

**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. 22799528

**Grievance No S-B-405-2020 dtd. 04/02/2020**

Shri Girish Shivji Dharod .....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent

**Present**

Chairman / Member Licensee

Quorum : Shri K. Pavithran

Member

Dr. M.S. Kamath, Member CPO

On behalf of the Respondent : 1. Shri D.S. Bodke, AAM CC(B)

On behalf of the Complainant : 1. Shri Mandal G.S. (Complainant's Representative)

Date of Hearing : 11/03/2020

Date of Order : 13/03/2020

**Judgment**

Shri Girish Shivji Dharod, Godown ground floor, 164/166, Bhimpura, Shayda Marg, Chinchbunder, Mumbai - 400 009 has come before the Forum for dispute regarding reconnection of supply at Godown ground floor, 164/166, Bhimpura, Shayda Marg, Chinchbunder, Mumbai - 400 009.

**Complainant has submitted in brief as under :**

The complainant has approached to IGR Cell on 23/10/2019 for dispute regarding reconnection of supply at Godown ground floor, 164/166, Bhimpura, Shayda Marg, Chinchbunder, Mumbai - 400 009. The complainant has approached CGRF vide schedule 'A' dtd. 03/02/2020 (received by CGRF on 04/02/2020) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee.

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

- 1.0 Applicant Shri Girish Shivaji Dharod, has applied vide requisition no. 402645 dtd. 26.04.2019 for reconnection of meter at Godown, on Ground floor, 164/166, Bhimpura, Shayda Marg, Chichbunder, Mumbai 400 009. As per site inspection report, the building is partly constructed upto 2<sup>nd</sup> floor.
- 2.0 As per Agreement it is learnt that, building is proposed to construct upto 19<sup>th</sup> floor. Since the Building's construction work is incomplete and Applicant has not complied with the requirements under Statutory Permission i.e. Completion Certificate, MCGM Approved structural audit report, etc., reconnection of electric supply cannot be complied with.

**REASONS**

- 1.0 We have heard the complainant's representative Shri Mandal G.S. and for the Respondent BEST Undertaking Shri. Bhodke AAMCC B ward, the narrative of the case as per the complainant's representative is as below;
- 2.0 The complainants representative Shri Mandal G.S. submitted that the consumer Mr. Girish Shivaji Dharod had applied for reconnection of electricity supply to his new godown at ground floor in the under construction building at Shayada Marg, Mumbai 400004 and for that he has submitted an application at B ward office of BEST Undertaking and BEST has not sanctioned his application no. 402645 for electricity as BEST is insisting to submit occupancy proof, NOC from Chief fire officer, PWD department and completion certificate and structural audit report from MCGM. In regards to this he had approached IGRC of Customer Care B ward office and IGRC has rejected his complaint on the ground that he did not submit the required documents of NOC from Chief fire officer, PWD department and completion certificate and structural audit report from MCGM. Complainant's representative argued that he cannot bring NOC from Chief fire officer PWD department and completion certificate and structural audit report from MCGM as demanded by BEST because the developer builder is absconded from the site of construction and the construction activities of the proposed new building is stopped due to the reason known to the builder only and it is now as if the building is abandoned and they are not aware of the whereabouts of the builder. Under the present state of affairs, they are not able to locate whereabouts of the builder and get the required documents and also it is a well established fact that without completion of building construction work it is quite impossible for the complainant to get all these permissions. Therefore without

producing all these documents before the Forum, complainant's representative wants reconnection of electric supply to the premises where the consumer is occupying in the under construction building . Representative further submitted that his old premises was demolished for the redevelopment of the old building and at present the builder has constructed the new building only up to 2<sup>nd</sup> floor and the builder has absconded. The actual plan of the proposed new building is for construction of 19 upper floors building. In view of the present circumstances he could not produce any statutory permissions or proof of his rightful occupancy in the premises except the copy of agreement for Permanent Alternate Accommodation executed between the developer M/s Shah developers and the complainant. He cannot bring NOC from Chief fire officer PWD department and completion certificate and structural audit report from MCGM as the developer is absconded without completion of the proposed new building. Under the present situation the complainant is in dilemma and without all these documents he wants reconnection of electric supply to the premises occupied by the complainant. Complainant's representative agreed that the builder has not issued the allotment letter or occupancy certificate. Representative further submitted that there are three more tenants also occupying in the second floor of the same building and using electricity from the BESTs service cable which is laid for construction activities of the building. Representative therefore requested to consider his application under mercy as he is also aware that without occupancy certificate, electricity connection cannot be granted legally. Contention of the representative is that the meter had been removed at the time of demolition of the old building, somewhere in the year 2013 and therefore the case may be considered as a reconnection case instead of treating a new connection case. The consumer's business is running under huge loss without electricity and therefore come before the forum to give meter connection to complainant's godown on the basis of indemnity bond and agreement as valid documents.

- 3.0 Representative of BEST Shri. Bhodke submitted that an application was received for reconnection of the electric supply and after the due verification complainant's premises was inspected on 18/2/2020 when it was noticed that the building construction work was stopped and service meter cabin was found locked and no any responsible person was available at the site to enquire about the status. The premises where complainant has applied for electric supply is in the under construction building where only the concrete work is reached up to second floor and there is no any sign of progress of further construction activities going on at the site. After enquired with the site they came to know that the developer builder has stopped the further construction. Representative of BEST further submitted that the premises where electric supply is required by the complainant is at ground floor which is not marked and also found that some other portion on first floor (assumed to be as per the present status) is occupied by tenants with their own risk and cost by providing some brick wall arrangement. In view of the above circumstances the building is not safe for providing electricity and admittedly agreed that the builder cannot grant occupancy or allotment of the premises now occupied by the complainant as the building construction work is not completed. BESTs representative further submitted that in the earlier submission of the document to CGRF, they came to know that building was

planned for 19 upper floors however, it is now came to know that the building is proposed to be constructed for 21 upper floors. BEST's representative submitted that there is no any provision in the Act and Regulation to sanction the application without producing the valid occupancy proof.

- 4.0 Having regard to the above said submissions and deliberations during the hearing, the Forum has come to the following conclusions leading to the decision and to issue the order. The contention of the complainant's representative to consider the case under reconnection, emphasizing the fact that the meter was existing in the old building and the meter was removed for demolition / redevelopment of building somewhere in 2013, cannot be admitted. In this regard we think it just and proper to reproduce Regulation 6.10 of MERC (Standard of Performance of Distribution Licensee, Period of giving supply and Determination of Compensation) Regulations, 2014 below.

Regulation 6.10        xxx    xxx    xxx

*Provided that where the period of disconnection exceeds 6 months, an application for reconnection of supply shall, after either payment of amounts due for upon settlement of dispute, be treated as a fresh application for supply of electricity under the provisions of the Act.*

Therefore, the present case is to be treated as a fresh application for supply of electricity under the provisions of the Act. Now the rival contention in the case is as to whether the occupation of the so called godown by the complainant at the ground floor of under construction building amounts to occupy as contemplated u/s 43 of EA Act 2003 and regulation 4.1 of MERC ( Electric supply code and other conditions of supply ) regulation 2005 and subsequent Practice directions under Electricity supply code Regulation 2005 issued by MERC on 25 March 2019. In this content we wish to produce section 43 of The EA 2003, and practice Directions issued by MERC.

Section 43 :

Duty to supply on request :

- 1) *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.*

xxx    xxx    xxx  
xxx    xxx    xxx

*Explanation - For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the Distribution Licensee, along with documents showing payment of necessary charges and other compliances.*

- 2) xxx    xxx    xxx  
   xxx    xxx    xxx

- 3) xxx    xxx    xxx

- 5.0 After going through the section 43 of The EA 2003 it appears that, it casts liability on Distribution Licensee to supply electricity when application is complete in all respect in the appropriate Form as required by the distribution licensee along with the documents and payment of necessary charges and other compliances. Considering the provision of section 43 of The EA 2003, we wish to reproduce Application for supply as per a Regulation 4.1 of MERC (Electricity supply code and other conditions of supply) Regulations 2005 and also Clause 2.1 and 2.2 of Practice Directions issued by MERC.

#### Regulation 4.1

*4.1 The applicant shall provide the following information / particulars / documents to the Distribution Licensee while making an application for supply or for additional load, shifting of service, extension of service or restoration of supply:*

*(i) applicant's name and, whether or not the applicant is the owner of the premises for which supply of electricity is being applied for;*

*(ii) xxx xxx xxx*

*(iii) where applicant is not the owner of the premises, name of owner of premises;*

*(iv) xxx xxx xxx*

*(v) xxx xxx xxx*

*(vi) xxx xxx xxx*

*(vii) additional documents as may be required from the applicant under any statute for the time being in force:*

*Provided that the application form shall provide a list of (a) all major purposes of usage and (b) all such documents along with a reference to specific provision of the statute(s) under which they are required by the Distribution Licensee from the applicant at the time of giving supply of electricity to the premises:*

*Provided further that for consumers falling under the domestic tariff category, a copy of any one of the following documents, namely (i) ration card; (ii) photo-pass; (iii) voter's card; (iv) passport; (v) documents pertaining to occupation of premises, may be required at the time of processing of the application;*

*(viii) additional details that may be provided by the applicant, at his option, to facilitate the supply of electricity or consumer service by the Distribution Licensee;*

*(ix) xxx xxx xxx*

## 2. Practice Directions :

2.1 *For application for new supply, Distribution Licensee shall seek only following two documents along with application form.*

- i) *Proof of identity of the applicant*
- ii) *Proof of ownership / occupancy (in case of owned or leased premises), Authorization document (in case of firm or company)*

*For all other statutory requirements, the applicant shall provide declaration / undertaking for confirmation that the information provided in the application is true, the applicant has complied with all requirements under all Statutes for the time being in force, the applicant himself / herself shall be held responsible for any issue arising out of any such non-compliance and that the Applicant shall indemnify the Distribution Licensee from any loss that may occur on account of such non-compliance.*

6.0 Having regard to the legal provisions of Regulation 4.1 of MERC (Electric Supply Code and Other Conditions of Supply) Regulations 2005, it appears that the applicant/complainant shall provide the information/particulars documents as provided under Regulation 4.1 of MERC (Electric Supply Code and Other Conditions of Supply) Regulations 2005, which elucidate that provisions are mandatory. Forum has cautiously perused the provision in the practice direction clause 2.1 and the provision in the clause is mandatory. We have perused the complainants application having no.402645 dated 26/4/2019 filed by the complainant for electric supply and it appears that it does not depict the name of the building, premises/shop no., building no. and name of the owner or at what capacity applicant is applying for electricity connection. Forum has also noted that in the application Form under serial No. 1 against premises /shop no. is written as godown, building name is kept blank. Forum do not understand as to why these columns are not been filled up by the applicant as per Regulation 4.1 of MERC (Electric Supply Code and Other Conditions of Supply) Regulations 2005.

7.0 After going through the provisions of 4.1 of MERC (Electric Supply Code and Other Conditions of Supply) Regulations 2005, it appears that it is obligatory on the part of applicant/complainant to mention whether he is the owner of the premises or not for which the electric supply is being applied for. As well as per the provision 4(iii) of MERC (Electric Supply Code and Other Conditions of Supply) Regulations 2005 where the applicant is not the owner of the premises, name of the owner of premise is to be mentioned. Complainant's application is silent on the above aspect.

8.0 Having regard to the above said reasons, we have asked the representative of the complainant as to why the complainant has not filed the allotment letter identifying the particular premises allotted to the complainant. In this respect the representative replied that the building under the reference is not yet completed its construction by the builder and they don't know the whereabouts of the builder as the builder/developer is now absconded. The submission of the complainant at some

extent goes to show that the possession of the said premises now occupied by the complainant is not authorized. It is the admitted fact that builder can issue such allotment letter only when the construction work of the building is completed in all respect as per the plan approved by various authorities and all other statutory permissions are received from the competent authority. In the instant case it appears that there is no question of issuing such allotment letter as the construction of the building work is found to be stalled as admitted by the Respondent BEST and the representative of the complainant. This we have to say because, unless the complainant has been granted the letter of allotment of the premises as per the approved plan and in accordance with the agreement, emphatically took possession by the person under his own whims cannot be termed as legal and occupying such premise without any authentic document is illegal occupancy. In this regard Forum has cautiously gone through the copy of Agreement for Permanent alternate accommodation submitted by the complainant and observed that in the said agreement nowhere it is mentioned the specific premise numbers and also at page no. 17 of the said agreement shop premises/flat no. is kept blank. Forum further noted that in the said agreement there is a mention of the newly constructed building name is "Noorani Castle". However, the said name of the building is not mentioned in the application submitted by the applicant for electricity connection. After perusal of the copy of agreement submitted by the complainant, Forum further noted that the proposed new building is to be constructed with ground+four podium+nineteen floors and has two lifts. However as per the photo copy of the site picture filed with the Forum shows that there is only ground and two floors concrete structures have been constructed. The Forum has therefore confirmed and convinced that the proposed new building's construction work is not yet completed as per the approved plan.

- 9.0 Having regard to the above said facts and circumstances it appears that the occupation of the complainant as per the present status in the premises cannot be considered as legal and therefore cannot be termed as the complainant is a legal occupier as also complainant has no any occupancy proof to substantiate his contention that he is occupying the premises legally. On this point we have gone through the section 43 of The EA 2003 and the expression occupier mentioned in the section 43 of The EA does not include an unauthorized occupant of a premises within a class of persons denoted by it. A person who forces himself in to any part of the premises which is not yet specifically and legally allotted to him with all statutory permissions from appropriate authority cannot be treated as an occupier of such premises for the purpose of section 43 of The EA 2003. Now in this case the question does not arise at this situation as the building itself is not authorized to occupy safely. In a case where the very entry of a person in to the premises before allotment with statutory approvals from competent authority was illegal, such person is not entitled to claim a legal right to get supply of electricity from the licensee that is under statutory obligation to give supply to owner or occupier of a premises. If a legal or statutory right of such an occupant is also visualized, the provision of section 43 of The E.A. Act 2003 shall suffer an interpretation that is neither meant by them, nor was ever intended by the legislature. For these reasons we hold that the complainants

being unauthorizely occupying the premises is not entitled to get any benefit of section 43 of The EA 2003.

- 10.0 Having regard to the above said reasons after cautiously going through the applications and documents filed by the complainant along with the requisitions it appears that the complainant themselves unable to explain, as in what capacity they are occupying the premise before completion of the building construction work and not getting allotment letter from the developer/builder. In this regard representative of the complainant submitted that since the construction work of the building is stopped by the builder and the builder had absconded and don't know the where about of the builder, they are suffering financial loss due to their business got a stumbling block. Complainant's representative also admitted the fact that the complainant is occupying the premises without any allotment letter and they are aware of the fact that there is no provision in the law to get electric supply legally. Representative further submitted that since the builder has absconded and the further construction activities of the building is stalled, complainant is not sure when the building construction work will complete and they can legally occupy the premises. Therefore in order to cope up with their business running they have occupied the premise without seeking any approval and they are at present using electricity from the BEST's temporary service which is laid for construction activities of the building. Representative also submitted that there are two to three such occupants in the same building and using electricity from these temporary service. In this regard Forum directed the respondent BEST to verify and ensure that the electricity connection taken from the temporary service which is meant for construction activities of the building is in accordance with the relevant Act/Regulations. The Forum wish to appreciate the honest approach of the complainant's representative and very nicely argued the matter but his argument appeared to be lucrative and has no legal base.
- 11.0 To conclude , this Forum finds that there is no cogent evidence placed before this Forum to show that, the so called premises occupied by the complainant is authorized as there is only a copy of Agreement which is not complete in all respect to claim his possession on the ground floor of the under construction building. The complainant has failed to establish his legal occupancy merely not because he has no other document to produce before the Forum ,but also considering the factual position of present status of the building under construction which is incompleted its construction and further construction activities are stopped and no even partial occupancy has been issued by the Authorities.
- 12.0 In considered view of this forum, as envisaged under section 43 of The EA 2003, the Respondent BEST Undertaking has been under duty to provide electric supply to the owner/occupier of the premises within one month after dully filled application for such supply is received. Forum further observes that now it is a well established principle of law that expression, "owner/occupier" explained by the legislator in the said section 43 of The EA, 2003 means lawful owner/occupier. The Forum has already discussed it in the above paragraphs. The Forum wish to emphasis that only on the basis of copy of Agreement and the present status of the premises occupied by the



complainant in the building which is not yet completed its construction where complainant has applied for electric supply, the complainant cannot be considered as authorized occupant of the premises where electric supply connection is sought. All these above discussions and submissions put together conclusively prove that the occupancy of the complainant in the said premises is not authorized / legal. It appears that if electric supply is given to such incompletely constructed building and unauthorized occupants, there would be every possibility of untoward incidents. The Respondent BEST Undertaking has no enmity with the complainant and being a Distribution Licensee is under legal obligation to provide electric supply if application is filled under Regulation 4.1 of MERC (Electric Supply Code and Other Conditions of Supply) Regulations, 2005 and subsequent practice Direction issued by MERC read with Section 43 of The E.A., 2003 with all legal aspects.

- 13.0 To conclude, there is no merit in the complaint and therefore deserves to be dismissed. Accordingly we pass the order.

**ORDER**

- 1.0 The grievance no. S-B-405-2020 dtd. 04/02/2020 stands dismissed.
- 2.0 Copies of this order be given to all the concerned parties.

sd/-  
(Shri K. Pavithran)  
**Chairman / Member Licensee**

sd/-  
(Dr. M.S. Kamath)  
**Member**