

| | | Date | Month | Year |
|---|------------------------|---------|-------|------|
| 1 | Date of Receipt | 11 | 11 | 2020 |
| 2 | Date of Registration | 13 | 11 | 2020 |
| 3 | Decided on | 18 | 12 | 2020 |
| 4 | Duration of proceeding | 35 days | | |
| 5 | Delay, if any. | NIL | | |

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-415-2020 dtd. 13/11/2020

Shri Imran LokhandwalaComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Coram : Shri S.A. Quazi, Chairman

Member

1. Shri R.B. Patil, Member

On behalf of the Respondent (1) : 1. Shri D.S. Bodke

On behalf of the Complainant : 1. Shri Imran Lokhandwala

On behalf of the Respondent (2) : 1. Smt. Sujata Singh

Date of Hearing : 14/12/2020

Date of Order : 18/12/2020

Judgment

- 1.0 The complainant has requested this Forum to direct the Respondent to remove the existing meter and connection from the premises pertaining to consumer a/c no. 502-295-003 and to install new connection and meter in the name of the complainant as per his requisition no. 440662 dtd. 12/08/2020 submitted to the Respondent.
- 2.0 The case of the complainant may be stated as under :
- a) There is a premises comprising of shop no. 11, 12 & 13 situated at Karimji Building, Carnac Bridge Koliwada, Kazi Sayyed Street, Mandvi, Mumbai - 400 003. There are two meters on the said premises through which the electricity is supplied to the said premises. The said premises was in occupation of Postal Department as the Postal Department was Lessee under the Lease Deed dtd. 31/07/1942.
- b) The complainant being Landlord had filed suit R.A.E. & R Suit 747/1199 of 2011 before the Hon'ble Small Cause Court at Mumbai. In that suit the complainant had prayed for vacating the Postal Department from the said premises comprising the said shop no. 11, 12 & 13. That suit was decreed in the favour of the complainant on 29/07/2016. The Respondent / Department of Posts filed an appeal against the said decree vide A(1) Appeal no. 527 of 2016 before the Small Cause Court at Mumbai Appellate Bench. Pending that appeal, the complainant and Postal Department arrived at compromise and consequently a registered agreement came to be executed between the complainant and Postal Department. In terms of the said compromise agreement dtd. 08/12/2017, the appeal came to be disposed off by the order dtd. 15/12/2017 passed by the aforesaid Appellate Bench of the Small Cause Court at Mumbai.
- c) As per the terms of the said agreement / compromise, the Respondent (Department of Posts) handed over the possession of all the three premises / shops no. 11, 12 & 13 to the complainant with further condition that the complainant would renovate one shop no. 11. After renovation he shall hand over possession of shop no. 11 to Postal Department on new lease rent and on execution of new Lease Deed for 5 years. The new lease rent shall be as may be decided by the Postal Department's Fare Rent Assessment Committee (for short FRAC). In case of any dispute about any lease rent decided by Departmental Fare Rent Assessment Committee, the Landlord/complainant shall abide with the Maharashtra Rent Control Act, 1999. This is also one of the terms of the said compromise agreement. The Department of the Posts shall pay new lease rent of the said shop no. 11 only after the execution of the Lease Deed and after the vacant and peaceful possession of the said shop no. 11 is handed over to the Department of Posts on the new lease rent.

- d) It is further case of the complainant, that after taking the possession of the aforesaid premises comprising of three shops, the complainant has renovated the shop no. 11 for being given to the Department of Posts on new lease rent. The complainant informed the Department of Posts that the renovation work is over as per the compromise agreement and therefore the Postal Department shall perform its part of the said agreement in respect of executing new lease rent and pay the lease rent as per the agreement. It is submitted by the complainant in the course of hearing of argument before this Forum that despite various efforts and meetings held by the complainant with the officials of the Postal Department, the authorities of the Postal Department have failed to take appropriate steps for accepting the fair lease rent proposed by him and for execution of Lease Deed. A long period has expired thereafter. In such circumstances, the complainant is suffering losses as the Department of Posts is also not paying any type of lease rent. Since last 2 to 3 years the shop no. 11 is vacant and the complainant is suffering losses of rent due to failure of the Postal Department to execute the lease and to pay the lease rent as per the terms of the agreement. It is submitted by the complainant before this Forum that the department is offering unrealistic amount of lease rent at Rs. 44,600/- only vide the meeting dtd. 24/01/2020. However, this rate of rent is not acceptable to the complainant. The complainant has demanded Rs. 1.25 lacs per month or if not possible conditionally he has offered to decrease the said rent by 10 to 15% of the proposed rent of Rs. 1.25 lacs excluding GST and other applicable taxes.
- e) The Postal Department has not taken further steps in the matter and therefore the complainant is not bound by the terms of the said compromise agreement, for giving shop no. 11 to them for further lease of 5+1 years. In such circumstances, the complainant submits that he is entitled to ask the Respondent BEST Undertaking to remove existing electric connection and meter standing in the name of the Postal Department. He is also entitled to obtain new connection and meter in his name in the said premises. The complainant had given requisition application in this regard vide 12/08/2020 to the Customer Care department. However, the Customer Care Dept. has not processed the said requisition application.
- f) Being aggrieved by the said failure of the Customer Care department, the complainant has filed complaint to the IGRC of the Respondent BEST Undertaking to seek the relief as above. However, the IGRC has also rejected the complaint.
- g) Being aggrieved, the complainant has approached this Forum for the aforesaid relief by submitting his grievance application in the form of Schedule 'A'.
- h) In the course of hearing of submissions before this Forum, the complainant has submitted that the Respondent BEST Undertaking should have at least given new connection to the complainant in respect of shop no. 12 & 13. About these shops no 12 & 13, there is no claim of the Postal Department after the compromise agreement executed and registered between the parties and in terms thereof the appeal has been

disposed off by the Appellate Bench of Small Cause Court. He has submitted that he is ready to give appropriate application in this regard.

- 3.0 The Respondent/Postal Department was also issued notice by this Forum, in respect of the aforesaid complaint. They have filed their reply before this Forum. Their case may be stated as under :
- a) The Department of Posts in their reply has not disputed that the compromise agreement was entered into between the complainant and Postal Department as above. However, according to the Department of Posts, the department has handed over the possession of the premises to the complainant/landlord on 03/01/2018 for repairing and renovation. The Landlord was to complete the renovation work satisfactorily and hand over the shop no. 11 to the Department of Posts within 90 days from the date of receiving vacating possession as per the agreement. As the Landlord did not hand over the possession even after the completion of three month from handing over of possession by the department to him, the Postal Department addressed several letters to the Landlord to hand over possession of the premises. Pursuant to this, the Postal Department received a letter from the Landlord along with draft Lease Deed. In this correspondence it was insisted upon the department to execute Lease Deed at the earliest. The Landlord demanded Rs. 1.25 lacs as monthly rent in lieu of shop no. 11. The Postal Department requested Landlord to hand over possession of shop no. 11 till finalization of rate of rent. Till date the Landlord has not handed over the possession of premises to the Postal Department.
 - b) It is further case of the Postal Department that it has constituted 3rd level Departmental Fare Rent Assessment Committee (FRAC) for finalizing of rent in respect of the premises. The Postal Department conveyed the recommendation of FRAC to the Landlord, about rate of rent to be as Rs. 44,600/- for an area of 446 sq. ft. of shop no. 11 from the date of handing over of the possession. Postal Department also informed the Landlord that he will have to execute the Lease Deed for 5 years with option clause for extension of one year at his cost in the Standard Lease Agreement Forum.
 - c) It is further case of the Respondent Postal Department that, in reply to the aforesaid correspondence of the Postal Department, the Landlord has stated that he does not admit the rent recommended by FRAC. He has also stated that he cannot sign Lease Deed in general form as suggested by Postal Department. According to the Department of Posts, this conduct of the Landlord is in contravention to the terms and conditions of the agreement dtd. 08/12/2017 signed by both the parties. As per sub-clause (iv) & (v) of Clause 7 of the agreement, the Landlord has agreed to accept the new lease rent of the premises as may be decided by the Departmental Fare Rent Assessment Committee. Therefore, the Postal Department referred the case to Ministry of Law and as per opinion of Ministry of Law and competent authority, the department is filing proceeding for execution of the compromise decree before the court of law. Due to Covid-19 pandemic and nationwide lockdown imposed by the

Government, the Postal Department was not able to file the execution proceeding. However, the same is in process.

- d) In view of the above, the representative of the Respondent/Department of Posts has submitted before this Forum in the course of hearing that aforesaid case of the Department of Posts be considered and it is requested that no direction be given to the Respondent/BEST Undertaking to remove the electric meter and connection standing in the name of Department of Posts vide a/c no. 502-295-003. The representative of the Department of Posts has submitted before this Forum that if the complainant requests for the new connection in respect of the shop no. 12 & 13, the Department of Posts will decide appropriately in the matter about their action provided, the complainant performs his part of the agreement of compromise. So far no such application has been received from the Landlord for giving No Objection in this regard.

- 4.0 The Respondent BEST Undertaking has filed its reply and has supported the rejection of requisition application of the complainant for removing existing electric connection and meter from the premises comprising of shop no. 11, 12 & 13. The aforesaid facts have been referred by the Respondent BEST Undertaking in respect of compromise between the Department of Posts and the complainant. According to the Respondent/BEST Undertaking, as the Department of Posts is its registered consumer, the No Objection of the Department of Posts is necessary for removing the existing electric connection and meter provided by the Undertaking. The representative of the Respondent/BEST Undertaking has submitted in the course of hearing before this Forum that as there is dispute between the parties about the performance of their respective parts under the compromise agreement between them, the Respondent BEST Undertaking will have no role to intervene between their dispute and in such circumstances, it would be appropriate on the part of the Respondent/BEST Undertaking to maintain status-quo i.e. to keep the existing connection and meter on the premises as it is unless the Department of Posts gives No Objection or Court of law decides the dispute finally. The representative of the Respondent/BEST Undertaking has submitted before this Forum that their Legal Dept. has also opined as above and therefore the Respondent/BEST Undertaking has rightly not processed the requisition application of the complainant and the IGRC has rightly rejected the complaint of the complainant.

- 5.0 We have heard the submissions of parties and noted their submissions as above. In view of the above submissions of the parties and case pleaded by them, the following **points arise for determination**, on which we record our findings as under, for the reasons to follow.

| Sr. No. | Points for determination | Findings |
|---------|---|---|
| 1 | Whether the complainant is entitled for the relief of direction to the Respondent BEST Undertaking to remove the existing connection and meter from the premises comprising of shop no. 11 and to give electric supply to shop no. 11 in the name of the complainant as requested under requisition application no. 446062 of the complainant dtd. 12/08/2020 | No |
| 2 | What order should be passed ? | The complaint is dismissed with direction that if the complainant gives necessary application for electric connection exclusively in respect of shop no. 12 & 13, the Respondent/BEST Undertaking shall take appropriate decision thereon as per the rules and regulations prevailing and in terms of the compromise agreement between the parties. |

6.0 We record reasons for aforesaid findings as under :

- a) Facts of the case have been elaborated herein earlier while noting the respective cases of the parties concerned. From the submission of the parties, it can be said that the compromise agreement has been arrived at between the complainant and Department of Posts and in terms of the said compromise agreement the appeal, before the Appellate Bench of Small Cause Court of Mumbai filed, against decree passed in R.A.E. & R Suit no. 747/1191 of 2011, has been disposed off. The aforesaid facts also show that the electric meter and connection pertaining to consumer no. 502-295-003 was in respect of the collective premises comprising of shop no. 11, 12 & 13 and that connection is in the name of Department of Posts. Admittedly, the Postal Department is registered consumer of the Respondent/BEST Undertaking. The complainant's case is that all the three shops have been given in his possession in terms of the compromise agreement. It is not disputed that as per agreement, the complainant was to hand over shop no. 11 to the Postal Department on new Lease Agreement for 5 years with 1 year's optional extension and the lease rent shall be decided as per the terms of compromise agreement.

- b) It may be noted that the relevant terms of the compromise agreement are as under :

Clause 7(iv) - The Landlord / owner hereby agrees that he will accept the new lease rent of premises rented on lease to Department of Posts as decided by the Departmental Fare Rent Assessment Committee (FRAC). In case of any dispute about lease rent decided by the Departmental FARC, the Landlord / owner shall abide with the provisions of "Maharashtra Rent Control Act, 1999". The parties of Second Part shall pay new Lease Rent of said shop no. 11 only after the execution of Lease Deed in favour of the Department of Posts viz. its representative Sr. Supdt. of Post Offices, Mumbai East Division and after the vacant and peaceful possession of the said shop no. 11 is handed over to the Department of Posts.

Clause 7 (v) - The Landlord agrees to accept the proportionate rent to be decided by the FRAC for the area to be retained by the Department of Posts after this agreement.

- c) From the aforesaid contents of the agreement between the parties, it appears that the rate of the new lease rent was not determined by the aforesaid agreement of the compromise. Therefore, there is dispute between the parties about the rate of lease rent. The complainant says that the Department of Posts' is liable to pay the lease rent as he has demanded i.e. Rs. 1,25,000/- p.m. Whereas the Department of Posts' submission is that as per the terms of the agreement the Landlord/complainant has to accept the rate of rent of Rs. 44,600/- p.m. as determined by Departmental Fare Rent Assessment Committee. As the parties have not arrived at mutual rate of rent, it appears that new lease has not been executed and possession of the shop no. 11 has not been given by the Landlord to the Department of Posts. In short, there is dispute between the parties about performance of their respective part of the agreement. The Respondent/Department of Posts has submitted that it is going to take appropriate proceeding for execution of the terms of the compromise agreement/decreed before the court of law. The complainant submits that now the Department of Posts has no right to continue to demand new Lease Agreement as they have already failed to take appropriate steps in time for execution of the Lease Agreement.
- d) On considering the submissions of the parties, what we find is that as far as the shop no. 11 is concerned, there is dispute between parties as to whether the Landlord is liable to give the possession thereof on new lease terms and rate of rent, which is not acceptable to him. In such circumstances it would not be appropriate on the part of the Respondent BEST Undertaking to remove the existing electric connection and meter from the premises comprising of shop no. 11, at least about which the complainant has made request in his requisition application. Therefore, the failure of the Respondent/ BEST Undertaking not to process his requisition application in respect of shop no. 11 cannot be said to be illegal. In view of this we hold that the complainant is not entitled for the relief of directions to the Respondent BEST Undertaking to remove the existing electric supply and meter from shop no. 11 and to give supply in the name of complainant in shop no. 11. Accordingly, we have answered point 1 in negative.
- e) In the course of hearing, the complainant has submitted that in respect of shop no. 12 & 13, the Respondent/BEST Undertaking may be directed to give connection and meter

in his name. However, the Respondent/Department of Posts and the Respondent/BEST Undertaking have submitted that no such specific application has been made by the complainant to the Undertaking. In such circumstances we find it appropriate to direct that if the complainant makes any such specific request application in respect of only shop no. 12 & 13, the Respondent BEST Undertaking shall take appropriate decision on it in accordance with rules and regulations and the law and in terms of the agreement of compromise dtd. 08/12/2017 referred to above. With these directions we hold that the present complaint for relief of direction to remove existing connection and to give new connection in the shop no. 11 is liable to be dismissed. Accordingly, point 2 is answered by us and we proceed to pass the following order.

ORDER

- 1.0 The grievance no. S-B-415-2020 dtd. 13/11/2020 for relief of directions to the Respondent/BEST Undertaking to remove existing connection from and to give new connection to the shop no. 11 is dismissed.
- 2.0 However, if the complainant submits necessary application for new connection in his name in respect of premises bearing shop no. 12 & 13, the Respondent/BEST Undertaking is directed to take appropriate decision on it in the light of prevailing rules and regulations and the provisions of law and compromise agreement and directions of court of law, if any.
- 3.0 Copies of this order be given to all the concerned parties.

sd/-
(Shri. R.B Patil)
Member

sd/-
(Shri S.A. Quazi)
Chairman