

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

(Appointed by the Maharashtra Electricity Regulatory Commission  
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 22 OF 2020

In the matter of billing

Narsinhbhai V. Patel ..... Appellant

V/s.

Brihanmumbai Electricity Supply & Transport Undertaking  
(BEST Underaking) ..... Respondent

Appearances

For Appellant : None

For Respondent: N. N. Sonawane, Assistant Engineer, (E) Ward

**Coram: Deepak Lad**

Date of Hearing:- 16<sup>th</sup> July 2020

Date of Order: - 24<sup>th</sup> July 2020

ORDER

This Representation is filed on 11<sup>th</sup> February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 10<sup>th</sup> December 2019 passed by the Consumer Grievance Redressal Forum, Brihanmumbai Electricity Supply & Transport Undertaking (BEST Undertaking).

2. The Forum by its order dated 10.12.2019 has dismissed the grievance application in Case No. N-E-397-2019.

  
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3. Aggrieved by the order of the Forum dated 10.12.2019, the Appellant has filed this representation stating in brief as under: -

- (i) The Appellant is a residential consumer (No. 748-071-071\*5) at 7/27, Milan Building, 87, Tardeo Road, Mumbai. Narsinhbhai V. Patel is name of the consumer on record who died on 09.08.2009. The present Appellant, ~~Shri~~ Harendra N. Patel is son of late Shri Narsinhbhai V. Patel who is the actual user. The representation filed by him be accepted.
- (ii) The Respondent illegally debited Rs.72,360/- in the monthly bill of May 2019 towards alleged amendment of defective meter for the period of December 2014 to December 2017. The Appellant raised the dispute as amendment bill is not in line with the Regulation 15.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) of defective meter.
- (iii) The Appellant filed complaint before the Internal Grievance Redressal Cell (IGRC) on 17.07.2019. The IGRC by its letter dated 22.07.2019 has rejected the complaint.
- (i) The Appellant approached the Forum on 05.09.2019 against the decision of IGRC to resolve its grievance. The Forum, by its order dated 10.12.2019 has dismissed the grievance. The Forum failed to understand the basic issue of grievance and not given clear picture of the situation.
- (ii) According to the Respondent, they have made seven to eight attempts to replace the meter and the Appellant did not allow to replace it. This is not true. In fact, the Appellant did not receive a single notice for replacing the defective meter from the Respondent mentioning the appointment given to the Appellant with time and date.
- (iii) On the contrary, the Appellant had written letter to the Respondent, Divisional Engineer on 13.7.2016 to come for replacement of meter with prefix appointment mentioning time and date. But the Respondent failed to reply the letter dated 13.07.2016 for nearly sixteen months. The Respondent demanded the copy of the said letter on 26.10.2017, and the Appellant immediately handed over copy of the letter on the same day i.e. on 26.10.2017.
- (iv) The Respondent, by its letter dated 7.11.2017 has given appointment for replacing the meter on 22.11.2017. But they did not reach in scheduled time and came late about two and half hours. The Appellant had already left from his house.

  
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- (v) The Respondent sent its Vigilance team on 27.11.2017 at about 12.30 p.m. without informing the Appellant. The Appellant was not present at his house. The Respondent replaced the meter by way of bullying and by force. The Respondent threatened the Appellant on phone for calling police.
- (vi) The Appellant filed complaint with the Respondent's General Manager (Supply) on 28.11.2017 for this instance of misbehaviour by Vigilance Department.
- (vii) It is the case of defective meter. However, the Respondent illegally charged the Appellant on the basis of latest average recorded on the meter for entire period from 02.12.2014 to 28.11.2017 instead of only for three months as per average stipulated for defective meter as per Regulation 15.4.1 of the Supply Code, though the Appellant was not at fault.
- (viii) The Respondent does not follow the rules and regulations of the Commission and sent its staff at their own convenient date and time, normally after 12.30 p.m. in afternoon when no male person is present. The Respondent did not inform the consumer in advance.
- (ix) The Appellant pointed out that when the display of the meter is defective then the Respondent should charge as per the average of previous month reading. But in this case the Respondent prepared the amendment bill on the average of new meter for three years i.e. 02.12.2014 to 28.11.2017 instead of procedure described in Regulation 15.4.1 of the Supply Code Regulations.
- (x) The Appellant, therefore, prays that the Electricity Ombudsman to look into the matter and give justice to the Appellant.

4. The Respondent, by its letter dated 03.03.2020 filed its reply stating in brief as below:-

- (i) The Appellant is a residential consumer (No. 748-071-071\*5) at 7/27, 7<sup>th</sup> Floor, Milan Building, 87, Tardeo Road, Mumbai having Meter No. C104463 which was in service in the year 2014.
- (ii) Meter reader reported that the meter display was not visible. Hence a complaint having REC ID No. 2021300 was registered in the system on 05.12.2014 under smoky/rusty meter category. Work order for meter replacement was sent on 14.02.2015.

  
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- (iii) The Respondent staff has visited the premises for replacement of meter on 02.03.2015, however, the Appellant did not allow Respondent to replace the meter and instead asked for intimation letter. A letter was sent to the Appellant on 11.03.2015.
- (iv) The Respondent visited the premises for replacement of meter on 06.04.2015. At that time also the Appellant did not allow the Respondent to replace the meter. Subsequently, the Respondent visited his premises on 23.12.2015, 15.03.2016, 09.07.2016 and 17.01.2017 for replacement of meter. However, every time he has not allowed the Respondent to replace the meter.
- (v) The Transmission and Distribution Information Management System (the system) generated letters were sent to the Appellant on 02.03.2015, 6.04.2015, 12.05.2015, 23.12.2015, 15.03.2016, 09.07.2016 and 17.01.2017 with a request to allow replacing the meter. Finally, the meter was replaced on 27.11.2017.
- (vi) The Occupier Appellant is Licensed Electric Contractor and he informed the Respondent, Meter Inspector that he would meet the Respondent higher officials.
- (vii) When the Appellant was contacted on telephone immediately, he raised new issue that he has not received any reply regarding letter having Inward No.1174 dated 14.07.2016. The Respondent searched for the letter in Department but could not find it. Hence, the Appellant was requested to forward the copy of the letter so as to give reply to him. But in spite of repeated reminders on telephone, he did not submit copy of the letter. Finally, he submitted copy of letter vide Inward No. 2370 dated 26.10.2017.
- (viii) The Appellant raised unwarranted other questions in the said letter. The Respondent has replied the questions vide CCE/SCCE/995/2017 dated 07.11.2017 and delivered the letter by hand delivery.
- (ix) During his visit on 26.11.2017, he requested to give him Meter No. and test reports of the new meter. In view of this, vide letter DyCCE/994/17 dated. 07.11.2017 the Respondent had handed over test report of Genus make meter No.B179720 by hand delivery and taken his signature as a token of receipt of the letter for meter replacement on 22.11.2017.
- (x) In spite of this, he did not allow to replace the meter on 22.11.2017. When he was contacted on phone, he told that Respondent should install only L&T make meter.

  
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He was informed about the provision of Regulations that he can also procure new meter, which can be installed after testing in Laboratory. But he did not purchase the meter. This shows that he deliberately avoided meter replacement to misuse the provisions of the Electricity Act, 2003 (the Act)/Rules.

- (xi) As the Appellant had meter of Genus make only and not having L&T make meters, the Respondent arranged for L&T make meter No. E145863 from IRE Section Dadar on 24.11.2017. After receipt of the meter from internal source, the Respondent contacted the Appellant. However, he informed that he wanted to inspect the meter personally and would visit office in afternoon. But he did not visit the office. On 27.11.2017, the meter was removed by the Respondent Vigilance Department and installed the new meter.
- (xii) Old Meter No. C104463 was tested in laboratory on 18.07.2018 in Appellant's presence and found defective. On scrutiny, it is observed that average consumption recorded on new meter is much higher than the average units charged to the consumer from 2015 till date of meter replacement. It is pertinent to mention that the Appellant had complained to the Respondent General Manager (G.M.) that the Respondent officer of Vigilance Department and Divisional Engineer Customer Care E Ward threatened with police complaint, the matter was discussed with G.M.in presence of consumer.
- (xiii) The fact is that the Appellant did not allow the Respondent to replace the meter in time on some pretext or the other on number of occasions. It was proposed to amend the consumer's A/c for the period from 2.12.2014 to date of meter replacement i.e.27.11.2017. The meter replacement was delayed due to objection of the Appellant. There is a drastic rise in consumption after meter replacement.
- (xiv) Meter was found defective from 28.10.2014 i.e. October 2014, however the Respondent made amendment from 2.12.2014. Hence, the Appellant's bills were amended for the period from 02.12.2014 to 28.11.2017 and an amount of Rs.69,668.27 was debited in the bill month of May 2019.
- (xv) The Appellant filed complaint before the IGRC on 17.07.2019. The IGRC by its letter dated 22.07.2019 has requested him to pay the amended bill.
- (xvi) Not satisfied with the above reply, the Appellant approached the Forum for his grievance. The Forum, by its order dated 10.12.2019 has rightly dismissed the

  
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alleged grievance. The Forum observed that the complainant, intentionally not allowed the BEST Undertaking to replace the meter, as he was getting less electricity charges. The complainant cannot get benefit of his own wrong doing.

(xvii) The Respondent put on record the following facts for consideration :-

It is pertinent to mention that vide his letter dated 13.07.2016, the Appellant has communicated that

*“Also on that day on phone I came to know from your staff that meter reader dept is sending estimated reading to you for last 2 to 3 months. And then today i.e. after 2 to 3 months, BEST staff had come to change the faulty meter as per meter reader report without giving intimation to the consumer.”*

(xviii) The estimated units are being charged to him since October 2014 and the consumer has accepted that BEST staff visited his premises for meter replacement. Thereafter, letter was sent to him but he /his family did not accept it. Thereafter, on various occasions the Respondent sent system generated letter but same was not accepted by him or his family. It means that he knew that the meter is defective, but did not allow replacing it. He is Licensed Electrical Contractor and is fully aware of provisions of the Act and in view of this he objected for meter replacement to misuse the provisions of defective meter amendment for 3 months. As he did not allow to replace the meter in spite of repeated attempts the Respondent lost sizable revenue. Moreover, as consumer gesture, the Respondent did not invoke Section 163 of the Act and made various attempts to entertain his queries. We had tried to replace the meter on 02.03.2015 i.e. within 3 months of the system generated ID and there was no delay in taking action for meter replacement on Respondent's part. In the circumstances, the Respondent could not replace the meter as he had not allowed replacing the meter. Further, the Respondent had made 7 attempts to replace the defective meter. Hence, the amendment carried out by the Respondent is on the basis of the units recorded by replaced meter is proper.

(xvii) The Respondent prays that the Representation of the Appellant be rejected.

  
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5. While registering this representation, the Appellant was requested to deposit Rs. 25,000/- as per Regulation 17.9 of the CGRF Regulations and as per order of the Forum. The said Regulation is reproduced as below:-

*“17.9 The Electricity Ombudsman shall not entertain a representation:  
“(e) unless the consumer has deposited in the stipulated manner, fifty percent of the amount, if any, that is required to be paid by him in terms of the order of the Forum or twenty-five thousand rupees whichever is less; and .....”*

The Appellant vide its letter dated 05.02.2020 requested to allow the deposit of Rs. 15,000/- initially due to financial crunch and submitted written undertaking that the balance of Rs. 10,000/- will be paid in ten days. The Representation was registered on 11.02.2020, however the Appellant did not pay the balance amount of Rs.10,000/- as per Regulation 17.9 of the CGRF Regulations till the writing of this order. Therefore, this issue has been taken on record.

6. The hearing was scheduled on 18.03.2020 in the office of the Electricity Ombudsman as per notice dated 05.03.2020. As a matter of routine procedure, the Appellant was telephonically informed about the scheduled hearing. However, the Appellant requested that the hearing be postponed for his personal reasons. The request was sympathetically considered and the hearing was postponed. The Respondent was accordingly informed.

7. Thereafter, with the onset of Covid-19 epidemic and circumstances arising out of it, the hearing could not be conducted. Since then the conditions were not conducive for conducting the usual hearings through physical presence, all hearings were scheduled on e-platform through video conferencing from the month of June 2020.

8. The Secretariat of this office tried many times to contact the Appellant on telephone to schedule the hearing in second week of June 2020, however there was no response from him. The hearing was scheduled on 17.06.2020. Even for this hearing, the Appellant was contacted on telephone. In the interest of natural justice, the hearing was again postponed. Immediately, the next day i.e. 18.06.2020, a Short Message Services (SMS) was sent to the Appellant to inform his availability so as to reschedule the hearing. The Appellant vide his email dated 25.06.2020 conveyed that his health was not well and requested to postpone further for 3 to 4 months so that he will come to office for further discussion. However, the hearing was

  
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scheduled on 16.07.2020 as it was not proper to keep the hearing pending for next couple of months. Moreover, despite giving many chances to attend the hearing, the Appellant could have appointed his authorised representative or any family member to attend the hearing on e-platform but he did not do so and was interested in keeping the case pending in for further period.

9. During the hearing on 16.07.2020, the Appellant nor his representative participated despite the fact that the secretariat of this office made sincere efforts for hearing on e-platform by sending an appropriate link to join. The Appellant informed through email dated 14.07.2020 that he will not be able to attend the hearing and requested to postpone it. He could have well attended the hearing as it was on e-platform through video conferencing. Therefore, it is decided to proceed ahead with the hearing with the written submission of the Appellant in the representation.

10. The Respondent who was present on e-platform argued in line with its written submission. The Respondent argued that the Appellant is Licensed Electrical Contractor knowing all rules and regulation therefore trying to take undue advantages of the System. The Respondent argued that they had made seven attempts to replace the meter by visiting the premises, however, the Appellant did not allow to replace it. The Respondent issued letters to the Appellant through the System. The record of the System clearly state the facts. The meter was replaced on 27.11.2017 by the Vigilance team. The Respondent issued letters to the Appellant dated 27.11.2017 and 21.12.2017 to witness the testing of the meter in the testing laboratory, however he did not turn up. On the contrary, he is making propaganda that the Respondent did not test the meter. The Respondent frequently contacted him for testing the meter and finally, the old meter was tested on 11.07.2018 in presence of the Appellant. The consumption of the new meter was found 3858 units for the period 18.12.2017 to 14.12.2018 for 12 months with average of 304 units per month. The arrears of the Appellant has accumulated and reached upto Rs.1,02,738/-. The Appellant was billed for the period July 2015 to 27.11.2017 (date of meter replacement) for about 56 units per month instead of in the range of 300 units. The Respondent sent copy of the reply to the Appellant, however, he did not accept the hand delivery hence it was sent by registered post. This clearly shows his attitude towards the Respondent. Hence, the amendment carried out by the Respondent is correct on

  
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the basis of the units recorded by replaced meter for 12 months. The Respondent pointed out that the Appellant consumed 290 units, 281 units and 353 units on July 2013, August 2013 and August 2014 respectively. The Respondent prays that the Representation of the Appellant be rejected.

### **Analysis and Ruling**

11. Hearing was held on 16.07.2020 through e-platform. The Respondent was present for the hearing however, the Appellant was absent. I perused the documents on record and gone through the efforts taken by the Respondent to replace the faulty meter. I also observed the conduct of the Appellant, who is the Licensed Electrical Contractor who knows electricity business very well, in not allowing the meter to be replaced particularly, when its display is faulty. As a matter of fact, as a man who knows business, he should have himself taken positive steps to replace the meter. I also observed that his conduct in postponing the hearing on the flimsy ground particularly when he could have well attended the e-platform hearing from the safety of his own house. He knows very well that the present atmosphere is not conducive for conducting physical hearing. He should have voluntarily opted for e-hearing, however, he was more interested in postponing the hearing.

12. The meter of the Appellant was found smoky/rusty as per the system report dated 05.12.2014. Hence, the Respondent wanted to replace the said meter. According to the Respondent, they have made umpteen attempts to replace the meter but the Appellant did not allow to replace it. According to the Appellant, the Respondent did not take prior appointment for replacement of meter mentioning time and date. On one occasion the Respondent had intimated the Appellant the scheduled date and time however the Respondent itself did not follow the time. This resulted delay in meter replacement. The Respondent sent its Vigilance team on 27.11.2017 for replacement of the meter and the meter was replaced. The old meter was tested on 11.07.2018 when it was found defective. The Respondent observed that average consumption recorded on new meter is much higher than the average units charged to the consumer for disputed period of defective meter. After the replacement of the meter, the Respondent observed that the average of 304 units per month was recorded for one year after replacement of the meter for the period 18.12.2017 to 14.12 .2018. The Responded debited Rs.69,668.27 for assessment as per consumption pattern of 304 units per month in the bill of

  
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May 2019 towards amendment of bill of defective meter for the period from December 2014 to December 2017. The Appellant raised the dispute as amendment is not in line with Regulation 15.4.1 of defective meter of the Supply Code Regulations. The Respondent pointed out that the Appellant consumed 290 units, 281 units and 353 units in July 2013, August 2013 and August 2014 respectively. Therefore, the consumption of the Appellant is in the range of 300 units per month and it has billed the Appellant at the average of 304 units per month.

13. Considering all these aspects, the Forum in its order dated 10.12.2019 in reasoning part has correctly observed as follows:

*“3.0 Having regards to the above said submission, the question poses before us is as to whether the amendment carried out on the basis of units recorded by new meter is justified or not ? On this point we have cautiously gone through the record exhibit D i.e. Transmission & Distribution Information Management System and it reveals that for 7 times the Respondent BEST Undertaking made attempt to replace the meter and it is the complainant who did not allow them to replace it. It reveals that from time to time the distribution licensee issued the letter to the complainant and they were visiting the premises of the complainant for replacing the meter. It further reveals that the Respondent BEST Undertaking with the help of Vigilance Department replaced the meter C104463 and installed new meter number C170827.*

*4.0 The complainant has further submitted that, the meter was not tested before him and no communication was issued to him informing the date of testing of meter. We have gone through the record and it reveals that on 27/11/2017, 21/12/2017 and 11/07/2018 the Respondent BEST Undertaking issued letter to the complainant informing to remain present on the date mentioned in the letter for testing of meter. The Respondent BEST Undertaking has placed the report which on page no 23/C and it reveals that meter found no display, no pulse output, no communication, hence meter accuracy cannot be taken. Thus the said meter was found defective. It reveals that the son of the consumer has signed on the Test Report . From the record, it is crystal clear that, the complainant did not allow the Respondent BEST Undertaking to replace the meter as well as did not remain present on the date of testing of meter. This conduct on the part of the complainant goes to show that he was intending to take benefit of low units recorded by the defective meter.*

*5.0 Having regards to the above said reasons, we have least hesitation to arrive at conclusion that, the amendment carried out by the Respondent BEST Undertaking on the basis of units recorded by newly replaced meter is legal and proper. We are saying so because we have gone through the consumption pattern of old meter for the month of September, October and November 2014 and consumption recorded was 244 units, 195 units and 198 units respectively. We have also gone through the consumption recorded by replaced meter C170827 and same is in between 213 to 382 units per month. Considering this consumption pattern, it cannot be said that the amendment bill carved out on the basis of units recorded by newly replaced meter is excessive. We know that, as per Regulation 15.4.1 the Respondent BEST Undertaking is required to carry out the amendment for the period of three months in case of defective meter.*

  
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*But this case is not governed by Regulation 15.4.1 as the complainant by his own act not allowed the Respondent BEST Undertaking to replace the meter and therefore he cannot take the benefit of his own wrong and claim benefit as per Regulation 15.4.1. We have gone through the record and reveals that on the basis of units recorded by replaced meter the Respondent BEST Undertaking has carved out average 304 units per month. The record goes to show that the Respondent BEST Undertaking has given credit of units charged by old meter and there after prepared amendment bill by giving slab benefit.*

6.0 .....

*7.0 For the above said reasons we have arrived at the conclusion that the amendment carried out by the Respondent BEST Undertaking on the basis of units recorded by replaced meter is proper as it is the complainant who intentionally not allowed the Respondent BEST Undertaking to replace the meter as he was getting less electricity charges. It appears that the complainant has not come to Forum with clean hands. The complainant cannot get benefit of his own wrong. Thus the complaint deserves to be dismissed.”*

14. I am of the opinion that the Appellant with an ulterior motive to derive an advantage of the provision for billing of defective meter, he somehow tried to delay the replacement of faulty meter. The Appellant appears to have wilfully not touched the issue of his consumption in the range of 300 units prior to the period the meter going defective and after the meter is replaced. Moreover, I noted that despite follow up from the secretariat of this office and his declaration in writing to pay the balance amount of Rs.10000/- towards deposit, the Appellant has not till this date deposited the balance. Therefore, I am of the opinion that when the Appellant prays for equity, he is supposed to do equity. The case fits into the maxim ‘*He who seeks Equity must do Equity*’ Unfortunately, he is reluctant to perform his roles and responsibilities bestowed on him by the Common Law. He, therefore, does not deserve the benefit of provision under Section 15.4.1 of the Supply Code Regulations as the intention of the Regulation does not envisage the situation of the present case. The Forum has rightly observed that the Appellant has not approached it with clean hands and so is the case with this office.

15. It is not understood why the distribution licensee did not invoke the provision of Section 163 of the Act which is reproduced below:-

*“Section 163. (Power for licensee to enter premises and to remove fittings or other apparatus of licensee):  
--- (1) A licensee or any person duly authorised by a licence may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is, or has been, supplied by him, of any premises or land, under, over, along, across, in or upon which the electric supply-lines or other works have been lawfully placed by him for the purpose of—*

  
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(a) inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus for the supply of electricity belonging to the licensee; or  
(b) ascertaining the amount of electricity supplied or the electrical quantity contained in the supply; or  
(c) removing where a supply of electricity is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric supply-lines, meters, fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by an Executive Magistrate and after giving not less than twenty-four hours notice in writing to the occupier, -

(a) enter any premises or land referred to in sub-section (1) for any of the purposes mentioned therein;  
(b) enter any premises to which electricity is to be supplied by him, for the purpose of examining and testing the electric wires fittings, works and apparatus for the use of electricity belonging to the consumer.

(3) Where a consumer refuses to allow a licensee or any person authorised as aforesaid to enter his premises or land in pursuance of the provisions of subsection (1) or, sub-section (2), when such licensee or person has so entered, refuses to allow him to perform any act which he is authorised by those subsections to perform, or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry of twenty-four hours from the service of a notice in writing on the consumer, cut off the supply to the consumer for so long as such refusal or failure continues, but for no longer.”

16. The order of the Forum is reasoned and speaking order, there is no need to review the same. Therefore, the representation is disposed of accordingly. However, the Respondent may grant suitable instalments for payment of the bill if the Appellant so desires. In the event, the Appellant at any point of time, intend to have payment to be made in instalment, he should approach the licensee within 15 days from the date of this order after which, the licensee is free to proceed ahead with appropriate action in accordance with Rules, Regulations and the provisions of the Act.

17. The secretariat of this office is directed to adjust the amount of Rs.15000/- by transferring it to the Respondent so as to adjust it in the bill of the Appellant.

18. The secretariat of this office is directed to send a copy of this order to the General Manager, BEST Undertaking.

Sd/-  
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Electricity Ombudsman (Mumbai)

  
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