

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. S-D-86-09 dt . 27/10/2009

M/s. Dinurje Jewellery(P) Ltd.Complainant

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. Dinesh N. Mehta

On behalf of the Respondent 1. Shri. T.D. Jadhav, Supdt. `D' ward
2. Shri. G.D. Ubhalkar, AOCC(IGR)

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Date of Hearing: 3/12/2009

Date of Order : 15/01/2010

Judgment by Shri. R.U.Ingule, Chairman

M/s. Dinurje Jewellery(P) Ltd, 535 Panchratana Mama Paramananad Marg, Opera House, Mumbai- 400 004 approached to CGR Forum for his grievance against electricity consumption charges of Rs.1,12,806.33 demanded by the respondent for change of name of A/c No. 445-625-815*8. He has prayed for change of name without demanding any charges of erstwhile owner/occupier of the said premises.

Complainant's contention in brief are as under

1. Complainant M/s. Dinurje Jewellery(P) Ltd has approached to Internal Grievance Redressal Cell of respondent (BEST) on 27/7/2009 for his grievance against amendment claim of Rs.112806.33 demanded by the respondent for change of name of A/c No. 445-625-815*8.
2. In response to his grievance in IGR Cell, Respondent vide letter dtd. 21.08.2009 has informed that the revised amendment claim is in order and hence same is required to be paid by the complainant.
3. Unsatisfied by the reply of respondent's IGR Cell, complainant approached CGR Forum in Schedule `A' format on 23.10.09 and requested to set aside the amendment claim of Rs. 112806.33 and requested to effect change of name in his electricity bill.
4. Complainant submits that he has purchased the said premises of M/s. Arpit Exports in auction conducted by Debt Recovery Tribunal (DRT) on 07.05.2004. After he got possession of the premises from DRT he received electricity bill of Nil amount from the Respondent for the period 03.11.2003 to 02.01.2004. There was no mention of any pending arrears in the electricity bill. However bill showed a Security Deposit of Rs.40,000/- lying with the Respondent. Subsequently, complainant requested forum to effect change of name without demanding any amount and requested not to disconnect the electric supply of his premises till the final outcome of the case.
5. When he had approached to the Respondent for change of name, he was initially asked to pay the arrears amounting to Rs.870451.73. There was no amount shown as arrears till January, 2004. Only after he approached the respondent for change of name, he was asked to

pay the said arrears & same is not agreeable to him. On 06.04.2005 he has forwarded a letter received from Karnataka Bank Ltd. (certificate creditor) which clearly state that the premises were closed since January, 1999. Thereafter he received revised amendment claim of Rs.112806.33 for effecting change of name and the same is not agreeable to him. Hence he filed a case with High Court. However High Court dismissed his case and directed him to approach CGR Forum. He has placed on record judgment of the Supreme Court in the case of **Isha Marbles V/s. Bihar State Electricity Board, reported in (1995) 2 S.S.C. 648**

In counter Respondent, BEST Undertaking has submitted its contention *inter alia* as under

6. Meter No.Q930429 of the A/c No. 445-625-815 was found stopped on one Lamp testing on 16.05.2002 and therefore it was replaced by meter no. N020675 on 20.10.2002, accordingly A/c was amended for the period 02.07.1998 to 28.10.2002 based on average monthly consumption of 2255 units for the period 03.07.1997 to 02.07.1998 and the amendment amount worked out to Rs.870451.73. Since 11.05.2004 said pro-claim amount had been highlighted separately at the foot note in consumer's electricity bill. Security Deposit of Rs.40000/- pertains to the old consumer appears in the electricity bill as per the provision made on the electricity bill to know the amount of Security deposit lying with the Undertaking. The consumer's electricity supply was not disconnected.
7. To process change of name, new consumer was requested to pay the pro-claim amount of Rs.870451.73 which was lying as arrears in respect of old consumer A/c no.445-625-815*8 of M/s. Arpit Exports.
8. No letter was received by BEST Undertaking regarding closure of premises from old consumer M/s. Arpit Exports or from M/s. Karnataka Bank Ltd. with whom the premise was on lien.
9. Agreed that the letter from M/s. Dinurje Jewellery Pvt. Ltd. submitted to BEST on 06.04.2005 alongwith copy of letter received by complainant from M/s. Karnataka Bank Ltd. However, this letter was received approximately after year of inserting the claim amount in the electricity bill. From which it is clear that the consumer was well aware of the claim.

10. The claim amount was revised to Rs.112806.33 as per prevailing MERC Regulations.
11. Complainant consumer M/s. Dinurje Jewellery Pvt. Ltd. approached respondent against the revised claim in annexure 'C' format however it may be noted that the revised claim is in order and as per the prevailing regulation. Hence Hon'ble forum is prayed to dismiss the case and direct the complainant to pay the revised amendment claim of Rs.112806.33.

Reasons

12. We have heard the complainant and respondent at length. Perused papers.
13. In the instant matter the complainant has challenged the amount of arrears of the electricity consumption charges of an amount of Rs.1,12,806.33 levied by the respondent licensee on the complainant for a period from 2nd July, 1998 to 28th October, 2002 on account of the electric meter provided to the premises under consideration had stopped recording the electricity consumption units during this period. The respondent licensee initially worked out the amount of unpaid charges of Rs.8,70,451.73 on the basis of working out 2255 average units per month for the preceding period of 3rd July, 1997 to 2nd July, 1998. As per the case of the respondent the said amount of Rs.8,70,451.73 was proclaimed and highlighted showing separately at the footnote of consumer's electricity bill since 11/5/2004.
14. Significant to observe that the complainant under consideration had purchased the premises at 535, Panchratna, Mama Paramanand Marg, Opera House, Mumbai – 400 004, in a public auction conducted by the Debt Recovery Tribunal on 7th May, 2004. It is on submission of application for change of name by the complainant the respondent licensee directed the complainant to clear all the arrears of electricity charges of an amount of Rs.8,70,451.73. On making a representation by complainant, the review committee of the respondent licensee has reduced the said electricity consumption charges from Rs.8,70,451.73 to Rs.1,12,806.33 in view of a provision provided under regulation 10.5 provided under Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply), Regulation 2005 and Administrative Order 332 dated 12/6/2007 issued by the respondent covering the cases of 'Stopped Meter'.

15. The complainant now has been challenging a direction given by the respondent licensee to pay the re-worked electricity consumption charges in arrears of Rs.1,12,806.33, being illegally imposed on him by the respondent by placing a heavy reliance on the Judgement of the Hon'ble Full Bench of Supreme Court in the case of **Isha Marbles V/s. Bihar State Electricity Board ((1985) (2) SC Cases 648)**. The respondent has also placed a heavy reliance on a Judgements of the various High Court by placing on file the list of the citation dated 7/12/2009.

16. We, on going through the Judgement handed down by their Lordships of the Hon'ble Supreme Court in the case of **Isha Marbles (Supra)** find that in respect of the arrears of the electricity consumption charges of a premises purchased in a public auction, their Lordships have *inter alia* observed in paragraph no. 56, on going through the various provisions provided under the Electricity Act, 1910, that there cannot be any charge over the property. The purchaser of a property in a public auction cannot be called upon to clear the past arrears when he seeks supply of electric energy to such premises. What matter is the contract entered into by the erstwhile consumer with electricity board. The electricity board cannot seek the enforcement of contractual liability against the third party i.e. the purchaser. The bonafide's of the sale may not be relevant.

17. Their Lordships further observed in paragraph no. 61 that "what we discussed above appears to be law gatherable from the various provisions which we have detailed out above. It is impossible to impose on the purchaser a liability which was not incurred by them." We further observe that the law laid down by the Hon'ble Supreme Court in the case of Isha Marbles has been endorsed and approved by the Hon'ble Supreme Court in another case of **Ahemdabad Electricity Company Ltd V/s. Gujarat INNS Pvt. Ltd (2004 (4) BOM.C.R.880)**. Needless to observe that in various Judgements the said proposition of law has been followed by the Hon'ble Bombay High Court in its various Judgements placed before us by the complainant.

18. It is therefore pertinent to observe that while laying down the aforesaid principles of law it has been blatantly made clear by the Hon'ble Supreme Court as well as Bombay High Court that only in a contingency of availability of a statutory provision and terms in the agreement entered into with the purchaser of a property, the liability of paying arrears of the erstwhile owner/occupier can be imposed by the distribution licensee on the later purchaser/occupier, while providing electricity connection, as sought by him.

19. It would be therefore significant to observe for us, whether such statutory provision has been available to the respondent licensee to impose a liability of payment of arrears of electricity consumption charges of the erstwhile owner/occupier of the premises under consideration on the complainant under consideration. In this connexion we observe that admittedly the complainant has purchased the premises in a public auction on 7th May 2004. Thereafter proceeded to file an application for change of name before the respondent licensee. A letter dated 27th January, 2009 addressed to the complainant by the respondent licensee placed on file before us by the complainant alongwith his complaint, manifest that by referring to the letter dated 14/1/2009 of the complainant, alongwith the said letter dated 27th January, 2009 the respondent licensee had enclosed the prescribed requisition form for "Change of Name" with a direction to furnish the same duly completed alongwith documents and registration fee as mentioned in this letter.

20. Now we proceed to consider a merit in a recourse taken by a licensee to a regulation no 10.5 provided under MERC (Electricity Supply Code and other Conditions of Supply), Regulation 2005 as it was in operation at the relevant time. At this juncture we find it expedient to reproduce the said regulation 10.5 and it runs as under :

10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be charge on the premises transmitted to the legal representative / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be:

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.

21. We thus find that under the proviso provided under regulation 10.5 except in the case of transfer of connection to a legal heir, the liability to pay the electricity charges in arrears of the erstwhile owner/occupier on the new owner/occupier of the premises, has been restricted to a maximum period of 6 months of the unpaid charges for electricity supplied to such premises. The Hon'ble Supreme Court in case of **M/s. Hyderabad Vanashpati Ltd. V/s. Andrapradesh State**

electricity Board [(1998) (2 SCR 620)] has held such terms & conditions for supply of electricity notified by virtue of provisions provided under Electricity Act being statutory in nature. Explicitly therefore in our considered view the liability of payment of electricity charges in arrears for a maximum period of 6 months of the unpaid charges for electricity supplied to the premises under consideration of the erstwhile owner/occupier, has been statutory in nature liable to be imposed on the complainant under consideration.

22. Pertinent to note that such a statutory liability to pay the arrears of electricity charges of the erstwhile owner/occupier on the complainant has been imposed in a contingency of submission of application for change of name. Admittedly in the matter under consideration the complainant has submitted application for change of name under regulation 10 and therefore in our view he has been rightly imposed with a liability to pay electricity charges in arrears for a period of 6 months of the unpaid charges for electricity supplied to such premises as envisaged under sub regulation no. 10.5, by the respondent licensee.

23. To reiterate the period of 6 months of the unpaid charges for electricity supplied to the premises under consideration needs to be taken out from the period from 2nd July, 1998 to 28th October, 2002, as during this period the respondent licensee found the meter provided to the premises being "stopped" one. As submitted by the respondent licensee by taking a recourse to regulation 10.5, the amendment period has been taken into consideration by the respondent of a 6 months based on previous one year average. I may observe at this juncture that regulation no. 10.5 does not give any indication as to which period of 6 months is to be taken into consideration while imposing a liability of unpaid electricity charges when such period of unpaid charges could be more than 6 months.

24. At this juncture therefore we find it expedient to advert to a Judgements of Hon'ble Full Bench of Supreme Court in case of **BEST Undertaking V/s. Laffan's (India) Pvt. Ltd (reported in AIR: 2005: SC: 2486)**. In this Judgement their Lordships have *inter alia* observe that in a cases of burnt or stopped electric meter, the application is not required to be filed to the electrical inspector to estimate the amount of energy supplied to the consumer as envisaged u/s 26(6) of the Indian Electricity Act, 1910. Thereafter their Lordships have further observed *inter alia* that for the period for which the readings could not be recorded or retrieved because the meter was burnt or stopped, there is nothing wrong in the licensee having raised the demand based on the average consumption for the similar period during the previous year and it is a reasonable basis. We observe that in the instant matter also the respondent licensee has undertaken the similar exercise for computing the electricity consumption charges for 6 months, while working out amount of Rs.1,12,806.33 and directing the

complainant to pay the same for entertaining his application for change in name, in accordance with regulation 10.5.

25. At this juncture we observe that an attempt has been made by the complainant to contend that as per the letter dtd. 24th March, 2005 addressed to the complainant by Karnataka Bank Ltd, the premises under consideration was closed since 1999, as all letters addressed to the erstwhile owner/occupier, M/s. Arpit Dimond & Jewellery were returned to the said bank undelivered, with postal remarks thereon. The complainant has placed on file before us, a copy of the said letter alongwith envelope.
26. In our considered view a bare perusal of the said letter of the bank amply make it clear that the bank has proceeded to draw an assumption as to the premises being closed on the basis of undelivered letters. Therefore such assumption on the part of bank can't be considered as a cogent piece of evidence. Therefore this contention in our view, deserves to be discarded.
27. The respondent licensee has placed on file copies of a ledger maintain by it in a routine course of business transaction entertained with its lacs of consumers. In a bare perusal of the same, we find the meter no. Q930429 provided to the premises being stopped recording consumption of electric energy units during a period from July 1998 to October 2002 and the same came to be replaced with new meter no. 20675. The entry in the ledger shows installation of new meter on a latter date, to which the respondent has submitted an explanation as to consumption of some time to provide such information to the concerned department to take note of the same. We do not hesitate to accept the said explanation given by the respondent licensee, taking into consideration the volume of business transaction undertaken by it through its various departments.
28. We are conscious that under regulation no 15.3 a various provisions have been provide under a caption of "billing in the absence of meter reading". There under, under sub regulation 15.4.1 under the second proviso in case of 'stopped meter', the consumer is required to be billed upto a maximum period of 3 months based on the average meter consumption for 12 months immediately proceeding the 3 months prior to the month in which the billing is contemplated. In our considered view in the matter under consideration the regulation 15.4.1 would have no application as the instant matter stands on totally different footings, and squarely govern by the proviso provided under regulations 10.5.
29. Admittedly complainant is required to pay the arrears of electricity consumption charges of the erstwhile owner/occupier of the premises under consideration. In view of principles of law discussed above it is

the regulation 10.5 statutorily creates “a charge on the premises” and restricting the same to a maximum period of 6 months of the unpaid charges for electricity supplied to such premises. A bare perusal of the proviso provided under regulation 10.5 makes it amply clear that the statutory liability to pay the electricity charges as a charge on property and the period of 6 months for the same, are inseparable one. Therefore for fixing the liability of paying the electricity charges on the complainant of the erstwhile owner/occupier the respondent licensee in our considered view has rightly taken a recourse to the regulation no. 10.5, while taking into consideration a period of 6 months of the unpaid charges for the electricity supplied to the premises and worked out the amount of Rs.1,12,806.33, liable to be paid by the complainant while submitting application for change in name.

30. For the reasons stated above therefore we find no merit in the instant complaint and in the net result it should fail.

ORDER

1. Complaint no. S-D-86-09 dtd. 27/10/2009 stand dismissed.
2. The complainant hereby directed to pay the unpaid charges for electricity supplied to the premises purchased by him in auction, as directed by the respondent licensee in its letter dtd. 22nd December 2008, within a period of one month from the date of passing this order.
3. The respondent licensee is directed to carry out the change in name in the electric-bill as prayed by the complainant within a period of one month on receiving the above said amount.
4. The respondent licensee further directed to inform this Forum the above said compliances within a period of 15 days there from.
5. Copies be given to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member