

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-E-140-2012 dt . 06/03/2012

Bombay Workers' AssociationComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum :
1. Shri R U Ingule, Chairman
2. Shri S P Goswami, Member
3. Smt Varsha V Raut, Member

On behalf of the Complainant : 1. Shri Aboo Talib A.G. Shaikh
2. Shri. S.S. Nalawade

On behalf of the Respondent : 1. Shri. M.G. Mhatre, AOIGR(E)
2. Shri. V.K. Raul, Asst. Legal Advisor

Date of Hearing : 10/04/2012

Date of Order :

Judgment by Shri. R.U. Ingule, Chairman

Bombay Workers' Association, 1st floor, Room No. 26, 65/63A, 65/73A, Jumma Building known as Pinjari Chawl, K.K. Marg, Jacob Circle, Saat Rasta, Mumbai - 400011 has come before the Forum for their grievances regarding installation of new meter pertaining to A/c no. 536-495-001.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 02/11/2011 regarding their grievance of installation of new meter pertaining to A/c no. 536-495-001. The complainant has approached to CGRF in schedule 'A' on 06/03/2012 as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to direct the BEST Undertaking to install the meter immediately and to pay the compensation for failure to meet the SOPs .

**Respondent, BEST Undertaking in its written statement
in brief submitted as under :**

- 2.0 Respondent stated that meter No.A-107152 under A/c No.536-495-001 was installed on 24/09/1970 in the name of Shri Umesh Shanbaug. Darpal Investor Developer has requested vide letter dated 01/04/2009 that the old shops and houses have been demolished and the further work of demolition is in progress for implementation of rehabilitation scheme and further added that the condition of the service cabin has become dangerous as the adjacent premises have been demolished and requested to remove the meters. Accordingly, the site investigation was carried out on 16/10/2009 and noticed that 12 meters out of 23 single phase meters are lying idle on service position. We had therefore initiated MRA for 12 idle meters and removed those meters on 06/11/2009.
- 3.0 Shri Umesh Shrikant Shanbaug, BEST's registered consumer having A/c No.536-495-001 (Meter No.A-107152), the occupant of Room No.25, Pinjari Chawl, 65/73 K. Khade Marg, has informed vide letter dated 27/10/2009 that he has vacated the premises for redevelopment of the plot and requested to remove the Meter No.A-107152. The same meter was removed on 06/11/2009.
- 4.0 The complainant, Shri Abu Talib A.G. Shaikh, General Secretary of Bombay Workers' Association, who is occupier of the premises complained about meter removal and requested to install meter for Room No.26.
- 5.0 The complainant complained under Annexure-C for installation of new meter on 02/11/11. We had replied on 17/11/2011.
- 6.0 The complainant Shri Abu Talib Shaikh has registered a requisition No.51101152 (KLG No.16500) on 24/06/2010. He has enclosed copies of various documents (12 nos.) in support of the occupancy proof for Room No.26. We would like to state that there is mention of Room No.25 in the Leave & Licence Agreement for paying-guest dtd.25/08/1983 and rent receipt for May 2004. On going through the file and connected papers, it revealed that there is no Room No.26 in existence as per BMC inspection extract of property for the year 2006-07.

Even in tenancy list submitted as per MHADA Regulation the Room no. 26 is not in the existence. The only documents pertaining to Room No.26 is a paying guest agreement. However, that agreement is not a registered agreement. Para 3 of the agreement mentions that paying guest shall not claim any rights such as tenancy, sub-tenancy rights and rights of occupation and possession of said premises meaning that the occupant / applicant's Room No.26 does not have any tenancy rights. Shri Umensh Shrikant Shanbaug has mentioned that there is no Room No. 26 existing in the building and the property matter is prejudice and supply shall not be given without scrutinizing the documents and his consent.

- 7.0 Respondent had referred the matter to their Legal Dept. The advised that there is no occupancy proof for giving electric supply to Room No. 26 and electric supply can not be given to the said room at this stage and therefore the meter was not installed.
- 8.0 As per the legal opinion there is no occupancy proof for giving electric supply to Room No.26. We have informed to complainant to submit occupancy proof of Room No.26. However, as the complainant failed to provide necessary occupancy proof, the requisition is cancelled.
- 9.0 In view of above, the complaint of Shri Abu Talib A.G. Shaikh may be disposed off.

REASONS :

- 10.0 We have heard the representative Shri. S.S. Nalawade and for Respondent BEST Undertaking Shri. M.G. Mhatre, AOIGR(E) & Shri. V.K. Raul, Asst. Legal Advisor. Perused documents.
- 11.0 This Forum finds the controversy to be resolved in the instant complaint, moves in a very narrow compass. The complainant vehemently urged that as envisaged u/s 43(1) of Electricity Act, 2003, he is being "occupier" of the premises, is entitled to get a supply of electricity applied for, by him. However, the Respondent BEST Undertaking in utter violation of said section 43(1) has wrongly denied such supply to his premises.
- 12.0 In counter the Respondent has vehemently contended that as contemplated under said section 43(1) of the Electricity Act, 2003, the complainant has not been an "**Occupier**". Therefore, he is not entitled to get an electricity supply to his premises. Therefore, his application for the same has been rightly rejected by it.
- 13.0 This Forum observes that the complainant has placed on file, a plethora of documents viz. various correspondence entertaining by the various authorities

at the address of the premises i.e. Pinjari Chawl, K.K. Marg, Satrasta, Mumbai - 400 011, where the complainant is seeking the electricity connection to the said premises. This Forum therefore finds that these documents and the interlocutory order dtd. 15/12/1993 passed by the City Civil Court in a civil suit, manifest that the complainant has been in “occupation” of the premises where he is seeking an electricity connection.

- 14.0 However, a crucial and vital question arises for consideration of this Forum whether the complainant has been an authorized and legal “*occupier*” of the premises as contemplated u/s 43(1) of the Electricity Act, 2003 as alleged by the Respondent. In this context, the Respondent has pressed into service a judgment handed down by the Hon’ble Calcutta High Court in a case of *Samsul Haque Mollick v/s CESC Ltd. (AIR 2006 Calcutta 73)*.
- 15.0 On perusing, the said judgment, we find that his Lordship of the Calcutta High Court has held in unequivocal words that an “*unauthorized occupant*” of the premises, would not be entitled to get any benefit of section 43(1) of Electricity Act, 2003. His Lordship, further *inter-alia* observe that an unauthorized occupant would not be entitled to claim a legal right to get supply of electricity from a licensee who is under a statutory obligation to give supply to an owner or occupier of the premises. On entertaining an unauthorized occupant, the provision of the section 43(1) of Electricity Act, 2003 would suffer an interpretation that is neither meant by them nor was ever intended by the legislature.
- 16.0 Now we proceed to see the merit in the contention raised by the Respondent in regard to the complainant being an “*unauthorized occupant*” of the premises, therefore, not entitled to get the electric supply applied for. In this regard we observe that in the complaint, the complainant has alleged signing of ‘Leave & License Agreement’, on or about 01/09/1983 with Smt. Geeta Shrikant Shanbaug. The complainant has candidly admitted that thereafter no agreement has been signed between these parties till this date. Now we proceed to peruse the said alleged agreement of ‘Leave & License’, placed before this Forum by the Respondent at Exhibit ‘k’ along with its written statement.
- 17.0 We find that the said agreement has been written on Rs. 5/- stamp paper and titled as “Paying Guest Agreement”. This agreement recites that the same has been in respect of the premises viz. Room no. 25 and further recites that the said agreement should be treated at ‘Paying Guest Agreement’ and not as a ‘Leave & License Agreement’. In para 3 therein it has been agreed between the complainant and Shri Geeta S. Shanbaug that the paying guest i.e. complainant admits that he shall not claim any right such as tenancy, sub-tenancy, right of occupation or possession in the said premises as a paying guest and shall leave the premises peacefully. We thus find that there was a clear understanding between the parties that the said agreement was Paying Guest Agreement and

therein the complainant candidly admits that he was paying guest of Smt. Geeta S. Shanbaug and not to claim any right of 'occupation', in the premises.

- 18.0 It is significant to observe that the son of Smt. Geeta S. Shanbaug viz. Shri Umesh S. Shanbaug later on got the said meter in his name. M/s Darpal Investor Developer has undertaken the scheme of rehabilitation in the said premises and proceeded necessary work of demolition. Accordingly we find placed on file at pg. 5 a letter from the said M/s Darpal Investor Developer, addressed to the Respondent. We further find an application being submitted by Shri Umesh S. Shanbaug to the Respondent dtd. 27/10/2009 informing about vacating his premises in order to put in progress rehabilitation scheme and requested the Respondent to disconnect the electric supply and taking into its custody the said electric meter. We may observe at the juncture that admittedly the Respondent has disconnected the electric supply and taken away the meter.
- 19.0 This Forum also finds a letter from the unit of MHADA i.e. Mumbai Building Repairs and Reconstruction Board dtd. 25/04/2008 placed before us as Exhibit 'F' by the Respondent, informing Shri Umesh Shanbaug, the occupant of the premises under construction, to immediately vacate the premises as the same being found to be ***dangerous / unfit for human habitation***. Therefore, Shri Shanbaug was given a notice of 45 days to vacate the said premises.
- 20.0 We thus find that basically and admittedly the complainant was occupying the premises under construction, in the capacity of "paying guest" of Shri Shanbaug family. In our consider view therefore, the complainant being paying guest does not hold an independent right of possession of the premises. The complainant's right of possession in the said premises was entirely dependent on the possession of Shri Shanbaug & family of the said premises. In our consider view Shri Umesh Shanbaug has handed over the possession of his premises to the Board of MHADA and applied for disconnection of electric supply. Therefore, we hold that the complainant becomes an ***unauthorized possessor*** of the said premises.
- 21.0 We further observe that receiving various correspondence at the address of the said premises by the complainant and his recording the address of the said premises with various authority, would at the most establish that the complainant has been in possession of the said premises but a fact remains that his possession of the said premises has been unauthorized. Besides it, this Forum can not give a blind eye to the vital observation recorded by the Executive Engineer of Mumbai Building Repairs and Reconstruction Board, unit of MHADA declaring the said premises being ***dangerous / unfit for human habitation***.

- 22.0 To conclude, this Forum observes that in the first instant the “occupation” of the premises by the complainant has been unauthorized and illegal and secondly the said premises has been a dangerous / unfit for human habitation. On both these grounds, we find the complainant being not entitled to get the electric supply from the Respondent as envisaged u/s 43(1) of the Electricity Act, 2003.
- 23.0 Before we part with this order, we may observe that the judgment dtd. 15/12/1993 handed down by the City Civil Court in the injunction suit, admittedly has been an interlocutory order and not a final one. The said court itself has made it abundantly clear in para 6 of its judgment that at the interlocutory stage, the question of status of the defendant (present complainant) as to whether he is a paying guest or tenant cannot be considered. We thus find that the reliance placed on such interlocutory order before this Forum by the complainant has been misplaced and miscomprehend one. We may further observe that the premises has been referred to as Room no. 25 and at some places as Room no. 26. This Forum does not find any warrant to dwell on the said controversy as to whether it is Room no. 25 or 26. The said premises has been admittedly occupied by the complainant in the capacity of “paying guest” of Shri Shanbaug & family, who later on handed it over to MHADA under the scheme and got disconnected its electric supply.
- 24.0 In the aforesaid observation and discussion we find the complaint being liable to be rejected, accordingly we do so.

ORDER

1. Complaint no. N-E-140-2012 dtd. 06/03/2012 stands dismissed.
2. Copies be given to both the parties.

(Smt Varsha V Raut)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman