

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 N-FN-399-2019 dtd. 25/10/2019

Shri Himanshu A. KhanvilkarComplainant

V/S

B.E.S.&T. UndertakingRespondent no

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri K. Pavithran, Member
2. Dr. M.S. Kamath, Member CPO

On behalf of the Respondent : 1. Smt. A.J. Karbhari, AAM CC(F/N)
2. Smt. A.M. Padmanabhan, Ag. AO CC(F/N)

On behalf of the Complainant : 1. Smt. Sneha H. Khanvilkar

Date of Hearing : 20/12/2019

Date of Order : 20/12/2019

Judgment by Shri. Vinayak G. Indrale, Chairman

Shri Himanshu A. Khanvilkar, 164/165, Transit Camp, Pratiksha Nagar, Sion, Mumbai - 400 022 has come before the Forum for dispute regarding recovery of outstanding amount of Rs. 9,71,426.00 standing in the name of Usha S. Tambe at the time of reconnection of supply vide requisition no. 420167 dtd. 09/09/2019 pertaining to a/c no. 755-055-105.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell dated 01/08/2019 received on 06/08/2019 for dispute regarding recovery of outstanding amount of Rs. 9,71,426.00 standing in the name of Usha S. Tambe at the time of reconnection of supply vide requisition no. 420167 dtd. 09/09/2019 pertaining to a/c no. 755-055-105. The complainant has approached to CGRF in schedule 'A' dtd. 23/10/2019 received by CGRF on 24/10/2019 has not satisfied by the remedy provided by the IGR Cell.

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

- 1.0 Shri Himanshu A. Khanvilkar come before the Forum regarding his dispute about recovery of outstanding amount of Rs. 9,71,426 standing in the name Mrs. Usha S. Tambe at the time of reconnection of electric supply vide requisition no. 420167 dtd. 09/09/2019 pertaining to a/c no. 755-055-105.
- 2.0 Shri Himanshu A. Khanvilkar has applied for new electric connection vide requisition no. 420167 dtd. 09/09/2019. After investigation it was observed that earlier electric supply was given to the premises under reference through meter no. D094768 in the name of Mrs. Usha S. Tambe under a/c no. 755-055-105. This meter was removed on 16/06/2014 for non-payment of electricity dues amounting to Rs. 5,17,870/-. This outstanding amount is increased to Rs. 9,71,426 as on June 2019 by levy of delayed payment charges and penalty interest.
- 3.0 The complainant has provided documents regarding sale of premises like Sale Deed, Irrevocable Power of Attorney and Affidavit cum Declaration signed on 07/12/2017. It is clearly mentioned in Sale Deed that, *"The Purchaser shall be responsible for the payment of taxes, rent, arrears, differences, electricity charges and other outgoings of the said shop to the concerned authorities of Tahalsildar, Collector, B.M.C., MHADA, BEST Ltd. from the date hereof."*
- 4.0 As the complainant of fully aware of the facts of electricity dues of old occupier, he is liable to pay all dues.

REASONS

- 1.0 We have heard the argument of Smr. Sneha Khanvilkar, wife of the complainant and for the Respondent BEST Undertaking Smt. A.J. Karbhari, AAM CC(F/N), Smt. A.M. Padmanabhan, Ag. AO CC(F/N). We have perused the documents filed by either party to the proceeding. The Respondent BEST Undertaking has filed written submission along with documents marked at Exhibit 'A' to 'E'.
- 2.0 The representative of the complainant has vehemently submitted that the complainant had purchased the premises bearing 164/165 Transit Camp, Pratiksha Nagar, Sion from Shri Shantaram Laxman Tambe and got executed irrevocable Power of Attorney (POA), Sale Deed and Affidavit-cum-Declaration on 07/12/2017 and

therefore the complainant is not liable to pay arrears of electricity dues of earlier occupier Shri Shantaram Tambe. It is therefore submitted that the Respondent BEST Undertaking was negligent in recovering the arrears of electricity dues of earlier occupier and therefore the complainant is not liable to pay the same.

4.0 Against this, the Respondent BEST Undertaking has submitted that as per terms and conditions of Affidavit-cum-Declaration, irrevocable POA and so called Sale Deed, the complainant has undertaken to pay the electricity dues and other charges therefore now the complainant cannot deny his liability to pay electricity dues. The Respondent BEST Undertaking has further submitted that it is not the case of change of name but it is the case of new connection and therefore Regulation 10.5 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulations, 2005 cannot be applied in the instant case. Even if for the sake of argument, we presume that the Regulation 10.5 of MERC is applied to this case, but the complainant's wife submitted that deceased Smt. Usha Tambe in whose name electricity connection obtained was her mother's sister. The complainant's wife submitted that Smt. Usha Tambe died issueless. Under such circumstances the complainant's wife would be legal heir of Smt. Usha Tambe. This being the position, as per Regulation 10.5 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulations, 2005, the complainant is also liable to pay electricity dues.

5.0 We have cautiously gone through the above said documents filed by the complainant as well as the Respondent BEST Undertaking in support of their rival's contention. The application for supply of electricity is at Exhibit 'A' and it goes to show that the complainant has applied for new connection likewise the documents filed along with the application for new connection goes to show that the complainant has given letter of Undertaking to pay the previous electricity dues. If this would be the case, in legal sense once the complainant has admitted the liability of paying electricity dues in Undertaking as well as so called irrevocable POA, Affidavit-cum-Declaration and so called Sale Deed, now he cannot deny his liability to pay the electricity dues of earlier occupier. The complainant is now estopped from denying the previous electricity dues. This is hit by doctrine of estoppel as provided u/s 115 of Evidence Act.

6.0 We have gone through the terms and conditions of so called irrevocable POA and Sale Deed. Para 2 of irrevocable POA runs as under.

To pay the rent, taxes, differences, electricity, water charges, Committee / Society charges etc. all such other outgoings of the said Shop premises to the concerned authorities and to receive valid receipts thereof.

Likewise in para 7 of so called Sale Deed, the complainant has taken responsibility to pay tax, rent, arrears, differences, electricity charges and other outgoings of the said shop. In view of these terms and conditions incorporated in the documents which the complainant has filed along with application for new electricity dues, it is crystal clear that the complainant knowing fully about the payment of electricity dues he come in possession of said property and therefore liable to pay the earlier electricity dues.

- 7.0 We are saying so because the property belongs to MHADA and it is transit accommodation so party in possession has no right to execute any Sale Deed and only for the sake of their convenience they have executed such irrevocable POA and so called Sale Deed on Rs. 100/- stamp paper. In legal sense these documents have legal sanctity. It is only a proof of possession of the premises.
- 8.0 Considering all the above said documents, it is crystal clear that the complainant himself has admitted the liability of electricity dues and he cannot deny his liability only on the grounds that the Respondent BEST Undertaking was negligent in recovering electricity dues from earlier occupier. On this point, we wish to observe that the electricity is public property. Law, in its majesty be highly protect public property and behoves everyone to respect public property. In view of terms and conditions of above said documents, the complainant will step into the shoe of earlier occupier from whom he came in possession of the said premises.
- 9.0 Having regard to the above said facts of the case and the terms and conditions of above said documents entered in between complainant and earlier occupier we have arrived at the conclusion that the complainant is liable to pay earlier dues. It appears from the record that total electricity dues as on the day of filing application for electricity connection was Rs. 9,71,426.21 and now in view of Procedure Order no. 246-A of Amnesty Scheme 2009, the delayed payment charges and interest on arrears have been waived and now arrears due comes to Rs. 5,70,860/- so it is expected from the complainant to pay the said electricity dues.
- 10.0 For the above said reasons we do not find any substance in the complaint and therefore the complaint deserves to be dismissed. Accordingly we pass the following order.

ORDER

- 1.0 The grievance no. N-FN-399-2019 dtd. 25/10/2019 stands dismissed.
- 2.0 Copies of this order to be given to the concerned parties.

sd/-
(Shri K. Pavithran)
Member

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

sd/-
(Shri V.G. Indrale)
Chairman