

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. 22853561

Representation No. N-F(S)-54-08 dt . 03/10/2008

Asharul Islam Mohd. Ibrahim SiddiqiComplainant

V/S

B.E.S. & T. UndertakingRespondent

Present

Quorum 1. Shri. M.P. Bhave, Chairman
2. Shri. S. P. Goswami, Member
3. Smt. Vanmala Manjure, Member

On behalf of the Complainant 1. Shri. Asharul Islam Mohd. Ibrahim Siddiqi
2. Shri. Riyaz A. Ismail Dimtimkar

On behalf of the Respondent 1. Shri. V.N. Tambe, Supdt CC (E-Ward)
2. Shri. Mohan Parthasarathy, OACC (E-Ward)
3. Shri. P.V. Dhoble, Dy.LA (Vig)
4. Shri. G.D. Deshmukh, Supdt. (Vig)

Date of Hearing: 04/11/2008

Judgment by Shri. M.P. Bhave, Chairman

Shri. Asharul Islam Mohd. Ibrahim Siddiqi, Mazgaon, Mumbai – 10 has come before this Forum for his grievance regarding restoration of Electric Supply on Installation/Reconnection of new meter in lieu of the old meter and waiving of the provisional claim of Rs.5,38,265/-.

Brief history of the case

- 1.0 The complainant was consumer in respect of electricity meter No.0917084 installed at shop No.10, Sitaphal Wadi, Mazgaon, Mumbai-400 010.
- 2.0 The complainant was accused No.2 in the criminal case No.175/P/2002 lodged on 1/12/1999 by Byculla Police Station, regarding an offence of theft u/s 39 r/w 44 of the Indian Electricity Act, 1910.
- 3.0 The complainant's meter having No.0917084 was in custody of vigilance department since 1st December, 1999.
- 4.0 The complainant was acquitted by the Hon'ble Court of Metropolitan Magistrate, Mazgaon Court from the offence of the theft on 10/04/2002.
- 5.0 The complainant through his advocate sent notice to the General Manager, BEST on 06/04/2004 to restore Electric Supply by installing the old meter No. 917084 at his installation or a new meter saying that he is ready to incur the necessary charges for the re-installation of meter, failing which he will approach the appropriate court for redressal of his grievances.
- 6.0 On 25/09/2007 BEST replied the R.T.I query of the complainant stating that civil liability of Rs.5,38,265/- is to be paid by the complainant as the Hon'ble Court has not mentioned anything regarding waiving of the vigilance claim of Rs.5,38,265/-.
- 7.0 The complainant made application for reinstallation of the meter vide requisition No.50840967 dtd. 1/8/2007.
- 8.0 On 03/12/2007 complainant through his advocate informed Deputy Chief Engineer (Vigilance Review Committee), BEST to restore the electric supply at his installation saying that he is ready to pay the necessary charges for installation of new meter.
- 9.0 The complainant approached to Divisional Engineer, Vigilance in annexure 'C' format on 22/7/2008 for restoration of electric supply on installation/reconnection of new meter in lieu of the old meter and further waiving of provisional claim of Rs.5,38,265/- raised by vigilance department on 1/12/1999.
- 10.0 As he has not received any reply against his grievances in annexure 'C' format he has approached Forum in schedule 'A' format on 3/10/2008.

Consumer in his application and during Hearing stated the following

1. The complainant's case was in the Court of Metropolitan Magistrate, Mazgaon and Hon'ble Court had given judgment in his favor. He had

requested concerned dept. i.e. vigilance dept. of BEST vide his letter dtd. 03/12/2007 to implement that order and to waive or quash or set aside the notice dtd. 1/12/1999. He was not informed anything about the matter.

2. He said that he had lodged a complaint dtd. 21/07/2008 annexure 'C' to The Divisional Engineer, Vigilance Dept. BEST Undertaking, however more than 60 days have been passed, still his grievance was not solved or replied by the department.
3. He said that on or about year 2002, he was the original consumer no.515-731-003, meter no.0917084, inst.No.594195, however on or about by a notice dtd. 01/12/1999, addressed by the Divisional Engineer, Vigilance, inter alia alleging that he had committed an offence of theft u/s. 39 r/w 44 of the Indian Electricity Act. Accordingly his meter was taken in the custody of the Vigilance Dept. and thereafter the Vigilance Dept. lodged a complaint vide Criminal Case No.175/P/2002, wherein he was accused No.2 and was prosecuted for the said offence as mentioned above.
4. He said that he was acquitted in the above Criminal Case by the Hon'ble Magistrate's order dtd. 10/04/2002, inter alia the content of the order is that the Hon'ble Judge has rightly held that the accused has not tampered the meter as there is no evidence on record placed by the prosecution and hence the issue No.1 was decided in negative the same can be perused from the para No.26 of the said Order.
5. He further said that it is general principle of justice that once the accused has been acquitted for the offence they cannot be held liable for any compensation or damages unless and until there is an speaking order or direction from the Hon'ble Court, which in the instant case, he was been acquitted from the said offence of theft and hence the damages or compensation as claimed stand void and nullified.
6. It is pertinent to note that during the course of the trial, the BEST has already removed the said meter, after the said incidence the shop was closed for almost 9 years, therefore, he was not aware of the procedure for reinstallation of electric meter at the said premises, hence, through his power of Attorney Mr. Tawzihul Islam M.I. Siddiqi made application for reinstallation to the said BEST vide Reg. No. 50840967 dtd. 01/08/2007.
7. He said that after the said acquittal order his Advocate Mr. Badruddin M. Shaikh by a notice dtd. 05/04/2004 inter alia for restoration of the electricity supply by installing the said old electric meter no.0917084 at the said premises.
8. He further stated that he sent reminder through his Advocate Mr. Sajal Biswas dtd. 03/12/2007, inter alia to restore the electricity supply by installing a new meter of their own choice and he was ready and willing to pay necessary charges for installation of new meter. However, although the said notices were duly received by the concerned department, however they failed or neglect to reply the same till date.

9. He said that the Hon'ble Court in its order has not mentioned about the recovery of theft money and hence the question of recovery of theft amount does not arise at all.
10. He said that he had paid regularly the electric bills during the amended period and there was no theft done by the consumer and since the Hon'ble court has acquitted the consumer from criminal offence of theft, the BEST UNDERTAKING had not right of recovering the theft amount, the said claim is based on imaginary connected load, as per any rule and regulations constituted by the law of electricity act or MERC Regulations or any other in force.
11. He said that as per law, the liability lies with the licensee to keep accurate meters of the consumer and not with the consumers.
12. He said that as far as the RTI reply of the BEST is concerned it cannot be termed as reply of the BEST, as the same was for the purpose of only information and the same was not a complaint. Moreover, as mentioned by the BEST in their reply that the said Act was old Act and only criminal offence was only tried but civil liability remains same, if the said old Act is taken as it is then it was the duty of the BEST to raise the said issue before the Hon'ble Court, which they fail and since the consumer has been acquitted from the said offence, the BEST should have approached the appellate authority for their alleged claims or file recovery suit, which they failed and hence the said issue as of now cannot be decided or agitated as they have not raised the issue on earlier occasions, hence he said that their defense on this regard may not be considered and be rejected.
13. He said that the licensee is forcibly trying to recover the claim amount which is raised only on imaginary ground on connected load basis for the theft, which was not done by the consumer, besides the Hon'ble court's order and provisions in laws is in force. Hence we approach this Hon'ble forum to seek proper justice and to prevent the licensee from unjustifying their illegal claims against us.
14. He therefore prays before the forum to direct the Vigilance Dept. to waive or quash or set aside the notice dated. 1/12/1999 and to direct the Vigilance Dept. to give No Objection for installation of new meter to concerned dept. (Reqn/Appln. No. 50840967 dated. 01/08/07).

BEST in its written statement and during Hearing stated the following:

1. Although it is correct to say that Hon'ble Metropolitan Court, 17th Mazgaon Court have acquitted the consumer under C.C.No.175/P/2002, the civil liability of Rs.5,38,265/- due to the Undertaking under the criminal case, is still outstanding and it cannot be wiped out by order of the Hon'ble Metropolitan Court under the old Act.
In this respect consumer along with copy of order of Metropolitan Court had referred the case to DEVIG. Under R.T.I. Act, 2005 for restoration of electric supply. Same had been replied on 25-09-2007, stating therein that civil liability of Rs.5,38,265/- is to be paid by the

consumer as the Hon'ble Court have not mentioned anything regarding waiving of vigilance claim of Rs.5,38,265/-.

2. Our stand in regard to this case was already clarified vide our letter dated 25-09-2007.
3. Hon'ble Magistrate have not mentioned anything regarding waiving of civil liability of Rs.5,38,265/- due to the Undertaking.
4. As per the new Electricity Act, 2003, both the criminal and civil liability are decided by the Session Court, whereas as per the old Act only the criminal liability was being determined by the Metropolitan Court.
5. The consumer had made an application for reinstallation of meter vide requisition no.50840967 dated 01.08.2007 & in response to which we had forwarded letter to call upon us to fix a date of appointment for inspection of site & service position. However, the said requisition had been cancelled on 22.10.2007 for non compliance of the above requirement. In order to reconnect the supply it would be necessary for the requisitioner to clear earlier arrears of Rs.48,755.54 as on up to 12.09.2008 in respect of unpaid energy bills & claim in respect of theft of electricity of Rs.5,38,265/-.

As such the criminal case against the petitioner was disposed off by Hon'ble Metropolitan Magistrate, Mazgaon Court under the old act so the civil liability against the petitioner still remains and it cannot be wiped out by order of criminal court under the old Act.

6. As already stated at (1) above and already informed to consumer Shri. Asharul Islam Mohd. Siddiqi a new meter cannot be installed at his premises inspite of the fact, that the Hon'ble Metropolitan Court have acquitted him from the criminal part of the case as civil liability of Rs.5,38,265/- due to the Undertaking under the case is still outstanding. Moreover, the applicant also has to pay arrears in respect of unpaid bills of Rs.48,755.54 as outstanding up to 12.09.2008.

The electric supply to the consumer's premises can only be restored, after receipt of the vigilance claim & arrears amount. In case consumer is disputing the quantum of electricity used by him, the same can be referred for review (after receipt of 50% claim amt), based upon the legitimate evidence/documents produced by the consumer, if any, as per procedure in vogue in BEST.

Observations

1. The consumer has requested the reconnection without payment of any amount.
2. Complainant could not submit earlier paid bills except one bill dated 25/01/2000 which was partly paid. The consumer could not effectively explain why there are no dues pending against him.
3. Complainant's argument was that he was acquitted by Metropolitan Magistrate, Mazgaon Court from the theft charges. However, there is

no mention regarding waiving of the claim amount in the order passed by Metropolitan Magistrate.

4. Under the circumstance the review of the due amount is necessary.
5. BEST is ready to review the provisional claim after receiving 50% ad-hoc payment from the consumer.
6. The demand of 50% prepayment is a standard practice in normal case. However considering the fact that the consumer has been absolved of theft charges and claim amount stands to be thoroughly revised, there is no sanctity to 50% of amount claimed many years before. Hence consumer should be asked to make only token payment say of Rs.25,000/- towards unpaid bills (under review), before renewing the connection.
7. The amount should be reviewed in the light of the order of the metropolitan court. Not doing so may be seen as contempt of court.
8. The review should be comprehensive. After the review, no separate demand should be raised of any other type of arrears.
9. In the event of consumer refusing to pay the reviewed amount the BEST is free to take the necessary action as per the Rules and Regulations in force.

ORDER

1. Complainant is directed to pay Rs.25,000/- as an interim ad-hoc payment towards unpaid claim to the BEST.
2. BEST is directed to give electricity connection to the complainant at the earliest after receipt of an ad-hoc payment of Rs.25,000/-.
3. BEST is directed to review the outstanding amount considering that complainant is already acquitted from electricity theft charges by Hon'ble Metropolitan Court. Further, BEST is directed to inform the reviewed claim amount to the complainant accordingly. Suitable installments may be given if requested by the complainant.
4. The complainant is directed to pay the reviewed claim amount to BEST as per the time limits specified by BEST.
5. Copies be given to both the parties.

(Shri. M. P. Bhawe)
Chairman

(Shri. S. P.Goswami)
Member

(Smt.Vanmala Manjure)
Member