

Date of Hearing 11/09/2009

Date of Order 13/11/2009

Judgment by Shri. S.P.Goswami, Chairman

Shri. Mahendra B. Rughani, Chira Bazar, Mumbai – 400 002, has come before forum for grievances regarding not to charge outstanding amount of previous consumer & granting of reconnection.

Brief history of the case

- 1.0 Shri. Mahendra B. Rughani, the complainant vide requisition no. 3091488 dated 26/9/2008 applied for new connection to the premises 15F/157, Shankar Bari Lane, J.S.S. Road, Chira Bazar, Mumbai – 400 002 (Account no. 353-079-781*9).
- 2.0 Smt. Manjula J. Adhia, previous consumer, A/c no. 353-079-781*9, Meter no. B027204 was residing at above address. Meter no. B027204 was installed on 04/02/2005 with residential tariff.
- 3.0 As per respondent previous consumer was not paying electricity bill regularly since installation of meter. Previous consumer paid Rs. 651/- on 28/6/2005, bill upto Nov. 2005 of Rs.21,000/- was paid on 9/1/2006 by cheque, the same cheque was dishonored.
- 4.0 As per respondent a disconnection notice dated 09/11/2006 was issued to the previous consumer for non-payment of electricity bill of Rs.61,919/-. Previous consumer vide her letter dated 23/11/2006 complained for excess bill of Rs.61,919.0 after receiving disconnection notice.

- 5.0 As per respondent meter no. B027204 was checked in presence of previous consumer on 24/11/2006 and found working. The same was informed to previous consumer vide letter dated 29/11/2006 by the respondent and previous consumer was asked to pay the arrears immediately.
- 6.0 As per respondent total bill of Rs.85,023/- was found unpaid upto Nov-2007. Meter no. B027204 was removed on 12/11/2007 for non payment of electricity bill by the respondent.
- 7.0 New consumer Mr. Mahendra Rughani vide requisition No. 3091488 dated 26/09/2008 applied for new connection to above address.
- 8.0 So many efforts were taken by respondent to convince the previous consumer for payment of arrears, but it was in vain. So as a last resort the arrears of Rs.85,023/- of bill no. 353-079-781*9 (Rs.85,023/-) were debited in bill no. 292-307-050*0 of previous consumer, presently residing at 8 Apna Char, Jamshed Baug No. 2, S.B. Road, Colaba, Mumbai – 400 005 in the month of Feb-2009. As a result the arrears amount was deleted from the bill no. 353-079-781*9.
- 9.0 As per respondent Smt. Manjula Adhia, previous consumer vide affidavit dated 1/4/2009 informed that the said premises were handed over to Seth Rughanathdas Lalji Halai Charitable Trust in Jan-2007. further the Trust has handed over the possession to Shri. Divyang J. Racch and thereafter to Shri. Mahendra Rughani in the month of Feb-2008.
- 10.0 As per respondent previous consumer approached Chief Engineer, Customer Care (CECC) and submitted affidavit on 15/4/2009 regarding payment of outstanding of Rs.85,023/-.
- 11.0 As per respondent Chief Engineer, Customer Care vide their note ESO/CECC/281/2009 dtd. 12/6/2009 directed respondent to reverse the debit amount from bill no. 292-307-050 back to bill no. 353-079-781*9.
- 12.0 The complainant registered their grievances in Annexure 'C' format for withdrawal of claim & granting of reconnection on 25/3/2009.

- 13.0 Unsatisfied by the action taken by the respondent against their complaint in Annexure 'C' format, vide the respondent's letter ref no. C(C)/O/s.Rec./410086/2009 dtd. 13/5/2009, in which respondent informed the complainant to pay the outstanding amount of Rs.85,000/- (approximately) of previous consumer. The complainant lodged their grievances with CGR Forum in Annexure 'A' format on 01/07/2009.

Consumer in his application and during Hearing stated the following

- 1.0 As per complainant he applied for reconnection (A/c No 353-079-781*9) to premises 15F/157, Shankar Bari Lane, J.S.S. Road, Chira Bazar, Mumbai – 400 002, vide requisition no. 3092232 dtd. 29/12/2008.
- 2.0 As per complainant earlier consumer Mrs. Majula Adhia left the same premises in Feb. 2007 & that time arrears were about approxi. Rs.75,000/-. The meter of said premises was removed in Nov. 2007. Complainant took the possession of the same premises on 26/3/2008.
- 3.0 As per complainant he went out of his way to help & assist BEST authorities to recover the outstanding arrears by providing Mrs. Manjula Adhia's new address where she has shifted & residing. It is for the BEST authorities to take action against her & recover the dues & arrears. As per complainant he is not liable & responsible to pay the dues & arrears for the utility service not used by him.
- 4.0 As per complainant BEST Undertaking has transferred the arrears amount to the account of Mrs. Manjula Adhia's new shifted premises at Colaba in the month of Feb. 2009.
- 5.0 The complainant registered their grievances in Annexure 'C' format for withdrawal of claim & granting of reconnection on 25/3/2009.
- 6.0 Unsatisfied by the action taken by BEST against their complaint in Annexure 'C' format, vide BEST letter ref no. C(C)/O/s.Rec./410086/2009 dtd. 13/5/2009, in which respondent informed the complainant to pay the outstanding amount of Rs.85,000/- (approximately) of previous consumer. The complainant lodged their grievances with CGR Forum in Annexure 'A' format on 01/07/2009.
- 7.0 Complainant requested Hon'ble Forum not to charge the outstanding amount of previous consumer as he is not liable to pay the same &

electric connection to be given to him as per requisition no. 3092232 dtd. 29/12/2008 as early as possible.

- 8.0 At the time of hearing complainant admitted that he was not checked the agreement of tenancy carefully i.e. point no. 4 & 19 of agreement regarding tenant's liability to pay increase in rents, taxes, cesses, fees or any other levy of whatsoever nature or if the same is levied a fresh by the State Government, Central Government or any other local authority in respect of this agreement. However, as per complainant respondent is a separate entity with respect to the said tenancy agreement. Also, complainant submitted summary of the case in written at the time of hearing.

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

- 1.0 Shri. Mahendra B. Rughani vide requisition no. 3091488 dated 26/9/2008 applied for new connection to the above address, account no. 353-079-781*9.
- 2.0 Smt. Manjula J. Adhia, previous consumer, A/c no. 353-079-781*9, Meter no. B027204 was residing at above address. Merter no. B027204 was installed on 04/02/2005 with residential tariff.
- 3.0 It was read regularly and average consumption was around 900 units per month.
- 4.0 Consumer was not paying electricity bill regularly since installation of meter. Consumer paid Rs. 651/- on 28/6/2005, bill upto Nov. 2005 of Rs.21,000/- was paid on 9/1/2006 by cheque, the same was dishonoured.
- 5.0 A disconnection notice dated 09/11/2006 was issued to the consumer for non-payment of electricity bill of Rs.61,919/-.
- 6.0 Consumer vide her letter dated 23/11/2006 complained for excess bill of Rs.61,919.0 after receiving disconnection notice.
- 7.0 Meter no. B027204 was checked in presence of consumer on 24/11/2006 and found working with reading 17846 connected load, 4 tube lights, 3 fans, 1 D.D. Fridge, 1 washing Machine, 1 A/C. Split, 1 Water Pump. The same was informed to consumer vide letter dated 29/11/2006 and consumer was asked to pay the arrears immediately.

- 8.0 Total bill of Rs.85,023/- was found unpaid upto Nov-2007. Therefore, meter no. B027204 was removed on 12/11/2007 for non payment of electricity bill with final reading 21632.
- 9.0 New consumer Mr. Mahendra Rughani vide requisition No. 3091488 dated 26/09/2008 applied for new connection to above address. Accordingly, bill of Rs.85,023.00 was issued for payment of outstanding amount.
- 10.0 As per Recovery Officer's report dated 18/6/2008 Shri. Divyang J. Richh informed us that Smt. Manujula J. Adhia Menka Nathani having residential address at 8 Apna Char, Jamshed Baug No. 2, S.B. Road, Colaba, Mumbai – 400 005 having bill no. 292-307-050*0. So many efforts were taken to convince the consumer for payment of arrears, but it was in vain. So as a last resort the arrears of bill no. 353-079-781*9 (Rs.85,023/-) were debited in bill no. 292-307-050*0 in the month of Feb-2009. As a result the arrears amount was deleted from the bill no. 353-079-781.
- 11.0 Smt. Manujula Adhia vide affidavit dated 1/4/2009 informed that the said premises were handed over to Seth Ruganathdas Lalji Halai Charitable Trust in Jan-2007. further the Trust has handed over the possession to Shri. Divyang J. Racch and therefore to Shri. Mahendra Rughani in the month of Feb-2008.
- 12.0 Arrears of Rs.85,023/- debited to bill no. 292-307-050*0 pertains to 'A' ward as Smt. Manujula Adhia occupied flat in 'A' ward.
- 13.0 Respondent's CLA (Chief Legal Advisor) vide his noting dated 6/1/2009 in one of the other case has reiterated the stand that, the applicant applying for the new connection for the same premises should pay the outstanding arrears of electricity before the application can be considered. Based on the CLA's view CECC (Chief Engineer Customer Care) vide note ESO/CECC/281/2009 dated 12/6/2009 directed to reverse the debit amount from bill no. 292-307-050 back to bill no/ 353-079-781.
- 14.0 Smt. Manujula Adhia approached CECC and submitted affidavit on 15/4/2009 regarding payment of outstanding of Rs.85,023/-.
- 15.0 Shri. Mahendra Rughani made a complaint in 'C' Form on 25/3/2009 and disputed the payment of outstanding bill of Rs.85,023/- Shri. Rughani was informed vide letter dated 15/5/2009 that he is required to pay the

outstanding amount as per section 10.5 of Electric Supply Code and other conditions of supply.

- 16.0 Shri. Mahendra Rughani made complaint in schedule 'A' to CGRF on 26/6/2009 alongwith relevant correspondence.
- 17.0 At the time of hearing questions were raised by the forum regarding the action taken against the dishonored of cheque of Rs.21,000/-which was submitted by previous consumer.
- 18.0 At the time of hearing forum asked respondent to submit ledger folio in the readable form, break-up of bill & document showing payment of the previous consumer's arrears for the Apna Ghar premises, Colaba by Smt. Manjula Adhia.
- 19.0 Respondent alongwith their note ref no. CC(C)/410539/2009 dtd. 16th Sept, 2009 submitted xerox copy of dishonoured cheque of Rs.21,000/-, a ledger folios in the readable form of A/c no. 353-079-781*9, A/c no. 292-070-015 and billing history & payment statement of A/c no. 353-079-781*9.

Observations

Differing Opinion of Member,CGRF (CPO) Smt. Varsha Raut

- 1.0 The Complainant has approached this Forum with his grievance that Respondent has asked the Complainant to pay an amount of outstanding dues of Rs. 85,023/- due and payable by Mrs. Manjula, previous consumer for giving him a new connection in the premises he has purchased from the previous consumer Mrs. Manjula.
- 2.0 Briefly stated the relevant facts of this case are as under:
- 2.1 The Complainant Shri. Mahendra Rughani applied in Sept 08 for a new connection where previous consumer Mrs. Manjula was staying till Jan 07. Mrs. Manjula had electric connection A/c. no 353-079-781*9,vide meter no B027204 on her premises from Feb 05. As per Respondent the bills were not paid regularly by the said consumer. The said Consumer has paid on two occasions once, Rs 651/- on 28 June and then on 9th Jan 06 Rs 21000/- by cheque which was dishonored.

- 2.2 A disconnection notice was issued on 9th Nov 2006 for non payment of her electricity bill of Rs 61,919/-. On this notice, the said consumer made complaint dated 21st Nov 2006 (Exhibit-B) where she has mentioned that, "Since April 2005 she is not receiving any electric bill, her daughter has approached the authorities of respondent from time to time for asking and inquiry of electric bill but Respondent's officers have not given any response about her inquiry." It is pertinent to note that the Respondent has not denied the same. She has expressed doubt about the functioning of the meter therefore Respondent has checked her meter on 24th Nov 2006 which according to him it was found working correctly. Respondent has informed about the same vide letter dated 29th Nov 2006.
- 2.3 It can be seen from the Respondent's record that although disconnection notice was issued on 9th Nov 2006, Respondent has not taken any action regarding the dues as well as has not disconnected the supply of non paying consumer. Disconnection was made in the month of Nov 2007 i.e. after one year, with the total bill of Rs 85,023/-. In the mean time, according to this consumer's letter (Exhibit-G) she has shifted her residence in the month of Jan 07 itself.
- 2.4 The new consumer Mr. Mahendra Rughani has applied for the connection of the same premises in Sept 08. He, with the help of Respondent has found the new address of previous consumer Mrs. Manjula. Respondent then issued letters dated 26th Nov 08 and 5th Jan 09 and informed her that these old arrears will be debited to her on her new address. She in her affidavit (Exhibit-G) dated 1st Apr 2009 has stated that she has handed over the said room to trust and requested to hand over this to Mr. Racch, he who has then given the premises to Mr. Rughani. She has further stated that Respondent has charged her wrongly and has requested to remove it from her bill.
- 2.5 There is a correspondence from the Respondent dated 5th, 6th & 9th March 09, attached at (Exhibit-I) which shows that there should be disconnection at the new premises i.e. in ward 'A' of Mrs. Manjula and arrears should be recovered from her A/c no 292-307-050*0 whereas the note of the Respondent dated 12th June 2009 states as follows:

"She has paid the arrears amount of this Colaba premises when she occupied this flat. Therefore it is not fair to ask her to pay the arrears of her previous premises." Respondent had not provided any documentary evidence for the case. But, when the Forum sought additional information, the Respondent has, inter alia, (stated) admitted that there was no outstanding against (bill) A/c No 292-307-050 at 'A' ward where Mrs. Manjula had shifted. The ledger of 'A' ward which is provided by Respondent proves the same. This statement/information is in direct

contradiction of Respondent's earlier statement where in the above statements mentioned.

- 2.6 On carefully going through the ledger of A/c no 353-079-781*9 brought on record by Respondent in response to this Forum's query, it is noticed that for May'05 current bill for consumption of 497 units has been shown as Rs. 14957.17. This appears to be absurd on the face of it. However, this absurd bill amount is also being carried forward without any correction. This shows Respondent's careless handling of bill amounts.
- 2.7 Respondent in their letter dated 13th May 2009 to Mr. Mahendra Rughani (New Consumer) has asked to pay the outstanding dues of the previous consumer as per Electricity Supply Code (ESC) and other conditions of supply under Section 10.5. Respondent has also informed him that after payment of dues the electricity supply will be reconnected.
- 2.8 Although it is a settled legal position that as per ESC the new occupant of the premises is required to clear the outstanding dues payable by the previous consumer, it is equally necessary for Respondent to establish that such outstanding arrears were legitimately due and payable by the previous consumer at all. In the instant case, it is clearly evident that the amount that is shown as outstanding dues (initially Rs 61,919/-) from the old consumer Mrs. Manjula pertains to a period prior to November 2006. The previous consumer Mrs. Manjula has shifted from this premises in January 2007. It is her claim that she has not received bills from the Respondent despite her reminders and follow-up. The Respondent has neither controverted this claim of Mrs. Manjula nor brought on record any evidence to show that the bills were raised by them within a period of 2 years from the time they have become due and payable. (The present Complainant has applied for connection in September 2008). Hence, according to Sec 56 (2) of the EA 2003, the Respondent cannot legitimately demand this payment from the previous consumer Mrs. Manjula. It therefore naturally follows that whatever is not due and payable by the previous consumer cannot be demanded and recovered from the new occupant of the premises.
- 2.9 The Respondent therefore cannot demand from the Complainant, the payment of any amount being the old arrears from the previous consumers as a condition precedent for granting connection. The Respondent is therefore directed to grant connection to the Complainant within 7 days from the date of this order, without insisting on payment of old arrears.

Opinion of Chairman, CGRF Shri. S.P.Goswami

- 1.0 Meter no. B027204 (A/c no. 353-079-781*9) was installed on 4/2/2005 for previous consumer Smt. Manjula J Adhia to the premises 15F/157, Shankar Bari Lane, J.S.S. Road, Chira Bazar, Mumbai – 400 002.
- 2.0 Disconnection notice dated 09/11/2006 was issued to the previous consumer for non-payment of electricity bill of Rs.61,919/- (from 25/11/2005 to 21/09/2006) by the respondent. Previous consumer vide her letter dated 23/11/2006 complained for excess bill of Rs.61,919.0 after receiving disconnection notice. Meter no. B027204 was checked in presence of consumer on 24/11/2006 and found working with reading 17846 connected load, 4 tube lights, 3 fans, 1 D.D. Fridge, 1 washing Machine, 1 A/C. Split, 1 Water Pump. The same was informed to consumer by respondent vide their letter dated 29/11/2006.
- 3.0 Meter no. B027204 was removed by respondent on 12/11/2007 for non payment of electricity bill of Rs.85,023/- which was unpaid upto Nov-2007.
- 4.0 Complainant Mr. Mahendra Rughani vide requisition No. 3091488 dated 26/09/2008 applied for new connection to same premises.
- 5.0 Mr. Mahendra Rughani, complainant registered their grievances in Annexure-C format for withdrawal of claim & granting of re-connection on 25/3/2009. However, respondent informed to complainant to pay the outstanding amount approximately Rs.85,000/- of previous consumer.
- 6.0 Complainant admitted that he did not checked the agreement of tenancy carefully i.e. point no. 4 & 19 of agreement regarding tenant's liability to pay any levy of whatsoever nature or if the same is levied a fresh by the State Government, Central Government or any other local authority in respect of their agreement.
- 7.0 Complainant was therefore well aware at the time of taking possession of the premises that there may be an outstanding of the unpaid electricity charges. The Complainant has therefore accepted to take responsibility of all the payment due on the above premises as included in the agreement of tenancy.
- 8.0 Account no. 353-079-781*9 is in the name of Smt. Manjiula Adhia & A/C no 292-307-050* in the name of Menka N & Raji N. Nathwani, both these account numbers are existing on different names. Whether respondent

under these circumstances can legally or otherwise is empowered to transfer the outstanding amount in the name of consumer residing at Colaba premises.

- 9.0 From the record submitted by Respondent it is observed that, the Smt. Manjula Adhia has paid outstanding amount Rs.15,325.91 pertaining to unpaid charges of earlier consumer while taking re-connection at Chira Bazar premises as per prevailing procedure of Respondent.
- 10.0 In view of above para 8.0 & 9.0 complaint's request for transfer of the arrears to the premises at Colaba A/c cannot be considered.
- 11.0 Complainant being the new occupier of the premises is liable to pay the unpaid charges of the earlier consumer as per MERC Regulation.
- 12.0 The arrears are shown continuously in the electricity bills of the complainant by the respondent is proved by the ledger position submitted by the respondent satisfying the requirement under clause 56(2) of EA 2003.
- 13.0 In view of the above observations following order is issued by the undersigned as a Chairperson of the Forum, using second & casting vote as per the provisions of section 8.1 of MERC (CGRF & EO) Regulations, 2006 amended upto date.

ORDER

- 1.0 Respondent is directed to recover the outstanding amount of last six months consumption of the previous consumer from the complainant.
- 2.0 Respondent is directed to give re-connection to the complainant after receiving the above amount and taking other compliances as per the existing procedure.
- 3.0 Copies to be given to both the parties.

(Shri. S. P.Goswami)
Chairman

(Smt. Varsha V. Raut)
Member