BEFORE THE CONSUMER GRIEVANCES REDRESSAL FORUM
(*Under the Electricity Act, 2003*)
PUDUCHERRY
***

PRESENT:

THIRU T. GOPALAKRISHNAN, B.E.,
CHAIRMAN

THIRU A.S. JITENDRA RAO, B. Tech., M.B.A.,
LICENSEE MEMBER

THIRU R. KRISHNAMURTHY, B.Com., LLB., PGDFL.,
JERC NOMINATED MEMBER

FRIDAY, THE 1ST DAY OF JULY 2022

INTERIM ORDER in CONSUMER CASE No.100/2022

Bharat Sanchar Nigam Ltd.,
Office of the General Manager, BSNL,
Rangapillai Street,
Puducherry 605001.
Represented by: Divisional Engineer(Outdoor) .... Complainant

Vs.

1) The Executive Engineer, Rural-North(O&M),
Electricity Department,
Puducherry

2) The Assistant Engineer – Kurumbapet,
Electricity Department,
Puducherry.

3) The Junior Accounts Officer-Rev.II,
Electricity Department,
Puducherry.

4) The Junior Engineer- Mutharaiyarpalayam,
Electricity Department,
Puducherry. .... Respondents

This case in C.C. No.100/2022 came up before this Forum for final hearing on 28/06/2022. After hearing both sides and having stood over till this date for consideration this Forum has delivered the following:

The case of the Complainant is as follows:

1. A Complaint was received from the Divisional Engineer (Outdoor), BSNL, Main Telephone Exchange, Rangapillai Street, Puducherry on 25/05/2022. In the complaint, the Complainant had stated that BSNL is having a policy with Code No.26-20-01-0026 at BSNL Mettupalayam Telephone Exchange. A huge amount of outstanding Rs.53,94,693/- was claimed for the period from 19/12/1988 to 31/12/2010 vide Demand note dated 30/05/2013 due to omission of multiplication factor. On receipt of demand note, BSNL filed a case at Hon'ble High Court of Madras under Article 226 of Constitution of India calling for the details of Demand note issued by Junior Accounts Officer-Rev.II vide No.906/ED/JAO/Rev.II/ U.8/2013-14 dated 30/05/2013 in W.P.33432 of 2013 and M.P.No.1of 2013. After having heard the case, the Hon'ble High Court passed order on 03/12/2021 directing the Petitioner to approach the Consumer Grievances Redressal Forum for the purpose of adjudication of issues on merits and in accordance with law by submitting all relevant documents and evidences. The applicant in the event of filing of application, the Grievance Forum shall consider the period during which the Writ Petition was pending before the High Court for the purpose of condoning the delay in filing the delay or otherwise if any application is filed to condone the delay. The issues raised between the parties are directed to be adjudicated on merits and in accordance with law expeditiously as possible. The extract of arrears as enclosed for the past 6 months are detailed below:

Month & Year	Bill date	Final reading	Actual	Arrears	BPSC	Total due
10/2021	29/11/2021	A-57516	55937	7844595	1159544	9060076
11/2021	29/12/2021	A-65256	60429	7900532	1317555	9278516
12/2021	28/01/2022	A-72216	54797	7960961	1476774	9492532
01/2022	25/02/2022	A-79276	55254	8015758	1637089	9708101
02/2022	29/03/2022	A-85956	52442	8071012	1798509	9921963
03/2022	28/04/2022	A-89946	32124	8123454	1960978	10116556

Further the Complainant stated that in the month of 04/21, as the Department was ready to adjust the amount as earlier, and hence the arrears mounted month on month, even though they are ready to pay the current month chares. The Complainant prayed for as detailed below:

1. Until the settlement of the issue, the Complainant may be allowed to pay the actual consumption charges excluding the past arrears from the bill month April 2021 as an interim measure.
2. The past pending arrears issue may be settled as per the directions of Hon'ble High Court.

Hence, the Complaint.

2. The complaint was registered as C.C. No.100/2022 on 25/05/2022 and notice sent to the Executive Engineer, Rural- North O&M and others to furnish reply by 14/06/2022. The Respondent No.3 sought for time till 21/06/2022 to furnish reply as voluminous files, records, ledger data for the previous 34 years are to be traced out and compiled for submission of counter Affidavit. Reply from the Respondents were received on 22/06/2022 and a copy of the same were the communicated to the Complainant. The case was posted for hearing on 28/06/2022.

3. In the Affidavit dated 21/06/2022, the Assistant Engineer- Kurumbapet / Respondent No.2 on behalf of Respondent 1 and 4 had stated that, the policy bearing No.638842/A1 in favour of BSNL was effected in 19/12/1988 with code No.26-20-01-0026/A1. The Anti Power Theft Sqad (APTS) of the Department conducted surprise inspection of the premises of the Petitioner on 08/02/2011 in the presence of the Assistant Engineer/Kurumbapet, Junior Engineer, Mutharaiyarpalayam, and the consumer representatives and submitted report on 16/02/2011. The following observations are made by the APTS squad:

i. The service policy and the meter have been checked and the existing meter is Electromechanical type Havells make 50A capacity whole current meter. The lead seals at the meter were found intact t the time of inspection. The lead seal at the meter terminal cover and cut outs were not available at the time of inspection.

ii. The multiplication factor indicated in the name place of the meter is 10 which has not been adopted in the CC bill.

iii. Power check test carried out on 08/02/2011. If the MF 10 is adopted the power check test, result is satisfactory.

iv. The connected load of this service physically verified and the present connected load noticed on 08/02/2011 was 18,090 watts.

v. The current consumption bills from the month of July 2010 to November 2010 have been verified. In all the bills the MF indicated is 1 instead of 10. The monthly consumption of this service policy as per bill issued was about 800 units to 1200 units i.e., actual consumption is about 8000 units to 12000 units / month.

vi. For the service policy code No.26-20-01-0026/A1the CC bill shall be revised immediately by adopting the multiplication factor 10 for the period of MF has been left out in the CC bill. Lead seals may be provided at the meter terminal cover and cut outs.

The APTS of the Department pointed out the omission on billing during the inspection of the premises on 08/02/2011 multiplication factor was changed from 1 to 10 and the bills are being served accordingly from the subsequent month and the Petitioner had been paying the bills since then without any objection. Pursuant to the report of APTS, the current consumption bills have been revised from the date of energization i.e., 19/12/1988 and accordingly a supplementary demand was raised for an amount of Rs.62,75,784/- on 30/01/2012 with instructions to settle the bill amount within 30 days by the Junior Accounts Officer-Rev.II. Adverting to the supplementary demand, the Petitioner has requested the Respondent No.3 not to incorporate the demand amount in the Electricity bill and not to levy the BPSC on account of clarifications required by the BSNL Audit wing. The Respondent No.3 had issued revised demand dated 30/05/2013 for Rs.59,44,730/- for a period upto March 2013 after making necessary adjustment with the amount already settled by the BSNL as requested by the Petitioner. The Electromechanical meter in the above service connection was changed by direct meter of DLMS meter under 100% metering programme during May 2017. The present connected load found in the premises is worked out to 24 kilo watts. The supplementary bill has been raised is for actual consumption made by the Petitioner and this is not a revision of bill. The supplementary bill has been claimed for the energy consumed but not billed earlier. This is a case of escaped billing.

4. In the Affidavit dated 21/06/2022, the Junior Accounts Officer-Rev.II / Respondent No.3 had stated that the existing service connection with policy code No.26-20-01-0026/A1 in favour of Divisional Engineer, Telephones Department (now BSNL) located at PIPDIC Industrial Estate, Mettupalayam, effected three phase connection on 19/12/1988. The total connected load was 24560 W with initial reading of 000159. No amount of Security Deposit was collected in respect of the said service. The Multiplication Factor (MF) in respect of the said service was not indicated in the Test Report and the same was adopted as Factor of 1(one) in the bill credentials of the said service and accordingly current consumption bill was generated and claimed from the date of energisation. The Anti Power Theft Squad of the Department conduct surprise inspection of the premises of the Petitioner on 08/02/2011 and the observations of the APTS are detailed in para 3 (i) to (vi) above.

5. The Respondent No.3 further stated that pursuant to the report of APTS, supplementary current consumption bills have been issued from the date of energization i.e., 19/12/1988 for the omission of multiplication factor of 10 for which an average consumption of 10000 units per month has been calculated with effect from 19/12/1988 and accordingly a supplementary demand was raised for Rs.62,75,784/- on 30/01/2012 with instruction to settle the bill amount within 30 days. Adverting to the above demand, the Petitioner had requested to furnish the Due paid statement from December 1988 to December 2010 on account of clarification required by BSNL Audit wing, for further process of the claim and till such time not to incorporate the demand amount raised due to omission of Multiplication Factor in the Electricity Bill and not to levy the BPSC. The Respondent No.3 vide letter dated 30/07/2012 to BSNL, Puducherry, *interalia* stated that the

amount settled by BSNL is only for 1/10 of the total amount and the remaining 9/10 of the amount have to be settled for which the questioning of issuing the Due-paid particulars does not arise. The Petitioner vide letter dated 27/08/2012 has addressed the Respondent No.3, stated that on corporatization of erstwhile Department of Telecommunication of Government of India into BSNL with effect from 01/10/2000, the claim up to 30/09/2000 will have to be taken up with the Government of India, Ministry of Communications and subsequent to 30/09/2000, the claim will have to be cleared by the BSNL Audit. The Petitioner has therein requested Respondent No.3 to keep the arrear claim separately and not to levy any penalty and not to include the arrear with the regular monthly bill. Keeping in view of the lengthy proceedings involved in the settlement of old claim. It is pertinent to submit that the Petitioner had acknowledged the apparent fact that the old claim involved considerable period of time for scrutiny. The Respondent No.3 vide letter dated 07/05/2013 informed the Petitioner that the current consumption bill has been revised with effect from 19/12/1988 by incorporating the multiplication factor 10 and the bill for the month of December 2010 paid by BSNL has been adjusted. Further it has been requested the Petitioner concern to settle the demand amount of Rs.64,49,976/- immediately so as to avoid disconnection of service connection for non-payment of dues as per rules. The Petitioner vide letter dated 23/05/2013 once again requested Respondent No.3 to furnish the month-wise particulars of dues for processing the matter at their end. In reply dated 30/05/2013, the Respondent No.3 furnished the details of amount to be settled by BSNL, Puducherry and demanded the revised amount for Rs.59,44,730/- for the period upto March 2013 after making necessary adjustments with the amount already settled by BSNL. Based on the requisition letter from BSNL, stating that the average is on the higher side, the current consumption bills had again been revised for average of 8860 units per month by taking into account the average consumption for 44 months derived from the verification of certified copies of bills submitted by BSNL. An amount of Rs.53,94,693/- was calculated upto December 2010 exclusive of BPSC and the same was communicated to BSNL.

6. Aggrieved over the supplementary demand, the Petitioner had issued an Advocate notice dated 18/06/2013 which was duly replied by the Government Pleader for any recourse to revision as per rules. However, the Petitioner had assailed the demand order of the Respondent No.3 and filed this complaint on the grounds that short fall claimed over consumption of energy for the old period is barred by limitation. The Respondent No.3 stated that the BSNL has been paying current consumption charges for the meter reading with Multiplication Factor 1(one) from the date of energization and subsequently, on the inspection of APTS and as per reports the omitted multiplication factor of 9(nine) had been claimed for the same consumption paid earlier by them. Therefore, the quantum of bill served to BSNL earlier itself contained the meter reading and the arrear amount had been claimed after adjusting the payment made by the BSNL. Since the multiplication factor 10(ten) had been omitted and the bills had been claimed only for Multiplication factor 1 (one) from the date of energization. The current consumption bill had been revised based on the surprise inspection and the report of APTS which is an omission of multiplication factor and arrived arrears only after verification of the certified copies of the bills for 44 months submitted by the BSNL, Puducherry. Therefore, the BSNL is not entitled to call the Respondent to withdraw the claim as arrears of current consumption charges. For the reasons submitted above the BSNL is not entitled to provide all particulars regarding actual meter reading, tariff amount paid by BSNL. The arrear amount has been calculated and arrived for the power actually consumed by the BSNL from the date of energization and there is no limitation to claim the arrears from BSNL. The BSNL has accepted the multiplication factor (10) and had cleared the current consumption charges for the period from January 2011 to February 2021. Therefore, the BSNL are stopped for denying the payment of arrears

calculated for the multiplication factor. The Complainant had availed the power supply extended by the Respondent for actual period and the liability to pay the dues arise when the Electricity is consumed by the Petitioner for commercial purpose, although it is payable after a valid bill quantifying the liability is raised by the Distribution Licensee. Hence, the due payable by the said Government Undertaking to the Government Exchequer is payable in the context of the Section 24 of the Indian Electricity Act 1910 and Section 56 of Electricity Act 2003. The Respondent No.3 further stated that the demand for old period payable by the Petitioner undertaking due to Bonafide error of omission of Multiplication factor, pursuant to the surprise inspection of the ATPS, required considerable period of time to scrutinize the records ranging over a period since energization i.e., from 1988 and the Respondent Department was constrained to seek certain payment particulars from the Petitioner undertaking for adjustment of earlier paid dues towards consumption of energy, wherein errors in billing crept in. In the even of any clerical error or mistakes in the amount levied, demanded or changed by the Licensee, the Licensee will have the right to demand additional amount of undercharging. In terms of the undertaking furnished by the Complainant in their application for extension of power supply dated 19/12/1988 submitted by the Telecom District Engineer, Pondicherry, the Petitioner is bound by the Tariff and Supply conditions, Codal provisions, as applicable and amended from time to time, imposes by the Government as per the statutory provisions and imposed by the Respondent Department.

7. The Respondent No.3 further stated that, eventhough the liability to pay energy charges is created on the day, the electricity is consumed, the charges would become first due only after a bill or a demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice. The contention put forth by the Petitioner that as per provision under 55(1) in Chapter VII of Terms and Conditions of Supply of Electricity for the Electricity Department, Government of

Puducherry assailing the demand as barred by the period of limitation is not tenable. The Tamilnadu Electricity Ombudsman by their Order dated 30/09/2016 in Appeal Petition No.17/2016 (M/s Orchid Chemicals & Pharmaceuticals Ltd., Chennai Vs the Assistant Engineer, O&M TANGEDCO, and 2 others by relying on the decisions of the Hon'ble High Court of Delhi by catena of cases has upheld the demand towards shortfall arising out of Multiplication Factor issued by TANGEDCO and defined the extent of limitation from the period of demand. The Supplementary bill has been raised is for the actual consumption made by the Petitioner and there is no dispute on this count. It is the contention of the Petitioner on the grounds that back billing is to be restricted for a period of three years from the date of detection of omission. This contention is based on the reading and Petitioner's understanding of above cited Clause 55(1) of the Terms and conditions of Supply of Electricity notified by Government of Puducherry vide G.O.Ms. No.29 dated 19/04/1993. Clause 55(1) of Terms and conditions of Supply of Electricity relied upon by the Petitioner deals with revision of bills arising out of defective metering, incorrect application of tariff, wrong billing due to arithmetic error etc., in such cases, the original bill has been raised for the entire energy consumed and revision of bill is required to correct it. In the present case, however it is not a revised bill, but supplementary bill for the energy consumed but not billed earlier. This is a case of 'Escaped billing' and hence would not fall within the ambit of the cited Clause 55(1). The APTS of this Respondent Department has pointed out the omission on billing during their inspection of the premises on 08/02/2011. Multiplication Factor was changed from 01(one) to 10(ten) and the bills were being served accordingly from the subsequent month and the Petitioner had been paying the bills since then without any objection upto February 2021. As alleged by the Complainant in the complaint letter of the Consumer case 100/2022, this Respondent Department has not denied the payment of current month current consumption by BSNL in respect of the said service from March 2021. Therefore, this Department categorically denies the above charges made by the

Complainant. As preparation of the supplementary bill involved verification of past records pertaining to the period dating back to 1988, there was some inevitable delay in finalizing the amount to be claimed from the Petitioner. The allegation of casual callous or cavalier attitude on the part of the officials of the Respondent Department, as alleged by the Petitioner is categorically denied. The Compilation of records to substantiate the claim of the Department on the due payable by the Petitioner on account of the change of Multiplication factor had taken some time, in view of the voluminous records that has to be gone through over a period of almost 35 years. There was no wanton mala fide or wilful intention on the part of the Respondents Department to deny any documentary evidence towards the claims as alleged by the Petitioner. The Petitioner was all along paying for only one tenth of the actual consumption due to the unintentional and inadvertent omission in the application of the multiplication factor. The Petitioner cannot rightfully claim the continuance of the benefit of such omission once the same has been detected. The Department has every right to raise bills for the actual consumption made by the Petitioner and there is nothing illogical or unjust as claimed by the Petitioner. This is a case of escaped billing and hence there is no deficiency in service. The claim is not hit by any limitation unless and until law limits the right of Licensee to assess or compute or to serve a bill, it cannot be said the Licensee losses its right to demand the money due to it by serving a bill. Neither Section 26 of the Indian Electricity Act 1910 nor Section 56 of the Electricity Act 2003 has any application to a supplementary demand made by the Licensee for the unclaimed amount for the electricity consumed if the consumer was under billed due to omission or clerical mistakes or human error. In case the consumer is under-billed on account of clerical mistake such as the present case, where the multiplication factor had changed from 1(one) to 10 (ten), the basis of limitation cannot be raised by the consumer. The Respondent Department is bonafidely extending power supply to the Petitioner undertaking, which is also a Government of India undertaking. There is no unjust enrichment made by the Respondent Department in the above matter and the dues payable by the Petitioner as per the rules is accrued to the Government exchequer towards actual consumption made during the said period, to be complied as per the statutory provisions. A Government undertaking cannot assail the Government orders in violation of the rules. The Government of Puducherry through the Electricity Department has been purchasing power supply from the Central stations and other states generating stations for distribution of power supply to the Union Territory of Puducherry. Further, the Electricity Department is liable to pay BPSC for non-payment of power purchase. As such, the Electricity Department had already paid the charges for the energy consumed by the consumer. If the consumer fails to remit the charges towards the consumed energy, it would cause loss to the Government of Puducherry. If dues of electricity charges outstanding in respect of electricity supplied to a premises were to be permitted to be equated with a contractual claim of damages, it would encourage dishonest consumers to raise some dispute or other in respect of such dues and evade the consequences of non-payment of electricity charges viz., disconnection / non-resumption of supply.

8. The Respondent No.3 further stated that by apparent facts and circumstances of the case and the provisions of law as it stands, the Department's right to claim the amount due on account of actual consumption through supplementary bill accrued to the Government Exchequer, after making due adjustments cannot be denied by the Petitioner, which is also a Government undertaking extending commercial service to the consumers. It is pertinent to mention that bonafidely, the Respondent Department has not disconnected the power supply as provided under the statute mainly on the grounds that the Petitioner is also an instrumentality of the Government and the issue regarding actual dues may be resolved by recourse to available legal remedies.

9. Hearing was held on 28/06/2022. Both the Complainant and Respondents were present. During the hearing, the Complainant was directed to furnish original petition filed before the Hon'ble High Court, Madras in the above W.P.33432 of 2013 and M.P.No.1of 2013. The Complainant sought one week time to file additional Affidavit along with the other details. Further, the Complainant stated that they were ready to make payment for the undisputed period, provided that the Department shall issue separate bill with details of initial and present reading and the amount claimed from April 2021 on month-on-month basis. The Respondents and Complainant were directed to sit together and find modality for making payment on the above issue. The Respondent is also directed to furnish month by month claim for the disputed period from 19/12/1988 to 31/12/2012 as requested by the Complainant. Eventhough the Respondent stated that the details were already furnished to BSNL, it is once again directed to furnish a copy of the same. Additional Affidavit to be filed.

INTERIM ORDER

i. Pending the issue of Final Order on the issues raised by the Complainant, the Respondents are directed to accept the bill amount for the current consumption payable from April 2021 onwards without insisting for arrears, as the issue of arrears is under examination of Forum. The Complainant had informed that the Department had not accepted payment of monthly current consumption charges from April 2021 onwards leading to accumulation of arrears. The Complainant is directed to produce evidence for refusal /rejection of payment by the Electricity Department in order to decide whether BPSC is applicable for the payments from April 2021.

ii. As detailed above, the Respondents are directed to furnish the break-up of arrears for the period from 19/12/1988 to 31/12/2012 amounting to Rs.53,94,693/- as claimed by them.

iii. The Complainant is directed to settle the arrears for the un-disputed period within 21 days from the date of receipt of particulars and inform this Forum accordingly after making payment.

iv. The Complaint is partially allowed as discussed. Next hearing is posted after receipt of additional Affidavit both from the Complainant and the Respondents.

Dated at Puducherry on this the 1st day of July, 2022

Sd/-	**Sd/-**	**Sd/-**
(R. KRISHNAMURTHY)	**(A.S. JITENDRA RAO)**	**(T. GOPALAKRISHNAN)**
JERC NOMINATED MEMBER	**LICENSEE MEMBER**	**CHAIRMAN**