

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-183-2013 dtd. 30/01/2013

Mr. Jeetendra GhadgeComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : 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 Jeetendra Ghadge

On behalf of the
Respondent No. 1 (BEST) 1. Shri G. M. Bhagat (DECCD)

On behalf of the
Respondent No. 2 (Venus) 1. Shri Nilesh Oza0

Date of Hearing : 05/03/2013

Date of Order : 19/03/2013

Judgment by Shri. R.U. Ingule, Chairman

Mr. Jeetendra V. Ghadge, Room no. 4 & Shop no. 2, Gr. Flr., Parekh Estate Bldg. No. 43, J.S.S. Road, Mumbai - 400 004 has come before the Forum for grievance regarding electric connection given to M/s Venus Rubber Works A/c no. 867-243-067*6.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 29/11/2012 for grievance regarding electric connection given to M/s Venus Rubber Works A/c no. 867-243-067*6 who is sub-tenant of complainant's grandfather and requested to transfer their meter in his name. The complainant has approached to CGRF in schedule 'A' dtd. 28/01/2013 as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to change the name of the meter from M/s Venus Rubber Works to Shri Jeetendra Ghadge and also asked for the compensation of Rs. 1,00,000/- for causing trauma and inconvenience to himself and his family.

**Respondent No. 1 BEST Undertaking in its written statement
in brief submitted as under :**

2.0 Mr. Jeetendra Vasant Ghadge had submitted his grievances in Annexure 'C' on 29/11/2012 in which he complained that an illegal electricity connection is given to M/s. Venus Rubber Works who is trespasser into his shop. He has asked to transfer the meter of M/s Venus rubber works under A/c No 867-243-067, for his room no. 4 as his father late Mr. Vasant Tanaji Ghadge was the legal tenant of Shop no.2 & Room no.4 as per rent receipt and register an FIR against M/s. Venus Rubber Works for Forgery and cheating. He has also complained that in the bill address of Consumer No. 867-243-041 building name is mentioned as Madhukar Building instead of Parekh Estate Building. BEST officials had not collected any address proof.

3.0 After receipt of the complaint under Annexure 'C', our representative inspected the said shop on 11/01/2013 at Parekh Estate Building and it was found that the correct name of the building is Parekh Estate and not Madhukar Building. It is also observed that M/s Venus rubber works is the physical occupant of the said shop in Parekh Estate Building no.43. He is our registered consumer having electric Meter No. E911667 under a/c no. 867-243-041 in his name and he is receiving and paying the electricity bills since 21 yrs regularly. During the site inspection, as an occupant, M/s Venus rubber works submitted the copies of License renewed by MCGB valid up to 30.6.2014, Certificate of Registration with Sales Tax Office dtd 2/8/2012, MTNL bill for the month of Nov 2012, Small Cause Court Documents regarding suit no. 290 of 2000 and Advocate's letter dt. 17/07/2007 submitted to the owner of the property M/s. Shree Parekh Estates Pvt. Ltd.

4.0 For Annexure C, Mr. Jeetendra V Ghadge was suitably replied vide our letter dt 21/1/2013 which was acknowledged by him. The copies submitted by M/s. Venus Rubber Works during site visit were also made available to him. Also the copy of consumer information system (CIS) clearly indicating the electricity connection was given to M/s. Venus Rubber Works having consumer No. 867-243-041 is in the year 1991 i.e about 21 years back and to Vasant Tanaji Ghadge; Consumer No 867-243-067 is in year 2004 i.e about 8 years back was submitted to Mr. Jeetendra V Ghadge. It was also replied to him that, the changes in the building name has been carried out by our IT Department for standardization of address in the service master for building name, road name etc. However, on investigation it was found that the proper name of the building is Parekh Estate and not Madhukar building hence necessary correction advice is forwarded to DEIT on 11/01/2013 for correction in building name. Same will be implemented in electricity bill in due course.

- 5.0 The electric bill under consumer no. 867-243-067 stands in his late father's name Mr. Vasant Tanaji Ghadge who is the registered consumer. After his death, Mr. Jeetendra Vasant Ghadge not yet applied for "change of name" to BEST as per BEST's terms & conditions along with required documents. Hence Mr. Jeetendra Vasant Ghadge cannot be treated as consumer as per terms and conditions of the electricity supply code and other conditions of supply.
- 6.0 In the complaint under Annexure C, Mr. Jeetendra Vasant Ghadge did not produce either court documents or any such information as mentioned in complaint under "Schedule A", hence question of ignoring facts by BEST is improper as we were unaware of the court matter. Now, subsequently, while filing "Schedule A" he has submitted the Court Documents belonging to his late father Mr. Vasant Tanaji Ghadge along with article of agreement. It is also to be mentioned here that the information of M/s Venus rubber works available in electronic format was given under RTI, since the record documents being very old i.e more than 21 years, as per annual scrapping, hard copies were scrapped and are not available. Also the said information was provided to Anti Corruption Bureau (ACB) vide our letter dtd. 30/05/2012 on their request.
- 7.0 Shri Jeetendra Vasant Ghadge is trying to prove his ownership of shop no. 2 and room no. 4 by submitting evidences of current rent receipt, BMC extract etc. However, the current rent receipt submitted is in the name of Baburao S Ghadge and not in the name of Jeetendra Vasant Ghadge. Also there is no mention of any name on BMC extract. The Meter No. E911667 was installed in the name of M/s Venus Rubber Works having Consumer No. 867-243-041 in the year 1991 as per the documents submitted then. In this regard it may be noted that

As per Sr.2.9 Terms and conditions of BEST(Exhibit M) " the undertaking shall neither be responsible nor liable to ascertain the legality or adequacy of any No objection certificates/ way leave permissions/permissions or consents of statutory Authorities which might have been submitted by the applicant/consumer along with this application and shall believe that such certificates/permissions to be sufficient and valid unless proved to be contrary. In such cases if documents are found to be fraudulent at later stage consequences shall be borne by the consumer".

Hence proving ownership is not in the purview of BEST Undertaking. It may also be noted that the electricity bill issued to the consumer is for payment of electricity charges and not to be treated / used for any other purpose. Same is mentioned on the electricity bills by BEST Undertaking.

- 8.0 Since the electricity used by Mr. Jeetendra Ghadge is for Commercial activities, the tariff is being charged with Commercial Rates i.e. LT-II Tariff and not for residential purpose. He is not ready to apply for separate meter for his residence i.e. room no.4 and insisting to transfer the meter of M/s Venus rubber works to his residence room no.4 and in his name. In this regard, Mr. Jeetendra Ghadge has to make a written application for change of name from M/s Venus rubber works to Mr. Jeetendra Ghadge and register a separate requisition for electricity connection for his residence.

- 9.0 We pray to the Hon'ble Forum to dismiss the grievance made by Shri Jeetendra Ghadge for the reason as the cause of action arose in the year 1991 and Mr. Jeetendra Ghadge came to know in the year 2007 and grievance raised after more than 2 years from the cause of action. Therefore it is time barred and liable to be rejected in terms of Regulation 6.6 of CGRF Regulations 2006 and requested to Instruct Mr. Jeetendra V Ghadge to submit an application for New connection of meter for his residence, Change in Tariff & Change of Name for transfer of meter from M/s Venus Rubber works to his name along with required documents as per BEST terms and conditions.

Respondent No.2 M/s Venus Rubber Works in their written statement submitted in brief as under :

- 10.0 We have been in possession of this shop (front portion) in question situated at 43, Parekh Estate Bldg., Kennedy Bridge, J.S.S. Road, Girgaon, Mumbai - 400 004 from 1969 up till date and have been running our business in the name of Venus Rubber Works ever since. We had initially taken the said shop on Leave & License from 1973 onwards. Because of an act passed by the Government the same was converted to tenancy. Initially the electric supply to our shop was taken from our Licensor, Shri Baburao Ghadge whose shop was on our rear portion and the electric bill was paid by us and there was no issue what so ever.
- 11.0 In 1969-70 the landlord of Parekh Estate Pvt. Ltd., where the said shop exists, filed a suit in Small Cause Court against Shri Baburao Ghadge making us a party in the said suit for subletting the premises to us. During the process of said suit pending in Small Cause Court we were put into lots of hardship by Shri Vasant Ghadge, who was the nephew of the late Shri Baburao Ghadge. We would like to understand what rights the nephew was exercising in a shop where his uncle was a legal tenant. Shri Vasant Ghadge had taken law in his hand and was trying by all the possible ways to evict us from the said shop using illegal tactics and imposing terror tactics, without having any rights in the said shop.
- 12.0 During the period in 1985-86 in one occasion, one fine morning when we came to open our shop, we found that our shop was locked with a new lock, which we came to know that the said lock was put by Shri Vasant Ghadge. We then lodged a complaint with the D.B. Marg Police station, who advised us to take up the matter with the Court. We then filed a complaint with the City Civil Court, who after hearing our complaint, passed an Injunction Order to open the shop and also stopping Shri Vasant Ghadge from interfering with the working of our business, and to clear the shop from all the gunny bags with Charcoal, which he had put in to disturb us. When we opened our shop, we found that many of our items were missing or were spoiled causing a heavy loss to us. Here we would also add that we had to stop our business for almost 30 days because of this act by Shri Vasant Ghadge. The Hon'ble Court also ordered that the monthly rent is to be deposited in the Court.
- 13.0 In 1999, the Landlords M/s Parekh Estate Pvt. Ltd. lost the suit in the Small Cause Court bearing suit no. 2070. He went in an Appeal, which was finally dismissed on the 08/03/2006. Thereafter we wrote a letter to our Landlord M/s Parekh Estate Pvt. Ltd. to issue a rent receipt in the name of M/s Venus Rubber Works which is pending as on this day.
- 14.0 During the course of the said suite pending in the Small Cause Court Shri Vasant Ghadge started harassing us by cutting of the electric supply which was from the meter of Late Shri Baburao Ghadge. On many occasions, the bills which used to come to our address were not given to us and the whole intention was to harass us. By not giving us the bill, the idea was to get the electric supply disconnected. Knowing this attitude and intention

we then started applying for a duplicate bill so that our electric supply is not disconnected.

- 15.0 Tired of the problems created by Shri Vasant Ghadge, on the basis of the Shop and Establishment License which is a original document issued by the BMC, The Gumasta License and the telephone bill and the Sales Tax Reg. Address, we finally applied for a electric meter in our name. All original documents can be verified at any time.
- 16.0 This very clearly establishes the fact that all the accusations levied against us is with an ulterior intention to trouble us and some how evict us from the said shop where we have been doing our business for the last 44 years. The issues which were stated by the nephew, Shri Vasant Ghadge is now being continued by his son Shri Jeetendra Ghadge. There is no supply being used by us as on today which is under any forged documents, as is alleged.

REASONS

- 17.0 We have heard complainant in person and for Respondent No. 1, BEST Undertaking Mr. G. M. Bhagat (DECCD) and for Respondent No. 2 Mr. Nilesh S. Oza.
- 18.0 At the outset, this Forum finds no merit into grievance raised by the complainant in this complaint. This Forum observes that as submitted by complainant in the complainant, he came backs to reside in the premises alongwith his father in 2003. His father expired in the month of April 2006. The complainant came to know that Respondent No. 2 M/s. Venus Rubber Works obtained an electric meter in its name in 2007.
- 19.0 This Forum finds that the complainant however has raised instant grievance before IGR Cell in the month of November, 2012 and that before this Forum in the month of January 2013. At this juncture significant to observe that the Respondent No. 1 BEST Undertaking has rightly raised an objection that in view of Regulation, 6.6 provided under MERC (CGRF) Regulations, 2005, this Forum has been statutorily restrained from admitting any grievance, unless it is filed within two (2) years from the date on which the cause of action has arisen.
- 20.0 As observed above, complainant was aware as per his submission that, in the year 2007 the Respondent No. 2 M/s. Venus Rubber Works had secured the electric meter in its name. This Forum therefore, uphold the contention raised by Mr. G. M. Bhagat (DECCD) for the Respondent BEST Undertaking that the `cause of action', as envisaged under Regulation 6.6; had arisen in the said year of 2007, therefore the complainant ought to have raised instant `Grievance', within a period two years commencing from the year 2007. However, the `Grievance', has been filed in the month of November, 2012 before IGR Cell and in the month of January 2013 before this Forum i.e. out of the prescribed statutory limitation. This Forum under such admitted set of facts find the instant complaint, being preferred out of limitation, and therefore liable to be dismissed on this ground alone.
- 21.0 This Forum, however in its anxiety to dispose of the instant complaint on its merit, proceeds to consider the other contentions raised by the complainant in this complaint.
- 22.0 This Forum observes that the very relief claimed by the complainant has not been sustainable. Complainant prayer has been for passing an order to "change of name" of the electric meter of Respondent M/s. Venus Rubber Works, and to bring the same in his name. In support of his contention, the complainant submits that the front portion of Shop No. 2 was subletted to the Respondent M/s. Venus Rubber Works, by signing Leave and

License agreement for a period of one year, in 1969 by his late grand father. The proprietor of Respondent M/s. Venus Rubber Works had filed a suit before the City Civil Court Bombay, where in the said proprietor was directed to approach the proper court, and he has failed to do so, therefore he is now *trespasser*. Besides it, the Respondent BEST Undertaking has provided an electric meter to him by illegal means.

- 23.0 This Forum finds that there has been total misconception of law on the part of complainant. A solitary contention has been raised by the complainant that the Respondent M/s. Venus Rubber Works, has been illegal *tenant*, as such a *trespasser*, therefore not entitled to get the electric meter and retain the same in its name. This Forum in this connexion observes that as envisaged under sub-section (1) of S/43 of the Electricity Act, 2003, it is the "occupant and owner", who are entitled to get the electricity connection from the Distribution Licencee. This Forum finds it expedient to reproduce hereinunder the relevant portion of the said sub-section (1) of S/43, and it reads as under.

43. Duty to supply on request. -

(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

- 24.0 This Forum finds that the emphasis of complainant on the status of "tenant", has not been compatible with the intention of the legislature in employing expression "occupant and owner" in sub-section (1) of S/43 of the Electricity Act, 2003. As admitted by complainant himself, the Respondent M/s. Venus Rubber Works, has been "occupant" of front portion of Shop No. 2 from 1969 till date. If at all the Respondent M/s. Venus Rubber Works, has been a *trespasser* as contended by the complainant, in that case, no step has been taken by the complainant or his father, to evict him from the premises.
- 25.0 This Forum in this context observes that the copy of the judgement place on file by the complainant himself in Appeal No. 290/2000 in R. A. E. Suit NO. 2070/1970 between Shri Parekh Estates (Pvt) Ltd. R/s. ancestors of complainant alongwith present Respondent M/s. Venus Rubber Works, before the Small Causes Court at Bombay, manifest that the concerned judge has drawn a conclusion on page no. 29 that the defendant No. 2, 3 & 4, are not the unlawful occupants of the suit premises. This Forum observes at this juncture that the said suit premises includes front portion of Shop No. 2 and defendant No. 3, has been present Respondent V/S Venus Rubber Works.
- 26.0 This Forum thus finds that as observed above already there has been a decision of the competent court, holding Respondent M/s. Venus Rubber Works being "not illegal occupant" of the premises. Besides it, to reiterate from 1969 till this date Respondent M/s. Venus Rubber Works has been in "occupation" of Shop No. 2 till date as such, in a *settled possession* of the premises. At this juncture, we may advert to the decision of Hon'ble Full bench of Calcutta High Court in case of *Abhimanyu Muzumdar V/S The Superintending Engineer* (2012(4) All MR (Journal) 24 *inter alia* holding that a person in *settled possession* is lawful occupier and is entitled to apply for electricity without the consent of owner of the property and enjoy the same until he is evicted by due process of law. Therefore, this Forum hold that by no stretch of imagination Respondent

No. 2 can be called as "trespasser" for the purpose of application of Section 43 of the Electricity Act, 2003.

- 27.0 The complainant in his futile and abortive attempt of resisting the electricity meter standing in the name of Respondent M/s. Venus Rubber Works, raised various contentions like submitting forged documents by the Respondent M/s. Venus Rubber Works to Respondent BEST Undertaking and alleged corruption and biasness on the part of the official of the Respondent BEST Undertaking, and at the same time submitted that the *ACB* is conducting an enquiry and soon *FIR* would be register. This Forum therefore finds no warrant to dwell on this contention any more and burden this order.
- 28.0 The complainant has claimed Rs. 1,00,000/- compensation from Respondent BEST Undertaking under rule 17.15. This Forum however finds that at no stage of the hearing of this complainant, said alleged rule 17.15 has been brought to the notice of this Forum. To conclude this Forum observes that admittedly Respondent M/s. Venus Rubber Works has been in occupation of front portion of Shop No. 2 from 1969, therefore no blame can be ascribed to the Respondent BEST Undertaking, in providing electric meter to it. This Forum does not find any warrant and justification to address to rest of the contentions raised by the complainant being baseless and unsustainable in law.
- 29.0 In the aforesaid observation and discussion, the complaint is liable to be dismissed. Accordingly, we do so.

ORDER

- 1.0 Complainant No. S/D/183/2013 dated 30/01/2013 stands dismissed.
- 2.0 Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman