consumption period 10.9.2007 to 31.1.2015 as per clause 4.2.2.1 of the supply code. Subsequently supplementary bill dated 29.4.2015 has been issued to claim the arrear amount in view of earlier less claim. Sub sec (2) of the Section 56 of the Act and 4.3.3 of the Supply code says "old dues can be recoverable after period of two year from the date when such sum becomes first due."

The monthly bills for the period 10.9.2007 to 31.1.2015 issued prior to issuance of the supplementary bill dated 29.4.2015. Therefore the "first due" shall be the date of the monthly bill for the said period (10.09.2007 to 31.01.2015) and the two years period as per sub sec 56(2) of the Act shall be - from the date of the monthly bill. Accordingly the monthly bill date 7/5/2013 shall be first due date for supplementary demand dated 29/4/2015. All monthly bills after that date (7/5/2013) shall be revised and supplementary demand bill dated 29.4.2015 shall include the consumption period w.e.f. 2.4.2013 to 31.1.2015 and past dues for the said period shall be recovered as the recoverable old dues within the limit of two years as per section 56(2) of the Act and clause 4.3.3 of the Supply code.

Award - The above discussion and observation including examination of records submitted by the appellant and Respondent APDCL, it is now seen that first due date in the present case shall be 07.05.2013, the bill date for the monthly bill period from 2/4/2013 to 2/5/2013. The Respondent APDCL shall have authority to claim past dues from the said date (07.05.2013) which is within the limit of two years of the issuance of supplementary demand bill dated 29.4.2015 as per sub sec (2) of the section 56 of the Electricity Act 2003.

APDCL shall revised the supplementary demand bill dated 29.4.2015 accordingly.

Respondent shall be at liberty to allow installment payment by the Appellant.

The Appellant petitioner shall furnish a letter of acceptance of the above award to the Respondent APDCL within one month from the date of the receipt of this award.

The Appellant petition dated 14th October 2015 partially allowed. There shall be no cost to be born.

The delay in competition of the proceeding within three months is due to leave of the Ombudsman on medical ground during the month of November 2015.

Sd/-
(R.L. Duarah)
Electricity Ombudsman

Memo No. EOM. 28/2015/28-35
Copy to:

Dated Guwahati the 7th January, 2016

1. **Hiranya Bharali**, Proprietor, College Studio & Colour lab, Panbazaar, Guwahati - 781001.
2. **The Assistant General Manager**, Industrial Revenue office - I, APDCL, PaltanBazar.

Secretary,
O/o the Electricity Ombudsman