

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-FS-394-2019 dtd. 30/09/2019

The Secretary, Vincent Court Pvt. Ltd.Complainant

V/S

B.E.S.&T. UndertakingRespondent no 1

Shri Gokulprasad D. GuptaRespondent no 2

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 no 1 : 1. Shri S.S. Bansode, DECC(F/S)
2. Shri R.G. Baile, AAO (F/S)

On behalf of the Respondent no. 2 : 1. Shri Mahesh Gupta

On behalf of the Complainant : 1. Shri. M.H. Patel

Date of Hearing : 19/11/2019

Date of Order : 21/11/2019

Judgment by Shri. Vinayak G. Indrale, Chairman

The Secretary, Vincent Court Pvt. Ltd. 175, Vincent Court Bldg., Naigaum Estate, Dr. Ambedkar Rd., Near Fire Brigade, Dadar (E), Mumbai - 400 014 has come before the Forum for dispute regarding objection for providing electric supply to unauthorized structure in the name Gokul Prasad Gupta Dhode.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell dated 17/12/2018 for dispute regarding objection for providing electric supply to unauthorized structure in the name Gokul Prasad Gupta Dhode. The complainant has approached to CGRF in schedule 'A' dtd. NIL received by CGRF on 27/09/2019 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 The Secretary, Vincent Court Pvt. Ltd. come before the Forum regarding his dispute about giving electric supply to Shri Gokulprasad Gupta's M/s Gokulprasad Radiators Works at 175, Vincent Court Bldg., Naigaum Estate, Dr. Ambedkar Rd., Near Fire Brigade, Dadar (E), Mumbai - 400 014.
- 2.0 Vide requisition no. 356196 dtd. 23/04/2018, Shri Gokulprasad D. Gupta applied for electric supply for commercial premises under reference. At the time of application, he has submitted
 - i) Challan copy issued by Commissioner of Profession Tax
 - ii) Kerosene Permit issued by Dy. Controller of Rationing Region 'C' Bombay.
 - iii) Health Receipt provided by BMC.
 - iv) PAN Card
 - v) Shop & Establishment Certificate etc.
- 3.0 After site inspection it was observed that Shri Gokulprasad D. Gupta is physical occupant of the premises and documents submitted by him are correct. After following all formalities, electric supply has been given to the premises.

REASONS

- 1.0 We have heard the argument advanced by Shri M.H. Patel who has represented the complainant Vincent Court Pvt. Ltd. and for the Respondent No.1 BEST Undertaking Shri S.S. Bansode, DECC(F/S), Shri R.G. Baile, AAO (F/S). Perused the documents filed by the complainant along with Schedule 'A' as well as written statement filed by the Respondent No. 1 BEST Undertaking marked as Exhibit 'A' to 'D'.

- 2.0 The complainant has vehemently argued that since filling up an application for requisition by the Respondent No. 2 they approached the Respondent No. 1 BEST Undertaking and objected for giving electric supply to the stall which according to the complainant is unauthorized stall raised in the premises of Vincent Court Pvt. Ltd. He has further submitted that in the year 2014, the Respondent No. 2 has filed requisition for new electric connection and same has been declined by the Respondent No.1 BEST Undertaking. Thus in all his submission is that the Respondent No. 1 BEST Undertaking has no right to give electric connection to the person who is in unauthorized possession. He has further submitted that if the Respondent No. 1 BEST Undertaking has given electricity connection to unauthorized occupant then it will perpetuate illegality and same cannot be done by the authorities.
- 3.0 Against this, the Respondent No.1 BEST Undertaking has submitted that after receipt of requisition, the concerned officer visited the spot, verified the premises and after satisfying the fact that the Respondent No. 2 is in possession of the same, has released the electric supply or given new electric supply. According to the Respondent No.1 BEST Undertaking, as per section 43(1) of E.A., 2003 they are bound to give electric supply to the application made by the owner or occupier of any premises. The Respondent No. 2 has submitted that since 1963 he is in possession of the said constructed portion by the side of Vincent Court building and doing the business. He has further submitted that he is having shop and establishment license, other photographs and other documents to show that he is in possession of the said premises since 1963. The complainant's representative also admits that the Respondent No. 2 is in possession of the property and when we asked him since when the Respondent No. 2 is in possession, he disclosed that since 2009.
- 4.0 Having regard to the above said submission the moot question poses before us is whether the Forum has right to enter into controversy of legality of construction for which electric supply is given. We say this, being the quasi judicial tribunal, we are not supposed to enter into the controversy about legality on construction of premises for which electric supply is given and under law Distribution Licensee is required to see occupation for which electric supply is being asked for. The complainant has submitted that the requisition for which the Respondent No. 2 has filed is not properly filled up as in the requisition it is mentioned that an extension to the existing meter connection is required. He has further submitted that there is difference in father's name of the Respondent No. 2 as shown in requisition as well as in Aadhar Card and shop and establishment license. The Respondent No.2 being not so literate, this formal lacuna itself is not sufficient proof to infer that the Respondent No. 1 has illegally granted the electric supply. We have perused the record and it appears that initially the shop and establishment license was issued by showing business of Snacks and Tea Centre as well as Radiator Repairs. Thus according to the Respondent No.1 BEST Undertaking the shop and establishment license issued by BMC in the name of the Respondent No. 2 has itself proof of occupation and relying upon these documents and spot inspection they have released the electric supply.

5.0 Having regard to the above said reasons, it appears that the complainant has challenged the action of Distribution Licensee who has given electric supply to the Respondent No. 2 as per section 43(1) of The E.A., 2003. In view of this aspect the question poses before us is whether the complainant has right to challenge such action and whether he is to be termed as consumer within the definition of section 2 (15) of E.A., 2003. We think it just and proper to reproduce the same.

2 (15) "Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

6.0 We have cautiously gone through the definition of "Consumer" and CGRF being quasi judicial tribunal, it cannot enter into the controversy to see whether premises to which electric supply has been given is part & parcel of complainant's property.

7.0 Considering the above said definition of "Consumer", it cannot be held that the complainant is a consumer and he has right to file the complaint. After bare perusal of definition of Consumer, it appears that the complainant has no *locus-standi* to file the complaint. We are saying so considering the definition of "Grievance" as incorporated in the Regulation 2.1 (c) of MERC (CGRF & EO) Regulation, 2006. Likewise, we think it just and proper to reproduce the definition of the "Forum" as given in Regulation 2.1 (e),

"Forum" means the forum for redressal of grievance of the consumers required to be established by Distribution Licensee pursuant to sub-section 5 of Section 42 of the Act and these Regulations.

8.0 Irrespective of this legal position, the complainant has again and again submitted that the possession of the Respondent No. 2 being unauthorized, the Respondent No.1 BEST Undertaking is not entitled to release electric supply. On this point, he relied upon the ruling of Calcutta High Court in ***W.P. 11592 (W) of 2016 that C.P.E.N. 1089 of 2016 Smt. Shanti Devi Agarwal v/s W.B.S.E.D.C.L. & Others***. We have gone through the said ruling in which the Hon'ble High Court has discussed about the settled possession. In the case law, the dispute was in respect of giving electric supply to the demolished illegal part of the building. The Hon'ble High Court had allowed to give electricity connection on temporary basis through separate meter to the petitioner. So the ratio laid down in this case law is not at all applicable to this case. On this point we rely upon ratio laid down in ***AIR 2011 Calcutta 64 Full Bench Abhimanyu Mazumdar v/s Superintending Engineer and Anr***. In this case law, it has been held that 'Lawful Occupier' of the premises for purpose of - Means 'actual occupier in

settled possession - Person in settled possession of property be it trespasser, unauthorized encroacher, squatter of any premises, can apply for supply of electricity without consent of owner - Is entitled to get electricity and enjoy the same until he is evicted by due process of law.

- 9.0 In view of this ratio laid down in this case law, the action of the Respondent No.1 BEST Undertaking releasing electric supply to the premises of Respondent No. 2 appears to be legal and proper. It is for the complainant to take the action by filing civil suit for declaration of ownership to the said premises and for recovery possession. However he has no right to challenge the action of Respondent No.1 BEST Undertaking who has supplied electric supply to the Respondent No. 2.
- 10.0 For the above said reason we have arrived at the conclusion that after satisfying about the actual possession of the Respondent No. 2 and after going through the license issued by BMC and as per provision of Regulation 4 of MERC (Electricity Supply Code and Other Conditions of Supply), Regulation 2005 coupled with the mandatory provision of section 43 (1) of E.A., 2003, the Respondent No.1 BEST Undertaking has rightly released the electric supply to the premises in possession of the Respondent No. 2. We wish to observe that the representative of the complainant has very nicely argued the matter and his arguments appeared to be lucrative but it has no legal base as the Respondent No. 2 was and is in a settled possession of the premises for which electric supply has been given. Thus we do not find any merit in the complaint. Accordingly we pass the following order.

ORDER

- 1.0 The grievance no. N-FS-394-2019 dtd. 30/09/2019 stands dismissed.
- 2.0 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