

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-85-09 dt . 12/10/2009

Mr. Jalaluddin S. KhanComplainant

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. Akil Ahmed Ansari
2. Shri. Jalaluddin S. Khan

On behalf of the Respondent
1. Shri. Sanjay S. Bansode, DECC(D ward)
2. Shri. Girish D. Ubhalkar, AOCC(IGR D ward)

Date of Hearing 11/11/2009

Date of Order 16/12/2009

Judgment by Shri. R.U. Ingule, Chairman

Mr. Jalaluddin S. Khan, 1/5/6 Grd floor, Mustafa Bldg, 256/B, Bapty Road, Mumbai – 400 008 has come before forum for grievances regarding outstanding amount of electricity bill A/c No 840-147-043.

Complainant's contention in Brief are as under

1. Complainant Mr. Jalaluddin S. Khan stated that respondent demanded the OS recovery of Rs.27,378/- for A/c no. 840-147-043 from him. Complainant told the respondent that he had already paid all the amount at the time of taking meter in the year 2003. Due to flood on 26/7/2005 his said paid bill are washed away in the water hence he cannot submit the same paid bills. Complainant sought the record by submitting RTI Act & respondent replied him that they don't have any record.
2. Complainant stated that in the year 2000 the meter was installed for A/c no. 840-147-043 and in the year 2001 the meter was removed.
3. Complainant stated that in the year 2003 he had submitted an application (Reqn. no. 5030789) to install the meter & same was allotted under No. 840-147-045 & the meter was made higher capacity from single phase to 3 phase in the year 2004.
4. Complainant stated that he had allotted 6 meters under 3 Account numbers for said premises. When the dispute aroused in between him & his brothers the premises was closed and the respondent took away all the said meters.
5. The complainant registered their grievances in Annexure 'C' format on 23/6/2009. Unsatisfied by the action taken by respondent against their complaint in Annexure 'C' format vide respondent's letter dtd. 21/8/2009, the complainant lodged their grievances with CGR Forum in Annexure 'A' format on 12/10/2009.
6. Complainant prayed to the forum to close this account as he had given all the facts that the above amount has already paid to the respondent. Complainant hopes to get justice from the Forum.

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

7. The consumer was having three accounts with 6 meters for the same premises & all meters removed for non payment.
8. As per respondent the OS amount of Rs.24,068.52 was not cleared by the consumer & the OS amount bill was raised on him every month. Separate letter was also sent to remind him about the OS recovery, but the payment was not cleared by the consumer. Due to delay of payment charges amount increased to Rs.30,717.09.
9. Complainant vide application dated 8/5/2003 had requested for reconnection of the Electric Supply to his shop & new meter no.G022858 under A/c no. 840-147-045 was allotted to his premises. Complainant had not cleared the outstanding amount of Rs.24,068.52 pertaining to A/c no. 840-147-043.
10. Respondent prayed to the Forum to dismiss the case & direct the applicant to pay the OS amount of Rs.30,718/-.
11. Forum asked respondent to submit the ledger folio of A/C No. 840-147-043.
12. Respondent vide their note dtd. 12.11.2009 submitted the ledger folio of A/C No. 840-147-043 to Forum on 13.11.2009.

Reasons

13. We have heard representatives for both the litigating parties. Perused papers.
14. The controversy to be resolved in the instant matter moves in a very narrow compass. As per the contention raised by the complainant, the Respondent BEST undertaking has demanded arrears of electricity consumption charges of Rs. 27,378/- by serving a letter dated. 04.08.09 on the Complainant. The Complainant has been resisting the said claim of arrears made by the Respondent on a ground that the entire electricity charges have been already paid by him. However, due to the heavy flood, on account of a heavy rainfall occurred in Mumbai City on 26.07.05, the receipt issued to the Complainant against such payment made by him, has been washed away. Therefore, he has not been in a position to submit the said receipt issued to him against the payment made to the Respondent. During the arguments submitted before this Forum the Complainant has placed a heavy reliance on the said contention, while defending

the claim of arrears of electricity charges made by the Respondent against him.

15. Thus the crux of the controversy under consideration, has been confined to a solitary point, viz; whether the complainant has really paid the arrears of electricity charges of Rs. 27,378/- claimed by the Respondent BEST Undertaking and whether the Complainant has proved his said pleading. At this juncture it is significant to observe that the relief sought from this Forum by the Complainant has been viz "BEST is insisting for an arrears which I have already paid". Explicitly therefore, the Complainant has not denied his liability to pay the arrears of electricity consumption charges as claimed by the Respondent BEST Undertaking on any other ground or by taking a recourse to any provisions of law that provided under the Electricity Act, 2003 and / or Regulation provided there under.

16. In the aforesaid facts and circumstances, at the cost of repetition this Forum proceeds to observe that what remains to be seen, is whether the Complainant has proved his contention of paying electricity consumption charges in arrears of Rs. 27,378/- by submitting any evidence before this Forum. In the connexion, we may observe that the submission in writing placed before this forum on behalf of the Respondent BEST Undertaking manifest that the outstanding electricity consumption charges in respect of the A/c. No. 840-147-043 has been Rs. 24,068.52. The Respondent, however, contents that the said outstanding amount was not cleared by the Complainant; therefore, in the bill this amount has been raised and claimed against him every month. On account of delay in making the said payment, the said amount has been now increased to Rs. 30,717.09. In support of this claim the Respondent BEST Undertaking has placed on file copies of its ledger in respect of the account number of the Complainant i.e. 840-147-043 showing the electricity consumption charges in arrears being Rs. 24,068.52 against the entry for the month of March, 2002.

17. Keeping aside variance in respect of the amount of electricity charges in arrears, significant to observe that in an attempt to prove the payment of alleged amount of Rs. 27,739/- in arrears, the Complainant has placed on file Xerox copies of 3 electricity bills and Xerox copies of a Bank Pass Book. It may be noted at this juncture that the Complainant has alleged a receipt issued by the BEST Undertaking against the payment of electricity charges made by him to the Respondent, being lost in a heavy rainfall occurred on 26.07.05.

18. The aforesaid documentary evidence has been placed on file before this Forum by the Complainant at page no. 7 alongwith his letter dtd. 15.09.04. A bear perusal of this Xerox copies manifest that these 3 electricity bills are in respect of consumer A/c. No. 840-147-009 and

not for A/c. No. 840-147-043 under consideration. Besides this, the Xerox copy of the Bank Pass Book placed before us does not give the name of any bank, name of account holder, account number and other particulars. Further it is pertinent to note that there has been a single entry in the said pass book showing a payment vide cheque no. 393190 of an amount of Rs. 17,740.00 being made on 25.03.04 to the BEST Undertaking, when the latter claim the electricity consumption charges being of Rs.24,068.52. We thus find that these documentary evidences placed before us by the Complainant does not further the case of the Complainant to any extent.

19. The said attempt made by the Complainant to prove his contention before this Forum by submitting the said documentary evidence found by this Forum, being abortive and futile. We, thus, find that beyond mere assertion before us, the complaint could not place any evidence before this Forum to prove his contention about the said amount of arrears, being paid by him to the Respondent BEST Undertaking.
20. To conclude, we find that the Complaint made by the Complainant before this Forum has been confined to the alleged payment of electricity consumption charges to the Respondent. Thus far and no further. Accordingly, the nature of relief sought by the Complainant from this Forum has been viz. "BEST insisting payment of arrears which I have already paid".
21. In view of the foregoing reasons we hold that the Complainant has miserably failed in establishing his solitary contention raised in the Complaint, to any extent. Therefore, in a net result the same should fail.

Dissenting Judgement by Mrs. Varsha Raut, Member

22. The crux of the grievance is whether the amount of Rs 27378/- claimed by the Respondent in Aug-2009 for a period prior to 2004 is at all due and payable by the complainant. The complainant has claimed that he has paid the amount way back in 2003 but is unable to support his contention with any satisfactory documentary evidence since the same is washed away in floods on 26th July.
23. On the other hand Respondent too is not in a position to produce any satisfactory evidence to show that this amount of 27378/- is due and payable by the complainant in the year 2009. Although it is true that initially the onus of proving the payment made to the Respondent is on the complainant, it is equally true that when the Respondent has raised the bill after the long gap of more than 8 years, it is the primary duty of the Respondent to establish that such amount is not only due

and payable but has not been paid by complainant at all in these years in spite of repeated demands.

24. Peculiar facts and circumstances of this case cannot be ignored; it is undisputed fact on record that the complainant's power supply was disconnected for nonpayment in the year 2000. It is also undisputed fact that the Respondent had demanded the recovery of Rs 27378/- in the year 2003, further, it is also a matter of record as per Respondents own showing that the complainant vide its application dtd8/5/2003 had requested for reconnection of the electric supply to his shop and new meter no G022858 under A/c no 840-147-045 was allotted to his premises and the meter was made of higher capacity from single phase to three phase in 2004. Respondent has not been able to explain satisfactorily how and under what circumstances application and reconnection was granted without recovering the said outstanding amount. It is difficult to believe that Respondent would have reconnected supply without recovering the outstanding dues from the complainant.

25. Even assuming that Respondent erred in not recovering the said outstanding amount at the time of reconnection the Respondent ought to have brought on record adequate evidence to show that the demand of outstanding amount was consistently reflected in the bills of the complainant after 2004 till 2009. It is again a matter of record that Respondent has miserably fail to show any evidence having made this demand continuously for this entire period till Aug 2009. As such this entire episode gets hit by Sec 56(2) of EA2003 and no matter whether a complainant is in a position to produce any evidence in support of its alleged claim of having paid the said outstanding amount, the Respondent itself is guilty of not being consistent in its alleged claim of outstanding dues and hence has no legal authority to claim this amount after such long period. The undercurrent of Sec 56(2) appears to be that of not forgiving the utilities for their carelessness or negligence in not properly and consistently pursuing the case and hence the EA has provided a thoughtful protection under Sec 56(2) to consumers under such typical and gross cases of recoveries of outstanding dues after gap of long spell of time.

26. Apart from the above considerations I cannot also overlook another serious matter in this case. It has come to our notice from the ledger shown be Respondent. Even after the disconnection of supply there is unit consumption shown in the ledger. This raises doubts and also a serious question whether unauthorized supply was given by the Respondent to unauthorized person in connivance with the staff of Respondent.

27. In my considered view, will it be fair to deny justice because he has not pleaded his grievance asking the relief under Sec 56 (2) of EA Act 2003. Complainant has approached the forum saying that "BEST is insisting for an arrears which I have already paid" and does not want to pay again to Respondent. Is he not disputing the claim of Respondent ?

28. The Forums which are established under the name of "CONSUMER GRIEVANCE REDRESSAL FORUM" itself indicates the purpose of their establishment. The basic principle stated in Regulation 3 of MERC (CGRF and electricity Ombudsman)2006 says that "Such forums shall follow the principles of natural justice including inter alia, It shall protect the interest of consumers and it shall inform consumers of their rights. Shouldering more responsibility on forum it further says in regulation 6.20 (b) while issuing the notice of inquiry or at any time thereafter, the Forum may, at its discretion designate any person whom the Forum considers appropriate to, -
- (i) present the case of a party which cannot afford to engage its representative, or
 - (ii) act as *amicus curiae* to assist the Forum in its proceedings.
29. Regulation 6.19 says that the Forum shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872) as in force from time to time.
30. I am therefore of the view that with due respect I am unable to concur with the view of the majority and therefore say that the respondent has miserably failed to demand this outstanding amount after along gap of 8 years.
31. For the forgoing reasons we proceed to pass the following order by virtue of majority's view.

ORDER

1. The Complaint No. S-D-85-09 dt. 12/10/2009 stands dismissed.
2. Respondent is directed to waive D.P. & interest Charges and to recover only the energy charges from the complainant.
3. Copies to be provided to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member