

Brief history of the case

1. Shri. Afzal A. Majid Patca & Bros is registered consumer of BEST Undertaking using electricity through Meter No. M061209 for Room No 29/F, Ground floor, Mariam Kantharia Chawl, Dharavi Cross Road, Mumbai – 400 017.
2. The consumer has approached licensee i.e. BEST Undertaking regarding withdrawing the recovery of outstanding arrears which according to him are dues of S.S.Ibrahim (A/c No. 798-540-077).
3. Consumer had earlier approached IGR cell, Consumer (N) division vide Annexure 'C' dated 6/3/2007 requesting to withdraw the recovery of amount of Rs. 1,38,167.14/- due from S.S.Ibrahim as he had occupied the premises in March 2005 & done change of name on 16/1/2006 from the name of previous consumer namely Mr. Ziauddin Siddiqui.
4. During his application vide Annexure 'C', he stated that old arrears of some body else can't be recovered from him. Written submission was submitted by him on 22/2/2007 to consumers (N) division explaining the facts.
5. As the complainant has failed to produce certain documents viz original copy of surrender Affidavit by Ziauddin Siddiqui and copy of the agreement between Shri. Afzal A. Majid Pacta & Bros and land lady as asked by the IGRC, BEST in letter dated 30/11/2007 states that "as you have not submitted the documents requested by us your complaint under Annexure 'C' is closed from our end". Not satisfied with the reply, the complainant approached CGRF on 18/12/2007.

Consumer in his application and during hearing stated the following

1. He has received letter from BEST Undertaking dated 10/1/2007 asking him to pay arrears of A/c No.798/540/077 in the name of S.S.Ibrahim. He had occupied the premises in March 2005 and done change of name on 16/1/2006 from the name of the previous consumer namely Mr. Ziauddin Siddiqui.
2. He has lodged original intimation of grievances to the BEST on 22/2/2007. So far no remedy provided by the BEST. He wants withdrawal of recovery of said outstanding dues of S.S.Ibrahim.
3. He has mentioned that he is a tenant in the premises and not a owner.
4. He has submitted only a surrender affidavit of Ziauddin Siddiqui and not the tenant receipt.
5. He feels that the arrears are from old consumer and they are not clear. Paper work is not clear. Hence, prayed for withdrawal of the arrears.

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

1. The meter No.L971545 was installed under A/c No.798-540-077 in the name of S.S.Ibrahim at Grd.Floor, S H- 29.1/1, Mariam – E – Kantharia, 10th Rd., Dharavi – 400 017. This meter was removed for non-payment of arrears of Rs. 1,38,167.14/ on 26/7/2000.
2. Site inspection was carried out by Outdoor Staff on 6/1/2004 and the O.S. amount was debited on A/c.No.798-552-037 standing in the name of Amina M.V.Shaikh, in

the month of March-2004 as per the report of Outdoor Staff stating that premises was same.

3. The O.S. debited to the consumer Amina M.V.Shaikh was disputed vide her Advocate's Letter dated 19/5/2004 stating that the arrears does not pertain to her and Shri. S.S.Ibrahim is already having factory at above address and may be recovered from him. However, the address of factory is not mentioned in the letter.
4. Re-investigation was therefore carried out on 14/9/2004 by Inquiry Inspector Shri. Nangre and on the basis of the report the O.S. amount was deleted from A/c.No.798-552-037 and was debited to A/c.No.798-040-003 in November 2004 standing in the name of the old consumer Shaikh S. Ibrahim the owner of old O.S. Premises.
5. Re-investigation was carried out on 10/1/2007 to recover the O.S. dues and as per the report, meter No.M061209 was found installed in the O.S. premises against A/c.No.798-552-025 in the name of A.M. Patca & Brothers.
6. Notice dated 10/1/2007 was thereafter served to A.M. Patca & Brothers vide Ref.No.SCN/OSGN/718/June-2003 dated 10/1/2007 and token disconnection was carried out on 15/2/2007.
7. Consumer A.M. Patca & Brothers vide their letter dated 22/2/2007 disputed the notice vide Annexure 'C' on 5/3/2007 stating that they had occupied the premises on March-2005 and change of name was effected by them on 16/1/2006. Hence they are not liable to pay arrears as per Clause 56(2) of I.E. Act, 2003.
8. The consumer, vide our letter Ref.No.SCN/Dy.Eng.GN/Annexure 'C'/9947/2007 dated 15/5/2007 was asked to submit documentary evidence to prove the purchase transaction. As the consumer had submitted only the copy of surrender Affidavit and failed to produce the original for verification inspite of repeated requests, intimation was again sent to him vide our Letter dated 18/9/2007 reminding him the contents of previous letter. However, the consumer did not approach the Ward Officer till 30/11/2007, he was informed vide out letter that his complaint under Annexure 'C' was being treated as closed at our end.
9. From the report submitted by Dy.E.O.S. Mr. Gosavi dated 17/4/2007 it is confirmed that the O.S. premises and the disputed consumer's premises are one and same. In support of the sketch drawn by Dy.E. Mr.Nagvekar, the papers submitted by the consumer for getting reconnection of supply and drawing drawn by the BEST Officials, it is evident that the premises is one and the same. Hence the claim of Rs. 1,38,167.14/- is in order and may be recovered from A.M.Patca & Brothers.
10. In view of the above, the consumer's request for relief is not justified. Hence consumer may be directed to pay the O.S. amount.
11. BEST informed that owner of the premises is not traceable.
12. Outstanding bill premises and the complainant's premises are the same.
13. Mrs. Amina M.V.Shaikh is currently not the consumer of BEST
14. 29H and 29F are the same premises. However, as per consumer they are different.

15. BEST informed that the consumer had failed to supply purchase document. However, if consumer produces authentic document of purchase his request can be considered as permitted in the Rules and Regulations.

Observations

1. The disputed amount is due to arrears of Mr. S.S.Ibrahim.
2. These arrears were demanded from Mrs. Amina M.V.Shaikh in the month of March 2004.
3. She contested with the letter and additional letter through the lawyer.
4. Going through both the letters it is observed that, Mrs. Amina M.V.Shaikh has not contested that, she was occupying premises where default occurred. These letters fully points that the original defaulter has an existing account (at the address which is not specified in the letter).
5. The BEST decided to put the arrears in the account of Mr. S.S.Ibrahim as pointed out by Mrs. Amina M.V.Shaikh. As per BEST's reply it had added the amount in this account. BEST has not specified why the recovery of the arrears failed in this case.
6. The applicant has specified that he has obtained change of name from previous consumer Mr. Ziauddin Siddiqui.
7. BEST has never denied this fact. If for the sake of the argument it is assumed that the applicant occupies the specified place, same is true for his predecessor. BEST has not explained why this amount was not recovered from this consumer.
8. Under normal circumstances, BEST is supposed to verify any claim on premises before affecting change of name.
9. Under Section 10.5 liability of a new consumer is limited to 6 months of arrears. BEST has failed to specify the period of arrears.
10. From written submission of BEST, Forum comes to the conclusion that BEST has failed to prove that the applicant occupies the place where the original default occurred.
11. Under these circumstances, fixing the liability of the arrears on the applicant will not be proper.

Differing observations by Member (BEST)

1. From the written submission of BEST, it is confirmed that, the consumer has failed to produce the documentary evidence to prove that O.S. premises and disputed consumer premises are different in IGR Cell as well as in CGRF.
2. Consumer has failed to produce documentary evidence to prove the purchase transaction in IGR Cell. Consumer has submitted only the copy of surrender Affidavit of Mr. Ziauddin Siddhiqui and failed to produce the original for verification in spite of repeated request from BEST. Because of no response from the applicant the case had to be closed by IGR Cell.
3. For proving that outstanding premises and disputed consumer premises are different, consumer was asked to produce more Authentic document regarding purchase of premises within 7 days from the date of hearing in CGRF. However, the consumer has not responded, inspite of having agreed during hearing.

4. BEST has been asked to produce the bills of Mr. Shaikh S. Ibrahim (A/c No 798-040-003) from the year 2003 onwards within 7 days from the date of hearing in CGRF and the same are submitted by BEST. It is found that O.S. amounts are transferred to S.S.Ibrahim's account No (A/c No 798-040-003).
5. It would have been appropriate that the consumer is directed to pay outstanding amount equivalent to total six months consumption from the complainant on the basis of yearly average monthly consumption of the last recorded consumption date of the Energy Meter of original consumer M/s. S.S.Ibrahim without any D.P.Charges.

ORDER

1. The BEST is directed to withdraw the demand from the consumer in 15 days time.
2. Copies be given to both the parties.

(Shri. M. P. Bhave)
Chairman

(Smt. Vanmala Manjure)
Member

(Shri S. .P.Goswami)
Member