

BEFORE THE COMPLAINANT 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-G(N)-161-2012 dtd. 07/08/2012

Mr. Henry L. D'souzaComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum :
1. Shri R U Ingule, Chairman
2. Shri S P Goswami, Member
3. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri. Henry L. D'souza

On behalf of the Respondent : 1. Shri. Deshpande, Admin Officer (IGR Cell)

Date of Hearing : 06/09/2012

Date of Order : 01/10/2012

Judgment by Shri. R.U. Ingule, Chairman

Mr. Henry L. D'souza, Sai Ganesh Sadan, (Pandurang Vakil Chawl), 16 B, Grd. flr., S.B. Marg, Dadar, Mumbai - 400 028 for his grievance regarding reconnection of electric supply which was disconnected after the objection of tenants of the building.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 03/04/2012 for his grievance regarding reconnection of electric supply through meter as installed meter was removed after objection raised by the tenants of the building. The complainant has approached to CGRF in schedule 'A' dtd. 28/003/2012 (received by CGRF on 01/08/2012) as no remedy is provided by the Distribution Licensee regarding their grievance. The complainant has requested the Forum to reconnect the electric supply through meter.

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

- 2.0 On the basis of documents submitted by the consumer such as Shop & Est. licence, Aadhar Card of the same address, NOC from Society signed by Secretary (Pandurang Vakil Chawl) along with the Requisition no.V-69056 as a proof of occupancy, new meter was installed on 16.01.12. They have also given an Indemnity Bond stating that, "In the event if any objection raised by the Landlord / B. M. C. / Collector / MHADA I hereby authorize and empower the Licensee to disconnect the supply and remove the meters without any notice and the Licensee would not be responsible for any consequence financial or otherwise."
- 3.0 The members of Sai Ganesh Sadan approached to our ward office stating that the NOC submitted by the complainant is false and it is not on the letter head of Pandurang Vakil Chawl Rahiwashi Mandal. Hence the meter was removed on 17.01.2012 based on the Indemnity Bond submitted by the consumer.
- 4.0 Subsequently the complainant had submitted a copy of Mhada's letter wherein it was mentioned that Sai Ganesh Sadan is a redeveloped building of the earlier Pandurang Vakil Chawl Rahiwashi Mandal. Therefore, the meter was again installed on 20.01.2012.
- 5.0 On 24.01.2012 the members of Sai Ganesh Sadan came to the office and they had strongly objected for the installation of the meter of the stall in their meter cabin. Hence the meter was again removed on the same day.
- 6.0 The case was referred to Legal Dept. & the legal Dept. opined that, as per the application, submitted by the complainant the premises at 16 B, Ground floor, Sai Ganesh Sadan, beside shop No. 21, Senapati Bapat Marg, Dadar is owned by BMC. The documents which complainant had submitted alongwith consumer's requisition does not show that complainant is lawful occupier of the premises.
- 7.0 The complainant was requested to produce Legal occupancy proof of the ownership. Further, alongwith the requisition, consumer has attached a receipt issued by MCGM under section 314 as a penalty for removal of encroachment on the public road which itself indicates that premises is unauthorized premises.
- 8.0 In view of the above the supply was not reconnected at the complainant's premises.

REASONS :

- 9.0 We have heard the complainant in person, and for the respondent BEST Undertaking Mr. Deshpande, Admin Officer (IGR Cell).
- 10.0 The facts involved in the present matter are peculiar in nature. The complainant is having a stall upon the property of the Bombay Municipal Corporation, in front of the "Sai Ganesh Sadan" on Senapati Bapat Road, Dadar, Mumbai - 400 0028. The complainant had submitted a license issued by the authority under the Bombay Shops and Establishment Act, Adhar Card and indemnity bond, etc., to the respondent BEST Undertaking. On the basis of these documents, a new meter was installed in the cabin of the complainant on 16th January 2012. Thereafter, the members of the "Sai Ganesh Sadan" approached the respondent BEST Undertaking raising a strong objection for providing said electric meter. Therefore, the same was removed by the BEST Undertaking on 17/1/2012.
- 11.0 Thereafter, the complainant submitted the information provided by the authority of the MHADA dated 16/1/2012, stating that the said premises belongs to it and all the residents therein are the tenants. Therefore, they cannot form any society under the Maharashtra Co-operative Society Act. The complainant therefore, informed the respondent BEST Undertaking that the said "Sai Ganesh Sadan" can not have any committee as all the residents are merely tenants, therefore said alleged committee can not raise any objection for providing an electric meter to his cabin located in the premises of the Bombay Municipal Corporation. The respondent BEST Undertaking therefore, based on this letter from the authority of the MHADA again installed the electric meter on 20/1/2012.
- 12.0 Thereafter, a group of members of the "Sai Ganesh Sadan" approached the respondent BEST Undertaking on 24/1/2012 and again strongly objected installation of the electric meter in the cabin of the complainant. Therefore, the same has been again removed on the same day by the respondent BEST Undertaking.
- 13.0 Now, the respondent BEST Undertaking had taken a stand that the complainant has not been a lawful occupier of the premises. Therefore, he is not entitled for the electric connection. Hence the instant complaint before this Forum.
- 14.0 On the backdrop of the aforesaid set of acts, this forum observe that the respondent BEST Undertaking in the past had installed the electric meter in the cabin of the complainant admittedly located on place owned by the Mumbai Corporation. Admittedly the said meter was twice removed on the ground of an objection being taken by the alleged committee of "Sai Ganesh Sadan", who are staying in the adjacent building belonging to MHADA.
- 15.0 In the considered view of this forum, any committee of Sai Ganesh Sadan doesn't have any *locus standi* to raise any objection for providing electric connection to the complainant, as admittedly the complainant is having his cabin located on the property belonging to the Bombay Municipal Corporation. Secondly, the residents of the "Sai Ganesh Sadan" are the tenants and not owner of any premises in the said Sadan. Therefore, the respondent BEST Undertaking ought to have ignored such

protest raised by the alleged members of the committee of Sai Ganesh Sadan. This forum therefore, finds that for no valid reasons, the respondent BEST Undertaking had proceeded to disconnect the electric supply provided to the complainant that too on two occasions in the past as observed above and admitted by it.

- 16.0 This forum further observes that, admittedly the complainant has been occupying the cabin on the footpath belonging to the Bombay Municipal Corporation on Senapati Bapat Road, Dadar, Mumbai. As such, this forum finds the complainant being the *actual occupier of the premises in a settled possession*. Neither the respondent BEST Undertaking nor this forum is having any authority to declare such actual possession of the complainant of the premises, being unauthorized. It is for the Bombay Municipal Corporation to declare the actual possession of the complainant as unauthorized one or otherwise, and to take action for eviction of the complainant there from by taking a recourse to due process of law. In view of this forum as long as complainant has been the actual occupier in settled possession, would be entitled to get an electric supply, till he is evicted by the BMC under due process of law.
- 17.0 At this juncture, we may observe that, the respondent BEST Undertaking by placing a heavy reliance on two receipts dated 2/2/1995 and dated 31/07/1993 submitted, that the complainant being an unauthorized occupant, he has been evicted by the BMC under due process of law. In this regard, the complainant has urged that, these receipts of payment of penalty to the BMC has been submitted by him only in order to show that from a considerable long period complainant has been in a possession of the cabin and as such, he has been in a *settled possession* and therefore, entitled to get an electric supply. The complainant has further pointed out that, he has been penalized by the authority of BMC for keeping a chair and benches in an open place out of his cabin. The complainant was neither evicted from the premises he has occupied, nor the same was dismantled or penalized for the same by the authorities of the BMC. This forum in the context had specifically directed the respondent BEST Undertaking to place before it cogent evidence to establish that the complainant was penalized by the authorities of the BMC for illegally occupying the said cabin and whether the same was dismantled by the said authority. However, despite such clear instructions were given to the representatives of the respondent BEST Undertaking no any such proof has been placed before us.
- 18.0 In the aforesaid discussion and observations, this forum finds that, the complainant has been the actual occupier in a settled possession of the cabin, to which in the past on two occasions an electricity was provided by the respondent BEST Undertaking and later on the same was disconnected on the invalid ground of the objection raised by the so called committee of the adjoining "Sai Ganesh Sadan". To conclude, we find the said action of disconnection of electricity provided to the complainant resorted to by the respondent BEST Undertaking, being unsustainable in law. At the same time, we find the complainant being entitled for getting electric supply from the respondent BEST Undertaking, he being an actual occupier in settled possession of the cabin. This forum may observe at this juncture that, the power vest with the authorities of the BMC to find out whether complainant has been authorized occupant of the cabin or not and to evict him by due process of law. Till then in considered view of this forum the complainant would be entitled for getting an electric supply from the respondent BEST Undertaking.
- 19.0 Before we part with this order, this Forum finds a warrant and justification to observe at this juncture that as observed above on two occasions the Respondent BEST

Undertaking has removed the electric meter provided to the complainant without serving any notice on him. In considered view of this Forum, the Distribution Licensee under consideration has been a public undertaking. It is therefore such undertaking is expected to act as a 'model undertaking', and earn respect from its consumers. However in the instant matter, the Respondent BEST Undertaking has removed the electric meter not once but twice that too without serving any notice on the complainant. We hold such action resorted to by the Respondent BEST Undertaking being highly arbitrary and unilateral one. In view of this Forum the Respondent BEST Undertaking ought to have served a prior notice on the complainant before removal of the electric meter conveying reason thereto, to the consumer and offering him an opportunity to submit his say. We hope that in future such recurrence would be avoided by the Respondent BEST Undertaking.

- 20.0 For the aforesaid reasons and observation complaint is liable to be allowed, accordingly we do so.

ORDER

- 1.0 Complaint no. N-G(N)-161-2012 dtd. 07/08/2012 stands allowed.
- 2.0 Respondent BEST Undertaking has been directed to supply electric connection to the complainant within a period of one month from the date of passing this order, on the necessary compliances from the complainant.
- 3.0 The respondent BEST Undertaking has been directed to report the compliances of this order within a period of fortnight there from.
- 4.0 Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman

