

		Date	Month	Year
1	Date of Receipt	05	07	2023
2	Date of Registration	05	07	2023
3	Decided on	17	08	2023
4	Duration of proceeding	43 days		
5	Delay, if any.	—		

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,

BEST's Colaba Depot

Colaba, Mumbai - 400 001

Telephone No. 22799528

Grievance No.R-D-483-2023 dtd.05/07/2023

B.E.S.&T. Undertaking

(.....Review Applicant/Respondent in original
grievance Application No. 483/2023)

V/S

Shri Irfan Pathan

(.....Respondent/Complainant in
original grievance Application No.D-483/2023)

Present

Chairman

Coram :

Shri S.A. Quazi, Chairman

Member

1. Smt. Anagha A. Acharekar, Independent Member
2. Smt. Manisha K. Daware, Technical Member

On behalf of the Review-
Applicant (Original Respondent)

: 1. Shri Prashant R.Patil

On behalf of the Respondent
(Original Complainant)

: 1. Shri Ibrahim Mansuri

Date of Hearing

: 08/08/2023

Date of Order

: 17/08/2023

[Handwritten signatures and dates]
17.8.23

Judgment

- 1.0 This is a review application under clause 7.9 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (MERC (CGRS & EO) Regulation, 2020). This review application is filed by the BEST Undertaking / the Distribution Licensee with a request to review the order dtd. 07/06/2023 passed by this Forum in grievance application no. D-483-2023, in respect of consumer a/c no. 815-291-049.
- 2.0 By the aforesaid order dtd. 07/06/2023, this Forum had allowed the grievance of the present Respondent (original complainant / consumer). The operative part of the said order dtd. 07/06/2023 is quoted as under :

"The grievance no. D-483-2023 dtd. 29/03/2023 is allowed in following terms :-

- a) The Respondent is directed to withdraw its demand of Rs. 88,806.00 made to the complainant and to issue modified bills on the basis of the actual consumption recorded during the period from 30/11/2021 till the date of removal of the meter. The Respondent shall comply with this direction within one month from the date of receipt of this order.*
- b) The complainant shall pay the dues of the electric charges as per the modified bills which shall be given to him by the Respondent as per the direction given in clause (a) herein above.*
- c) After the complainant clears the dues as per the modified bills as directed in clause (b) herein above, the Respondent shall restore the supply to the premises of the complainant within 15 days."*

- 3.0 Hereinafter the Review-Applicant shall be referred to as Respondent / Distribution Licensee and the present Respondent shall be referred to as Consumer for the sake of convenience in understanding the nomenclature of the parties to the present review application with reference to their nomenclature in the original proceeding of the grievance No. D-483 of 2023.
- 4.0 In the review application, the Distribution Licensee has submitted that the aforesaid order under review dtd. 07/06/2023 was passed on the contention of the complainant / consumer that the possession of the premises was not taken by him till November 2021 although the premises had been allotted to him on 30/05/2017 by his employer Municipal Corporation Greater Mumbai (MCGM). It is further contention of the BEST Undertaking that after passing of the order under review, the officials of the

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Distribution Licensee approached to the Estate Officer of MCGM who had allotted the tenements in 'D' ward for the staff and officers of MCGM. Estate Officer has communicated to the BEST officials that the quarter was allotted to the complainant Shri Irfan Pathan on 30/05/2017. The Estate Officer of MCGM has already provided document regarding handing over and taking over of the premises. The copy of that document is annexed with this review application as Exhibit 'A'.

- 5.0 It is further case of the Review Applicant / Distribution Licensee that the said document of handing over and taking over of the premises was mutually signed by the MCGM authority and incoming tenant by physical inspection of the premises after taking over the possession of the premises by the allottee (herein the complainant Shri Irfan Pathan). As per that letter, the premises were taken over by Shri Irfan Pathan on 03/06/2017 whereas the premises were allotted to him on 30/05/2017. Moreover, said premises are in custody of Shri Irfan Pathan till date. The MCGM has also provided document by name Leave & License Agreement dtd. 05/06/2017. The said term in the agreement confirms that he had taken possession in June 2017. The MCGM has also provided a copy of document i.e. letter from AO Estate MCGM to the Estate Officer dtd. 30/05/2017. Copy of this letter is also annexed by Review Applicant and marked as Exhibit 'C'. By this letter, the AO Estate had informed to the Estate Officer that if the possession of the premises is not taken within 10 days from 30/05/2017 then they have to intimate to the AO Estate and premises should not be re-allotted till assuring their clearance. In the instant case there is no such incident happened as per the record of MCGM. Hence according to the BEST, it can be confirmed that Shri Irfan Pathan has continued and confirmed that possession from 30/05/2017.
- 6.0 The further case of the BEST Undertaking in the review application is that during the hearing in the grievance application it was discussed before this Forum that this might be the case of theft of electricity u/s 135 of Electricity Act, 2003. However, it is the case of the BEST that this case falls under clause (a) and (b) of 138 of E.A., 2003 which are in respect of unauthorized connection of any meter by any instrument or unauthorized connection with any meter by indicator or apparatus with any line etc.
- 7.0 It is further case of the Distribution Licensee in this Review Application that the complainant had unauthorizedly connected the meter and continued to use electricity without consent of the BEST Undertaking resulting loss of 11,004 units costing of Rs. 88,806/- during the period from 30/05/2017 to 30/11/2021. Since the complainant Shri Irfan Pathan did not approach the BEST Undertaking for change of name after allotment of the premises to him on 30/05/2017, the meter was not assigned in the record of the BEST Undertaking called as OLCC system and the consumer's account was not generated for monthly reading and subsequent billing. However, the meter reader had taken intermittent reading of this meter as extra

meter from which it was seen that there was progressive consumption recorded by meter.

- 8.0 Therefore, in the review application, it has been requested that the order dtd. 07/06/2023 be reviewed and be modified and the original complaint of the consumer Shri Irfan Pathan be dismissed. It is also requested in the review application that the complainant Shri Irfan Pathan be directed to pay Rs. 88,806/- to the BEST Undertaking towards the consumption of 11004 units for the period from 30/05/2017 to 30/05/2021.
- 9.0 The consumer / original complainant Shri Irfan Pathan has filed his reply and opposed the aforesaid review application strongly. It is submitted by him that the electric supply was already disconnected after the earlier occupier had left the premises. Thereafter, only on the application of Shri Irfan Pathan the electric supply was restored in November 2021. Therefore, the entire case of the BEST Undertaking that there was consumption of electricity from 30/05/2017 to 30/11/2021 is not at all believable. It is submitted that the said contention of the BEST Undertaking is without any proof that the complainant Shri Irfan Pathan utilized the aforesaid amount of 11004 units of electricity during the period from 30/05/2017 to 30/11/2021. It is submitted that this Forum has rightly allowed the grievance application by its order dtd. 07/06/2023. The representative of the consumer Shri Ibrahim Mansuri has submitted that the review application is liable to be dismissed.
- 10.0 We have heard the submissions of parties and noted their submissions as above. In view of the above submissions of the parties and case pleaded by them, the following **points arise for determination**, on which we record our findings as under, for the reasons to follow.

Sr. No.	Points for determination	Findings
1	Whether the order dtd. 07/06/2023 is required to be modified by making a review thereof as requested in the review application ?	In negative
2	What order is required to be passed to disposed off the present review application?	The review application is required to be rejected as is being directed in the operative order being passed herein below.

11.0 We record reasons for the above findings, as under:


- a) Before discussing further facts of the case, it is necessary to clarify that the judgment/order passed by us in grievance no. D-483-2023 was dtd. 25/05/2023. Thereafter, it was noticed that name of the consumer Shri Irfan Pathan was wrongly mentioned in the judgment dtd. 25/05/2023 as, Shri Irfan Patel. When the secretarial staff of this office pointed out this error, it was rectified under our signatures on the original judgment. Our those signatures were put on 07/06/2023. Therefore, it appears that Review Applicant / BEST Undertaking has mentioned that the order under is dated 07/06/2023 in their review application, whereas actually it was passed on 25/05/2023 and the error mentioned above was rectified on 07/06/2023. Therefore, herein after we will refer the said judgment under review as dtd. 25/05/2023.
- b) We have perused the record of the grievance no. D-483-2023 and our detailed order passed therein. On perusal of the said judgment, it is seen that whatever facts have been mentioned by BEST Undertaking / Distribution Licensee in this review application, they were already pleaded by them in the grievance no. D-483-2023 (a) that allotment of the premises to the complainant Shri Irfan Pathan on 30/05/2017, (b) that the case of the BEST Undertaking being that from 30/05/2017, the premises was in possession of the complainant Shri Irfan Pathan (c) that, therefore the consumption recorded from 30/05/2017 to 30/11/2021 was actually consumed by Shri Irfan Pathan and (d) the said consumption by the complainant was unauthorised. All these facts are already appearing in earlier reply of the BEST Undertaking filed in the original grievance No.D-483-2021. Again same facts are pleaded in the present revise application to seek review of the earlier order dated 25.5.2023. No new fact appears to have been brought on record in this review application.
- c) We have examined all the facts mentioned in this review application. We find that while passing our judgment order dtd. 25/05/2023, we have already taken into consideration all these relevant aspects, as mentioned in the review application. The operative part from the judgment dtd.25/05/2023 has already been quoted herein earlier. We have also examined and recorded our findings on the issue regarding allegations of the unauthorized consumption of electricity from 30/05/2017 to 30/11/2021. In the order under review, we have observed that if the case of the BEST Undertaking is there was unauthorized consumption of electricity during the period from 30/05/2017 to 30/11/2021 then the BEST Undertaking ought not to have given the bill for such unauthorized consumption, against which the aforesaid grievance no. D-483-2023 was filed before this Forum. We have observed in the order review that in such a case, the BEST Undertaking could have adopted the procedure laid down u/s 126 of E.A., 2003 i.e. in respect of theft of electricity. Now in the review application it is submitted by BEST Undertaking that the unauthorized use of electricity in the present case falls u/s 138 of E.A., 2003 and therefore review is sought. However, we

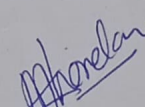
hereby observe that even if it is so, our findings and the operative order would not change. It is so because, ultimately the case of the Respondent/BEST Undertaking against the complainant could be about theft of electricity. The unauthorized consumption of electricity in both the circumstances i.e. either u/s 126 or u/s 138 of the Electricity Act, the procedure ought to have been adopted by the BEST Undertaking for unauthorized consumption of electricity. In such case of unauthorized consumption of electricity or theft of electricity, the Distribution Licensee cannot charge by issuing a bill as in normal course it is done. In the instant case the BEST Undertaking has issued a bill as if the consumption was authorized. Therefore, we have held that the procedure adopted by BEST Undertaking was incorrect in respect of issuance of the bills for consumption for the period from 30/05/2017 to 30/11/2021. Therefore, we have allowed the grievance application and passed the aforesaid order.

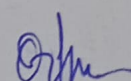
- d) For all the aforesaid reasons we do not find any error apparent on the face of record of the Order under review nor any new fact or evidence is brought on record. Therefore, we do not find that it is the Order date 25.5.2023 required to be reviewed and modified by us as requested in the review application. Hence, we have recorded negative findings in point no. (1).
- e) In view of the above findings, the review application is liable to be rejected. Accordingly we have answered point no. (2) and pass the following order.

ORDER

- 1.0 The grievance no. R-D-483-2023 dtd. 05/07/2023 (Review Application) is rejected.
- 2.0 Copies of this order be given to all the concerned parties.


(Smt. Mahisha K. Daware)
Technical Member


(Smt. Anagha A. Acharekar)
Independent Member


(Shri S.A. Quazi)
Chairman