

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-GN-395-2019 dtd. 14/10/2019

Mr. Khalid Hussain KhanComplainant

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. Manisha K. Daware, Supdt. (G/N)
2. Smt. Prajakta Kekane, AAM (G/N)

On behalf of the Complainant : 1. Shri Khalil Husain Khan

Date of Hearing : 26/11/2019

Date of Order : 11/12/2019

Judgment by Shri. Vinayak G. Indrale, Chairman

Khalid Hussain Khan 240, Ground floor, Plot-6, Jalil Compound, Dharavi Main Road, Dharavi, Mumbai - 400 017 has come before the Forum for dispute regarding debiting of Rs. 23,59,716.31 towards outstanding arrears pertaining to Agreemental a/c no. 202-007-435 to Conventional a/c no. 781-082-019.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell dated 18/03/2019 received on 25/03/2019 for dispute regarding debiting of outstanding arrears pertaining to Agreemental a/c no. 202-007-435 to Conventional a/c no. 781-082-019. The complainant has approached to CGRF in schedule 'A' dtd. 20/09/2019 received by CGRF on 01/10/2019 as complainant was 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 Khalid Hussain Khan come before the Forum regarding his dispute about debiting net arrears amounting to Rs. 23,59,716.31 standing in the name of Shri Khan Ahmed Hussain Kali Mohd. pertaining to a/c no. 202-007-435 in his bill of January 2019 having a/c no. 781-082-019.
- 2.0 Initially, electric supply was given to the premises under reference through meter no. L962016 from 06/07/1996 for commercial purpose to Shri Khan Ahmed Hussain Kali Mohd. having a/c no. 781-082-019. On 25/08/1997, meter no. L962016 was replaced by meter no. L972867. This meter had shown progressive reading upto June 2006 and then this meter was not found on board.
- 2.1 On 13/07/2011, meter no. M092573 was installed in place of meter no. L972867 after receiving complaint from consumer as stolen meter.
- 3.0 Shri Khan Ahmed Hussain Kali Mohd. had taken separate electric supply for industrial purpose for the same premises through meter no. P980357 under a/c no. 202-007-435 from 20/02/1998. Meter no. P980357 was replaced by meter no. P001964 on 27/12/2000. Later on meter no. P001964 was replaced by meter no. P021817 on 22/03/2005.
- 3.1 The consumer was paying electricity bill ranging from Rs. 25,000/- to Rs. 45,000/- regularly upto February 2003. Later on, cheques were started to get dishonor and the consumer started making partial payment from August 2004. This meter was removed on 28/10/2009 for non-payment of electricity dues as on October 2009 amounting to Rs. 9,30,720/-.
- 4.0 The consumer had informed to the Undertaking that his meter L972867 having a/c no. 781-082-019 was stolen. He had submitted FIR for stolen meter. Then meter no. M092573 was installed on 13/07/2011.
- 5.0 During inspection on 14/07/2018, it was observed that premises having a/c no. 202-007-435 and a/c no. 781-082-019 are same. From the load consumption pattern of both the meters, it was observed that the consumer is trying to avoid the payment of energy chares by transferring his consumption from one account to another account.

Hence, net arrears of a/c no. 202-007-435 amounting to Rs. 23,59,716.31 has been debited in commercial account no. 781-082-019. As on October 2019, the total outstanding amount has increased to Rs. 26,30,210.00 by levy of delayed payment charges. So the consumer is liable to pay the same.

REASONS

- 1.0 We have heard the argument of the complainant in person and for the Respondent BEST Undertaking Smt. Manisha K. Daware, Supdt. (G/N) & Smt. Prajakta Kekane, AAM (G/N). Perused the document filed by the complainant along with Schedule 'A' and documents filed by the Respondent BEST Undertaking along with written submission marked at Exhibit 'A' to 'F'.
- 2.0 The complainant has submitted that on 25/02/2019 he has filed an application for new electricity connection in the premises bearing no. 240, ground floor, plot 6, Jalil Compound, Dharavi Main Road, Dharavi, Mumbai - 400 017. After receipt of the said application, the Respondent BEST Undertaking has directed to pay the earlier dues amounting to Rs. 24,57,307.37 as on June 2019. According to the complainant he is not liable to pay the above said dues as his liability is to pay the electricity dues as per Regulation 10.5 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005.
- 3.0 Against this the Respondent BEST Undertaking has submitted that the premises for which the electricity charges were due and the premises for which the complainant has asked for new electricity connection is same and therefore the complainant is liable to pay the electricity dues. The Respondent BEST Undertaking has submitted that the outstanding unpaid arrears is pertaining to a/c no. 202-007-435 amounting to Rs. 23,59,705.13 is transferred to a/c no. 781-082-019 as meter was removed on 28/10/2009. According to the Respondent BEST Undertaking the consumer's premises for which the complainant applied for electric supply, initially supply was given from 06/07/1996 through conventional meter for commercial purpose. The said meter was replaced on 25/07/1997 by meter no. L972867. The said meter had shown progressive reading upto June 2006 and was not on board from July 2006 for which the consumer had filed stolen meter case and new meter no. M92573 was installed on 13/07/2011.
- 4.0 It is further submitted that meanwhile the consumer had taken separate electric supply through meter bearing no. P980357 on 20/02/1998 for industrial purpose at the same premises in his own name Shri Khalid Ahmed Husain K. M. and same was replaced by meter no. P001964 on 27/02/2012. Thus according to the Respondent BEST Undertaking after enquiry they found that both the premises of a/c no. 202-007-435 as well as a/c no. 781-082-019 being the same, the complainant is liable to pay the earlier electricity dues of earlier occupier.

- 5.0 Having regard to the above said submissions of both the parties, the question poses before us is whether the premises on which there were arrears of electricity dues are the same for which the complainant has asked for new electric connection. On this point we have gone through the application for new connection filed by the complainant in which he has shown plot no. 6, Jalil Compound, Mahim Level Crossing, Dharavi Main Road, Dharavi, Mumbai - 400 017. The electricity bill filed by the complainant in the name of earlier occupier Shri Khalid Ahmed K. Husain, the address is shown 240, ground floor, plot 6, Jalil Compound, Dharavi Main Road, Dharavi, Mumbai - 400 017. Considering the above said address it can be very well concluded that the premises for which electric connection has been applied and the premises on which there were arrears of electricity dues are the same. The complainant has not seriously disputed the above said fact.
- 6.0 The complainant has submitted that he has taken the possession of above said premises in August 2018 and therefore he has not liable to pay earlier electricity dues and his liability is only to be restricted as per Regulation 10.5 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005. The Respondent BEST Undertaking has submitted that no such documentary evidence has been placed on record by the complainant to know that he came into possession of the said premises in the month of August 2018. It is not the case of the complainant that he is not the legal heir of the earlier occupier Shri Khan A.H.K. Husain. Likewise it is not the case of the Respondent BEST Undertaking that the complainant is related to Shri Shri Khan A.H.K. Husain and therefore liable to pay whole electricity dues. According to the Respondent BEST Undertaking in order to take advantage of Regulation 10.5, the consumer has shown the premises being transferred to new owner Shri khalid H. Khan in August 2018 in the name of the complainant Shri Khalid Husain Khan. It is the contention of the Respondent BEST Undertaking that the complainant Shri Khalid H. Khan very well knows about the outstanding arrears of electricity charges for the electricity connection in the said premises and having known of this facts he had prepared some documents to show his possession on August 2018.
- 7.0 Having regard to the above said discussion and after going through the record and addresses shown in electricity bill of Shri Khan A. Husain K. as well as address shown in installation card and CIS copy and address shown in application for new electric supply, it is crystal clear that the premises is the same. Under such circumstances the complainant is liable to pay electricity charges of the earlier occupier.
- 8.0 We have cautiously gone through the record more particularly, Undertaking given by the complainant along with the application for new electricity connection in which he has specifically admitted that if any false documents have been filed by him, he is liable for the prosecution. Clause 2 of letter of Undertaking specifically denotes that he will be liable for any court proceedings in case any fraudulent document has been submitted by him to Distribution Licensee. It is pertinent to note that the complainant has not filed so called Power of Attorney (POA) and Agreement for Sale before IGR who has specifically narrated this fact in written statement. At the time of hearing the argument, the complainant has filed original POA and Agreement for Sale

and argued that he is in occupation of the said premises since 10/08/2018 for which new electric supply has been demanded.

- 9.0 We have very carefully gone through this POA and Agreement for Sale and it reveals that stamp on Agreement for Sale is of the year 2019 and purchase date is 05/03/2019. In POA, year on the stamp paper, Notary has affixed the tickets and the said stamp paper of Rs. 500/- has been purchased on 03/03/2019. It further reveals that date 03/03/2019 on both the stamp papers, number '9' is made as number '8' by black ink. Likewise on stamp paper of Rs. 500/- as well as on Rs. 100/- the date 10/08/2018 is shown after striking the earlier date as 03/03/2019 and tried to show that the stamp paper is purchased on 10/08/2018. It further reveals that on stamp paper year '2019' is shown and for number '9' there is overwriting by black ink and made it as '2018'. Both the original documents i.e. POA and Agreement for Sale is notarized by Adv. M.V. Shinde, High Court Notary and witnesses on Agreement for Sale, Vendor and Purchaser have been identified by Adv. High Court, A.M. Chabria, Kandivali. It reveals that Adv. M.V. Shinde has notarized the document on 10/08/2018 as the same date is shown below his signature as well as on stamp paper. Registration number of notary of both the documents is shown as 1228 and dates are 10/08/2018 and 12/08/2018.
- 10.0 Thus after carefully going through both the documents, it reveals that the complainant Shri Khalid Husain Khan and earlier occupier Shri Khan Ahmed H.K. Husain with the help of witnesses, Notary and Advocate have managed to prepare forged past dated documents with malafide motive to show that the complainant is in occupation of the premises since 10/08/2018 for which the electric supply has been given.
- 11.0 Considering the original documents i.e. POA and Agreement for Sale we arrived at the conclusion that both the documents are forged and fabricated. Having knowledge that these documents are forged, the complainant and earlier occupier have prepared these bogus, false documents only with a view to escape from payment of earlier electricity dues and to get benefit of Regulation 10.5.
- 12.0 We have cautiously gone through the conduct of earlier occupier Shri Khan Ahmed Husain K. Husain who has obtained electric supply through meter bearing no. L962016 installed on 06/07/1996 replaced on 25/08/1997 by new meter no. L972867 for a/c no. 781-082-019. This meter not found on board from July 2006, hence new meter bearing no. M0925873 installed on 13/07/2011 after receiving complaint from the consumer. This meter was removed for non-payment of electricity bill on 13/03/2019. The consumer had obtained additional separate electric supply through meter bearing no. P980357 under a/c no. 202-007-435. This meter was replaced by meter no. P001964 on 27/12/2000. Meter no. P001964 was replaced by meter no. P021817 on 22/03/2005 and removed for non-payment on 28/10/2009. It appears that the earlier occupier has made a report that meter no. L972867 has been stolen away as it was not on board since July 2006. It further reveals that the earlier consumer had managed to install 2 meters for same premises, one for commercial purpose and another for industrial purpose. The commercial meter for a/c no. 781-082-019 was not found on

board from July 2006 and stolen meter case registered in the year 2011. It reveals that the earlier occupier has consumed the electricity from industrial meter and thereby received less electricity charges as charges for industrial meter are less than commercial meter.

- 13.0 It reveals that the total arrears accumulated to Rs. 9,30,720/- as on October 2009 and meter was removed on 28/10/2009 and said arrears further accumulated to Rs. 23,59,716.31 as on January 2019 due to Delayed Payment Charges and Interest. It further reveals that in view of stolen meter for commercial purpose he again applied for electric supply and the Respondent BEST Undertaking inadvertently gave him new meter whereby arrears of the said account were only Rs. 53,086.06. On 14/07/2018 the concerned officers visited the premises and came to know that the premises for both the account was the same and therefore they have debited the amount of arrears in the a/c no. 781-082-019. Considering all these conduct of the previous occupier it reveals that the complainant was in habit of making false representation and to get the electric connection without payment of earlier electricity dues.
- 14.0 Having regard to this aspect of the case it appears that the earlier consumer Shri Khan A.H. K. Husain in collusion with the complainant, witnesses, Notary and Advocate have prepared these bogus, fraudulent back dated POA and Agreement for Sale only with a view to get benefit of Regulation 10.5.
- 15.0 Having regard to the above said circumstances and documentary evidence on record we have least hesitation to arrive at the conclusion that the complainant has filed this complaint with malafide intention to cheat the Respondent BEST Undertaking. On this point we think it just and proper to reproduce the Regulation 6.9 of MERC (CGRF & EO) Regulation, 2006.

6.9 The Forum may reject the Grievance at any stage if it appears to it that the Grievance is :

- (a) frivolous, vexatious, malafide;*
- (b) without any sufficient cause;*
- (c) there is no prima facie loss or damage or inconvenience caused to the consumer;*

Provided that no Grievance shall be rejected in respect of sub-clauses (a), (b) and (c) unless the applicant has been given an opportunity of being heard.

- 16.0 We have heard the complainant on the point of filing the false and fraudulent Agreement for Sale and POA as well as on the ground, why this complaint should not be dismissed or rejected as it has been filed with malafide intention. The complainant has submitted that the documents which he has produced are genuine and he has not prepared these documents as past dated and his Advocate has knowledge about the same. Thus it appears that irrespective of showing the overwriting on number '9' on stamp paper, the complainant is still stuck up with his version that the documents are genuine. Thus in view of Regulation 6.9 we arrived at the conclusion that the complainant has filed this complaint with malafide intention therefore it deserves to be rejected.

- 17.0 Before parting to pass the final order, we wish to observe that the complainant has dared to file false and fabricated documents in the quasi-judicial proceeding and therefore he is liable for prosecution as per section 340 read with 195 of CRPC for offence punishable u/s 420, 465, 468, 471, 474 read with 34 of IPC. From the said Agreement for Sale and POA it is crystal clear that these documents are false and bogus and made showing past dated documents by overwriting with black ink of number '9'. Under such circumstances, we think it just and proper to file the complaint against the complainant, earlier occupier, witnesses, Notary and Advocate for the above said offence. If we fail to do so then it will amount to fail in our duty to report the offence. With this observation we pass the following order.

ORDER

- 1.0 The grievance no. N-GN-395-2019 dtd. 14/10/2019 stands dismissed.
- 2.0 The Secretary of the Forum is hereby directed to file a complaint against the complainant, earlier occupier, witnesses, Notary and Advocate as per section 340 read with 195 of CRPC for offence punishable u/s 465, 468, 471, 474 read with 34 of IPC with concern police station.
- 3.0 The original Agreement for Sale and Power of Attorney be kept in seal envelope with the office and the zerox copies of Agreement for Sale and Power of Attorney and copy of order be given to police along with the complaint. The police authority is at liberty to see the originals and take custody of originals, if need, by giving acknowledgment.
- 4.0 Copies of this order be given to the concerned parties.

sd/-
(Shri K. Pavithran)
Member

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

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