

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)-64-09 dt . 05/02/2009

Shri. Kumar Chandrasen AsherComplainant

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. Kumar C. Asher
2. Shri. Shailesh Doctor
3. Shri. S.W.Deshmukh
4. Shri. Sashvat Doctor

On behalf of the Respondent
1. Shri. S.R.Kolekar, DECC(F/S)
2. Smt. V.V. Dabholkar, AOCC (F/S)
3. Shri. Mohan Parthasarathy, OAIGR (F/S)
4. Shri. V.K.Raul, Asst. Legal Advisor

Date of Hearing: 06/03/2009

Judgment by Shri. M.P. Bhave, Chairman

Shri. Kumar Chandrasen Asher, Nepean Sea Road, Mumbai-400 036 has come before this Forum for his grievance regarding outstanding arrears of bill no 564-259-001*5 in the name of premier Alt press, at 1st floor 16/A1, Bombay Cotton Mills Estate, Dattaram Lad Marg, Kalachowki Mumbai-400 033.

Brief history of the case

- 1.0 Shri. Kumar Chandrasen Asher has applied for reconnection of electric supply vide requisition no. 80901321 dated 02/07/2008 for the premises at 16-A/1, First Floor, B. Cotton Mill Estate, Dattaram Lad Marg, Mumbai – 400 033. Vide BEST's letter no. CN/ESL4/80901321 dated 04/08/2008, he had been asked to pay the outstanding amount of Rs.53,238.66 pertaining to old consumer, M/s. Premier Alt press with A/c No. 564-259-001.
- 2.0 Shri. Kumar C. Asher has disputed vide his letter dated 18/09/2008 to CGRF (received by respondent on 06/10/2008) stating that he has taken possession of the aforesaid premises approx. between 10th/14th January 2008 vide the order of the Honorable High Court & hence, he is not liable to pay any outstanding arrears of the previous consumer. BEST has also received another letter dated 08/10/2008 from Shri. Shailesh D. Doctor (authorized nominee of Shri. Kumar C. Asher) informing it to treat the same under Regulation 6.2 for speedy Disposal.
- 3.0 BEST has given an interim reply to Shri. Shailesh D. Doctor vide our letter no. CC(F/S)/IGR-F/27221/2008 dated 23/10/2008 informing him that the aforesaid case is under scrutiny and the outcome of the same will be informed shortly. Thereafter, BEST replied to Shri. Shailesh D. Doctor vide letter no. CC(F/S)/IGR-FS/11/2009 dated 23/01/2009 informing him that the outstanding arrears of Rs.57,242.52 of A/c No. 564-259-001 has to be paid by Shri. Asher.
- 4.0 As per the letter dated 08/10/2008 & telephonic request from Shri. Doctor on 22/01/2009, the complaint made against letter dtd. 18/09/2008 forwarded by CGRF & received by BEST on 29/09/2008 was treated under Annexure 'C' format of IGR Cell BEST.
- 5.0 Unsatisfied by the reply dtd. 23/1/2009 from IGR Cell of BEST the complainant approached respondent in schedule 'A' format on 2/2/2009.
- 6.0 Rejoinder from the complainant received on 3/3/2009.

Consumer in his application and during Hearing stated the following

1. The complainant has been restored the possession of his premises through a decree after a long and painful legal battle in the Court of Small Causes at Bombay vide L.E.&C. Suit No. 119/156 of 1981 against the occupant & obstructionist of this premises.
2. The photocopy of the order as submitted to BEST on 16/04/2007 as decreed against the defendants directing them to handover vacant and peaceful possession of the suit premises within three months by Hon.K.R.Warrier Judge C.R. No. 15, 16/06/1999 as was submitted to BEST on 16/04/2000. He has to draw attention to page 14 whereon vide para 14 it is clearly established that BEST was aware of the

dispute and one Mr. D. Nassim Karimkhan had attended in court to give evidence. Further "Exhibit-2-Service Card" clearly indicated that BEST had submitted service cards as evidences.

3. The above points are being brought to your attention because it is expected that whenever a premises is disputed – it is not only expected but absolutely necessary that BEST enforces the regular and timely payments of their bills at all times and no arrears should be allowed to be accumulated and prompt disconnection of supply is warranted in such cases.
4. He has requested to refer the letters by his advocate Mr. Prakesh Shah addressed and hand delivered to both Commercial (North) & Consumer (North) department on 16/4/2007 for disconnection of Electric supply to the premises.
As clearly mentioned in this letter copies of Orders of both Small Causes Court & High Court were attached.
5. The BEST has failed to provide the details of the amount being sought from him as arrears and as to the relevant provisions of MERC under which he is being asked to pay the arrears.
Letter in this regard dated 20/08/2008 submitted on 21/08/2008.
Matter submitted to IGR Cell. No further reply from IGR Cell after their letter CC(F/S)/IGR-F/S/27221/2008 dated 23rd or 24th Oct 2008.
6. Despite being requested BEST is avoiding to furnish the details of the arrears i.e. since when did they commence. BEST may be directed to produce the consumers bill ledger with full details for verification.
7. Without providing any details of the amount being sought from him as arrears and also without details as to relevant provisions of MERC Act under which the arrears are being claimed – the BEST has unduly delayed the release of electric supply to him in violation of the standards of performance as specified and for which he should receive compensation.
8. He has requested that the arbitrary arrears being sought to be recovered from him may be deleted from requirements of compliance and his afore referred requisition be sanctioned immediately and electric supply be released forthwith.
9. He is compelled to nominate a representative to assist him in the matter and for which he has agreed to pay him a sum of Rs.5,618/- as his fees. This cost to be incurred by him (Rs.5,618/-) towards appointment of a representative may be compensated by BEST.
10. The premises was leased to M/s. Premier Alt press. But due to dispute the matter was taken to court.
11. The court decided the matter and handed over the possession to K.C.Asher. The possession of the premises was received between 10th & 14th Jan 08 through action court Baliff.
12. He applied for new connection for the premises and completed all formalities as per Regulation 4 of conditions of supply on 2/7/2008.

As per SOP Regulation estimate should have been given within 15 days but BEST gave it on 04/08/08, thus violated the S.O.P Regulations. BEST while giving estimate on 04/08/08 asked him to pay the arrears of previous occupant M/s. Premier Alt Press which was totally illegal making in justice to him and violated conditions of supply regulations framed by MERC.

13. As per BEST's own submission the erstwhile consumer was habitually making only part payments and thereby was always in arrears right from 1st April 2004 onwards till 26th Dec 2006 when BEST last accepted part payment. By accepting only part payments from the erstwhile consumer, the BEST has encouraged and abetted the accumulation of arrears – for reasons beyond logical comprehension – but which need thorough investigations. BEST is solely responsible for all accumulated arrears.
14. By accepting only part payment on 22nd Dec 2006, the BEST of its own accord and responsibility willfully permitted the accumulation of arrears of Rs.16,645.30 and BEST is solely responsible for the same.
15. Vide 1 of nature of Relief sought from CRRF, the BEST has shown energy consumption charges as Rs.36,752.33, however from the same one is unable to decipher as to show the arrears of Rs.16,645.53 became Rs.36,752.53.
16. The BEST has claimed delayed payment charges of Rs.6,630.48 which is the total from 1st May 2004 to Sept. 2007 which is quite absurd to say the least. And that too after encouraging, abetting and willfully permitting the accumulation of arrears over this period. The DP Charges listed are very erratic.. for some months the amounts are 0.00 even when no payments have been paid and for some months the amounts are approx Rs.6 only.
17. Over all these years BEST billed the erstwhile consumer on the basis of readings of their meter no.032650 and without any doubt accepted willingly only part payments against such bills raised. The meter was removed on 06/07/2007. Thereafter on 1st Dec 2007, nearly six months after removal of meter BEST has levied damaged meter charges of Rs.3,000/- knowing full well that the erstwhile consumer has defaulted on payments. How did a functioning meter become damaged after its removal?
18. BEST vide 05D(i) of their reply has written “Normally BEST does not give break-up of arrears in ESL-4 letter” This statement smacks of arrogance derived out of their monopolistic status. Apparently BEST is willing to give a break-up (which too is not clear as far as energy charges amount is concerned) only through CGRF and not otherwise. Does not the BEST ask for break-ups from their vendors and others for payment claimed from BEST? Is not aim of the ELECTRCITIY ACT 2003 to provide greater transparency and hence has not MERC made mandatory the monthly bill formats for consumers such that full details are available to the consumer? The Honourable Forum may be pleased to direct the BEST to henceforth issue full break-up with month wise details of all charges levied for the arrears whenever claimed, especially for such cases.

19. By their neglect and willful co-operation BEST has permitted accumulation of NOT ONLY arrears of the erstwhile consumer but also of DP charges from 1st May 2004 to 1st Sept. 2007. Despite his various letters BEST did not respond positively and proactively to his request for withdrawal of arrears wrongly claimed from him despite their full knowledge of regulation 10.5 of the Electric Supply code. This has compelled him to approach the Forum and seek assistance of Mr. Sailesh D Doctor for a fee, for Redressal of his grievance. Thus the matter of release of supply which should have been 30 days as per the spirit of the code of performance has not been complied with by BEST and the matter has been delayed to his great detriment and loss. Had electric supply been released by 02/08/2008 i.e. 30 days from date of requisition then he would have commenced to earn an amount of Rs.10,000 per month.
20. The claim for arrears may be struck down not only because BEST will fully abetted in the accumulation of arrears and DP charges from 1st May 2004 to 1st September 2007 but also because of provisions under regulations 10.5 and the judgment pronounced by the Honourable Ombudsman in representation no 81 of 2007 in the matter Smt. Asha Sambhaji Londhe V/s MSEDCL wherein it is explicitly ordered that the payment of such arrears of any is subject to the provision of regulation 10.5 of Electricity supply code which restricts the payment of such arrears to a maximum of 6 months and in this case there was no consumption of energy for six months preceding the date from which he got possession through action of court bailiff and also since the meter was removed on 6/7/07.
21. Under no law outstanding can be transferred to new consumer. As per clause no. 10.5 of MERC (Electric Supply Code & other conditions of supply) Regulations 2005 only preceding 6 months outstanding of the precious consumer can be recovered from the new consumer. BEST has not specified the clause of Electricity Act 2003 under which the arrears are recoverable. BEST's IGR Cell should be given training regarding various rules and regulations related with consumer grievances.
22. The BEST may be directed to pay him a compensation of Rs.10,000/- per month (till the date of release of supply) which is the loss incurred by him owing to the delay in releasing supply by BEST.

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

1. Though BEST representative had given witness that the electricity connection was in the name of M/s. Premier Alt Press in the court of Small Causes at Bombay vide LE & C Suit No. 119/156 of 1981, we had been informed regarding the outcome of this case only through the letter sated 14/4/2007 by Shri. Prakesh Shah, the advocate of Shri. Asher & wee also directed to disconnect the electricity connection to M/s. Premier Alt Press.
It is pertinent to point out here that the electricity of the above said premises was being used by M/s. Premier Alt Press till March 2007 & the Meter M032650 of A/c No. 564-259-001 in the name of M/s.

Premier Alt Press was removed on 06/07/2007 for the non-payment of electricity bills. The erstwhile consumer, M/s. Premier Alt Press had been making payments regularly till December 2006 & was using electricity till March 2007, hence, the supply to the premises was not disconnected.

2. Vide letter CH/ESL480901321/2008-F/S dated 04/08/2008, the complainant was informed to pay arrears of Rs.53,238.66 for an electricity bill issued on A/c of 564-259-001. Normally, BEST does not give break up of arrears in ESL-4 letter.
3. In response to the complainant's letter dated 20/08/2008 & 08/10/2008, we have sent an interim reply mentioning therein that "the case is under scrutiny & the outcome of the same will be informed to you shortly". Further, in our final reply vide our letter no. CC(F/S)/IGR-F/S/11/2009 dated 23.01.2009, the complainant was asked to pay an arrears of Rs.57,242.52 for the period ended December 2008 & obtain the reconnection of electric supply to the premises.
4. The outstanding arrears of consumer of A/c No. 564-259-001 is Rs.58,044.19 till January 2009. For the period from 01/05/2004 to 01/01/2009, the consumer of A/c No. 564-259-001 has been billed for Rs.3,30,044.19 against which the part-payments of Rs.2,75,000/- had been received between 07/10/2004 to 22/12/2006. The outstanding arrears amount of Rs.58,044.19 as on January 2009 bill comprises of :

Description	Amount
Energy Charges	Rs.36,752.53
Damaged Meter charges	Rs.3000.00
Delayed Payment Charges	Rs.6,630.48
Interest on arrears	Rs.11,661.18
Total	Rs.58,044.19

The Computerized bill Ledger of the A/c No. 564-259-001 will be made available to the complainant.

5. The electricity bills of the Consumer A/c No. 564-259-001 indicating arrears. Amount are being delivered to the consumer's premises continuously till today & he was aware of outstanding arrears as the electricity bill for the same was being continuously printed and delivered in the premises of installation under reference. Hence, the Undertaking is entitled to recover the entire arrears of Rs.58,044.19 of A/c No. 564-259-001. as the complainant has not paid the outstanding arrears of A/c No. 564-259-001, hence, electric supply was not released to him.
6. The complainant, Shri. Asher has stated in his letter dated 20/08/2008 that he is not ready to pay the old arrears pertaining to the consumer of A/c No. A/c No. 564-259-001. Further, he also had not confirmed the outstanding arrears of the Premier Alt Press before taking the possession of the said premises. The profession fees of Rs.5,618/- which Shri Asher has agreed to pay his representative, Shri. Shailesh Doctor for attending this case is in his personal capacity. As such, BEST is not liable to pay the fees as cost incurred by Shri. Asher.

7. Considering all the above facts, the Hon'ble Forum may direct the complainant to pay the outstanding arrears of Rs.58,044.19 having A/c No. 564-259-001.
8. Since the volume of requisitions registered in Customer Care F/S Ward are about 300 to 350 in a month, it becomes difficult to complete the formalities at our end within 15 days of filing of application of electric supply and there was delay of about 15 days. BEST is introducing fully computerized system i.e. KLG system which will reduce the delay in processing time of application submitted for electric supply.
9. The erstwhile consumer, M/S Premier Art Press had been billed based on actual consumption of units. During the period from September 2004 to November 2006, the erstwhile consumer was billed for Rs.2,91,645.53 against which the part payments of Rs.2,75,000/- had been received from 07/10/2004 to 22/12/2006 (approximately 94.29% payment had been received) & Rs.16,645.53 was balance due from the consumer. The reason for accepting part payments could not be ascertained.
10. The bill for the month of November 2006 was Rs.31,645 & after deducting the part payment of Rs.15,000/- on 22/12/2006, the balance arrears was Rs.16,645.53 which included the DP Charges of Rs.5810.75. Thereafter, during the period from January 2007 to August 2007, Rs.25,917.75 was billed to the consumer of A/c No. 564-259-001.

MONTHS	UNITS	BILL AMT.RS	REMARKS
1/1/2007	2648	11405.01	
3/1/2007	2997	13208.61	
4/1/2007	6	336.31	
5/1/2007	3	331.82	
6/1/2007	--	318.00	FC + ED ONLY
7/1/2007	--	0.00	
8/1/2007	--	318.00	FC + ED ONLY
	5654	25917.75	

ARREARS AS ON JANUARY 2007	RS.16645.53
LESS : D.P. CARGES TILL JAN' 07	RS. 5810.75
	RS.10834.78
ADD : ENERGY CHGS-JAN 07 TO AUG07	RS.25917.75
TOTAL ENERGY CHGS.	RS.36752.53

In the next two month's bills, there is a consumption of 5645 units amounting to Rs.24,613.62 i.e. 2648 units in January 2007 for Rs.11,405.01 & 2997 units in March 2007 for S.13,208.61. Further, 9 units were billed in April 2007 & may 2007 amounting to Rs.668.13. Further, in the month of June 2007 & July 2007, Rs.636/- has been charged towards the Fixed Charges + Electricity Duty.

Hence, Rs.25,917.75 was billed subsequent to the arrears amount of Rs.16,645.53 which includes the Delayed Payment Charges.

11. The Electricity tariff were revised with effect from 01/10/2006 & 01/04/2007 and accordingly to these tariff schedule, the Delayed payment charges were revised accordingly.
 - (i) For the period upto 01/10/2006, D.P Charges of 2% were levied on the arrears per month to the consumers.
 - (ii) From 01/10/2006, 2% D.P. Charges was levied on the arrears per month on one time basis & the Interest Charges of 12% was levied for arrears upto 3 months, 15% for arrears between 3 to 6 months & 18% for arrears above 6 months.
Hence, base on the above revision in tariff, the calculation of Delayed Payment Charges & Interest on arrears worked out by our EDP program and accordingly, the consumers are charged in their respective bills.
12. The Meter no. M 032650 was removed on 06/07/2007 and the same was deposited with Repairs Section in Meter & Relays Department for evaluating the damage of the said Meter. Due to administrative delay, the advice to EDP Dept. for debiting the damage meter (Terminal Block burnt) charges of Rs.3000/- was sent in the month of December 2007.
13. The electricity bills are preferred to the consumers regularly based on the actual consumption & arrears and the break-up of the bill is reflected on the reserve side of the same for the information and benefit of the consumer. As the consumer of A/c no. 564-259-001 is being issued and delivered electricity bill till Jan. 2009 the break-up of the same is being received by the consumer (In this case, the present applicant, Shri. Kumar Asher).
14. D.P. Calculation is done by EDP department and is same for all the consumer. The consumer M/s. Premier Alt Press was sent bills regularly hence break-up was not given. On ESL-4 letters regarding compliances in respect of requisition of electricity no specific mention is made regarding the clause under which outstanding amount is being recovered. BEST doesn't know the reason for the part payment. Outstanding amount was asked from the complainant as per the management policy. Complainant's load was sanctioned, however as the complainant has not complied with the ESL-4 requirement, electric connection to the complainant was not given.
15. The contention of the applicant that if the electricity had been provided within 30 days from the date of requisition i.e. 02/08/2008, he would have earned Rs.10,000/- per month had not been highlighted in the compliant filed under Annexure 'C' & also there is no mention of the same in the compliant filed in CGRF dated 02/02/2009. Hence, the same is quite hypothetical and after-thought added in the rejoinder by the

applicant, for just seeking compensation from BEST for delay in reconnection of his premises.

Observations

1. Apart from energy charges the accumulated arrears of previous consumer M/s. Premier Alt Press includes damage meter charges, interest charges & DP Charges.
2. The complainant's premises were given on lease to M/s. Premier Alt Press. The complainant has got legal possession of the premises in January 2008 from erstwhile consumer M/s. Premier Alt Press. The energy meter was removed on 6/7/2007 as per request of the complainant.
3. The respondent was aware of the legal dispute between the complainant and the erstwhile consumer. As per the respondent the outcome of the said dispute was informed by the complainant's advocate vide his letter dated 14/4/2007.
4. Complainant has requisitioned electricity from the respondent on 2/7/2008 and he was intimated the estimate by the respondent on 4/8/2008. Thus, there was a delay of approximately 2 weeks for giving the estimates as per SOP regulations. Hence, respondent is liable to pay Rs. 200/- as compensation for delay in intimating the estimate to the complainant as per regulation section 3, Appendix-A of MERC (Standard of Performance of distribution licensees, period of giving supply & determination of compensation) Regulations, 2005.
5. OS premises and the complainant's premises are the same. Hence, as per clause no. 10.5 of MERC (Electric Supply Code & other Conditions of Supply) Regulations, 2005 the liability of the complainant is restricted for payment of 6 months unpaid electric charges of previous consumer.
6. Scrutinizing the details given by the BEST at the time of hearing the last 6 months unpaid dues are Rs.25,917/- which are purely energy charges excluding the DP & damage meter charges and Forum has come to the conclusion that this amount has to be paid by the complainant.
7. The respondent has failed to give the breakup of the amount of the arrears in time.
8. Earlier occupant was paying part payment for long time since 1st April 2004, but respondent has not taken any action on him and has failed to give the satisfactory explanation of accepting the part payment for long time.
9. Since meter found damaged after removal therefore damaged meter charges cannot be levied on the consumer.

ORDER

1. Respondent is directed to give electric connection to the complainant within 15 days from the date of order.
2. Respondent is directed to recover the 6 months unpaid electric charges amounting to Rs.25,917.75/- adding them in the first month bill as arrears.
3. Respondent is directed to pay Rs.200/- as compensation for delay in intimating the estimate. This amount should be given as credit in first month's bill of the complainant.
4. Copies be given to both the parties.

(Shri. M. P. Bhawe)
Chairman

(Shri. S. P. Goswami)
Member

(Smt. Vanmala Manjure)
Member