

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-195-2013 dtd. 13.05.2013

Mr. Imran Arif ChasmawalaComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum : Chairman
Shri R U Ingule, Chairman

Member
1. Shri M P Thakkar, Member
2. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri Farooque A. Electricwala

On behalf of the Respondent 1. Shri G.M. Bhagat, DECCD
2. Shri T.D. Jadhav, Supdt. CC(D)

Date of Hearing : 26/06/2013

Date of Order : 10/07/2013

Judgment by Shri. R.U. Ingule, Chairman

Mr.Imran Arif Chasmawala, A-1 Restaurant, Ground Floor, Gulam Hussein Building, 3 Proctor Road, Mumbai - 400 007 has come before the Forum for his grievance regarding dispute of recovery of outstanding dues of previous consumer pertaining to A/C.No.100-012-175.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 22/03/2013 with his grievance regarding dispute of recovery of outstanding dues of previous consumer pertaining to A/C.No.100-012-175. The complainant has approached to CGRF in schedule 'A' dtd. NIL (received in CGRF on 10/05/2013) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has mentioned that he is ready to pay outstanding bill amount as per MERC Regulation and requested the Forum to release the electric supply to his premises.

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

- 2.0 The Account no. 100-012-175, is in the name of M/s. Bombay A1 Restaurant. Due to non-payment of Electricity bills dues, Meter No.P000901 of the said account was disconnected on 2/4/2011. The present outstanding amount is Rs.7,34,642/- up to the billing month of April 2013. On 16/01/2013. the complainant Mr. Imran Arif Chasmawala, , had filled his grievances in Annexure 'C' stating that, he had purchased the premises known as M/s. Bombay A-1 Restaurant in the month of January, 2012. He further stated that, on verifying the electricity bill no. 100-012-175 *0 the total bill amount up to December 2012 was Rs.711836/-. If he would be aware before purchasing the premises that an outstanding amount of Rs.7,11,836/- is pending, he may had recovered it from the old party.
- 3.0 Along with Annexure 'C' he had submitted, the copies of agreement between landlord, but it was found that instead of submitting the copy of agreement, (Registered Deed) between landlord, he submitted the copy of "Affidavit / Declaration" on Rs.100/- stamp paper. Also he had submitted the copy of "Surrender of Tenancy" of old party and Rent Receipt for the month of March, 2012 to Nov 2012 (Receipt No. 2224 dtd. 15/03/2012) . It is also observed that, the rent receipt is not duly signed by the owner/landlord of the premises. Hence cannot be considered as proper and valid document showing that the premises under consideration being occupied by the complainant. The submission of merely a rent receipt neither shows the premises being owned or occupied by the complainant.
- 4.0 Since document submitted by the complainant doesn't prove the ownership of the premises, he was asked, to let us know his locus standi in submitting the Annexure 'C' form.
- 5.0 After receiving the reply of Annexure "C", the complainant submitted the Application for Supply of Energy on 25/02/2013 alongwith the documents which were submitted earlier with Annexure C form. In addition to this, he also submitted Undertaking letter that, "there are no outstanding dues in respect of the premises. In case any outstanding dues are noticed, he undertakes to pay the same immediately failing which any electricity supply shall be liable for disconnection".
- 6.0 Again on 25/03/2013 he filled his grievances in Annexure 'C' dtd 22/03/2013 stating that he had purchased the premises known as Bombay A1 Restaurant in the month of January, 2012, and he had applied for Re-connection of Supply under application No. 121644 dtd 25/02/2013. He further stated that he had received a Letter dtd 21/03/2013 for payment of outstanding amount of Rs.7,23,710/-. He also added

that, he is a new tenant of the said premises and he is not entitled to pay electricity outstanding but to pay average bill for the period of only six months as per MERC rules.

- 7.0 In reply to his grievances, he was replied that his statements in two different Annexure 'C' grievances are different and contradictory i.e in first Annexure 'C' form, the statement was that "the premises stands on his name and he is the sole owner of the said premises" and in Second Annexure 'C' form that, "he is the new tenant of the said premises". He was requested that, in order to proceed his requisition for new connection, to produce documents about his Ownership OR Tenancy agreement and further informed that, if he is not satisfied with decision of the IGR cell he may appeal to CGRF, Colaba. Since the complainant was aggrieved with the reply he filed his grievance in Schedule 'A' form to CGRF Colaba.
- 8.0 In order to give new connection, the Application No.121644 dtd 25/02/2013 is processed and sanctioned on 20/3/2013 subject to comply the requirement mentioned in the letter dt 21/3/2013 i.e submission of valid occupancy proof, NOC from Landlord, payment of outstanding amount of Rs. Rs.723710/- within 60 days from the date of letter dt 21/3/2013 issued to the applicant. It is also mentioned in the said letter dt 21/3/2013 that, if he fails to comply the requisition, same will be treated as cancelled without any further notice. Since, the complainant has not submitted the valid and proper documents of either an agreement entered with the owner of the premises OR NOC from the owner showing premises being occupied by the complainant, the requirements is not yet complied by the applicant / complainant.
- 9.0 Since the complainant has failed to comply the required valid and proper documents in establishing the Ownership or Tenancy of the premises, to which Re-connection of electricity supply has been sought, as envisaged u/s 43 of the Electricity Act 2003, we humbly request to the Hon'ble Forum, to dismiss the case and refrain from addressing the grievance of the complainant for payment of outstanding arrears as per clause 10.5 of MERC regulations but direct to clear the entire outstanding dues.

REASONS

- 10.0 The Forum has heard Shri Farooque A. Electricwala for the complainant and for the Respondent BEST Undertaking Shri G.M. Bhagat, (DECCD) and Shri T.D. Jadhav, (Supdt. CC(D)). Perused papers.
- 11.0 At the outset, the Forum finds that the document submitted along with application seeking the reconnection to the Respondent BEST Undertaking as well as before this Forum, blatantly manifest that they are *per se*, fisheye and confusing one. This Forum therefore does not find any lapses or wrong on the part of the Respondent BEST Undertaking for denying the reconnection to the complainant as applied by him, in the aforesaid facts and circumstances. This Forum further finds that there is nothing wrong on the part of the Respondent BEST Undertaking to ensure itself not to allow any potential consumer to make any misinterpretation or to play any deceit on it.
- 12.0 This Forum now proceeds to advert to the documents placed on file by either party to this litigation. Therein this Forum finds that the complainant has raised the grievance that when he submitted an application for reconnection of meter to the premises allegedly occupied by him, he was directed by the Respondent BEST Undertaking to

pay the outstanding bill of previous consumer of an amount of Rs. 7,23,710/- along with submission of a cogent proof showing his "occupancy or ownership" of the premises. This Forum further finds that the complainant however, has shown his ready and willingness to pay the electricity charges in compliance to Regulation 10.5 of the MERC (Supply Code & Other Conditions of Supply) Regulation 2005.

- 13.0 We find that in the complaint submitted before the IGR Cell of the Respondent BEST Undertaking in Annexure 'C', the complainant had submitted that he had "purchased" the premises known as M/s Bombay A1 Restaurant. The complainant had also submitted along with his application for reconnection, the agreement reached between the landlord and surrender of tenancy by old party along with rent receipt for the month of March 2012. The complainant further submitted that, had he aware of pendency of electricity charges in arrears of Rs. 7,11,836/- before *purchasing* the premises he would have recovered the same from the old party.
- 14.0 On this backdrop, on perusing the documents placed on file, this Forum finds that there has been a notarized declaration dtd. 22/03/2012 placed on file by the complainant. This *affidavit / declaration* recites that the complainant has purchased the premises under consideration from the landlord Mr. Abdul Gafar Abdul Razak Rajkotia. These documents further recites that as the complainant has *purchased* the said premises, the same has been in his full possession from 22/03/2012, he being a lone proprietor.
- 15.0 The complainant has also submitted before the Respondent BEST Undertaking and that before this Forum, a *surrender of tenancy* notarized document dtd. 22/03/2012 signed by Mr. Merwan Khodiyar Dhamera and Mr. Pariburz Khodiya Dhamera. This document recites that the above name Mr. Dhamera Bros. are the partners of M/s A1 Restaurant i.e. the premises under consideration. They are the tenant in the said premises and the landlord is Mr. Abdul Gafar Abdul Razak Rajkotia and they have surrendered and handed over this tenanted premises to the said landlord.
- 16.0 This Forum therefore finds that, the documents placed on file by the complainant himself blatantly manifest that the landlord of the premises under considerations has been Mr. Abdul Gafar Abdul Razak Rajkotia. The surrender of "tenancy" document makes it further clear that Mr. Dhamera Bors. were the tenant in the said premises who surrendered the tenancy rights and handed over the possession of the premises to the landlord Mr. Rajkotia.
- 17.0 On this backdrop, it would be vitally important to ascertain whether to prove the ownership, the complainant has placed on file an "Agreement of Sale" signed with the owner Mr. Rajkotia. Apart from it, in case the complainant has been posing himself as a "tenant", in that contingency the complainant ought to have placed on file a rent receipt issued by the owner Mr. Rajkotia.
- 18.0 However, this Forum finds that the complainant has neither placed on file any "Agreement of Sale" entered with the landlord Mr. Rajkotia to prove his alleged *ownership*, nor he has placed on file any rent receipt issued by the landlord Mr. Rajkoita to prove his alleged *occupancy* of the premises in the capacity of a tenant.

- 19.0 This Forum however finds to its surprise that the complainant has placed on file a rent receipt at pg. 12 signed for Mr. Dhamera and Others. This rent receipt shows that the complainant has paid rent for a period from March to November 2012 to Mr. Dhamera and Others. To reiterate the complainant himself has placed on file the document at pg. 15 i.e. "surrender of tenancy" showing that Mr. Dhamera Bros. were the tenant of the premises under consideration, and they have handed over the possession to the landlord Mr. Rajkotia. It is therefore blatantly manifest that this rent receipt dtd. 15/03/2012 is of no significance, and it does not show that the complainant has been in the *occupation* of the premises.
- 20.0 The contention raised by the Respondent BEST Undertaking about the occupancy of premises claimed by the complainant is being ill-founded and unsupported, has been further fortified and strengthened by the site inspection report dtd. 19/03/2012 placed on file by the Respondent BEST Undertaking under the signature of its Investigation Inspector. This report manifest that at the time of inspection carried out on 04/03/2013 Mr. Faruq (Electric License Contractor) of the complainant was present on the site but complainant was not there.
- 21.0 To our shock and surprise, Mr. Dhamera Bros. surrendered its tenancy, of the premises where they were running their business viz. "A1 Restaurant", in the capacity of partners, to the landlord Mr. Abdul Gafar Andul Razak Rajkotia. This deed of "surrender of tenancy" as been dtd. 02/03/2012. However, Mr. Dhamera Bros. issued so called rent receipt to the complainant on later date viz. 15/03/2012, that too, when they themselves were the tenant and not landlord and as such they were liable to pay outstanding electricity charges to the Respondent BEST Undertaking. To reiterate the complainant on some occasion poses himself as "owner", besides it as well as "tenant" also. Thus this Forum finds that there has been much more than that meet the eyes.
- 22.0 In the aforesaid observation and discussion we find that the complainant has miserably failed in placing on file any cogent documentary evidence to show his *occupancy* of the premises to which the reconnection has been sought by him. To further reiterate the official of the Respondent BEST Undertaking has also not found the complainant physically in occupation during its site inspection. This Forum therefore does not have any hesitation to dismiss this complaint as the complainant has miserably failed to prove himself being either *owner* or *occupier* of the premises wherein he has sought the reconnection to electricity. Accordingly we proceed to pass the following order.

ORDER

1. The complaint no. S-D-195-2013 stands dismissed.
2. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman