

		Date	Month	Year
1	Date of Receipt	24	01	2022
2	Date of Registration	24	02	2022
3	Decided on	24	03	2022
4	Duration of proceeding	59 days		
5	Delay, if any.	—		

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

On Portal Grievance No. E-008-2022 dtd. 24/01/2022

Mrs. Razia Mohd.Aslam Waghoo Complainant

V/S

B.E.S.&T. Undertaking Respondent

Present

Chairman

Coram : Shri S.A. Quazi, Chairman

Members

1. Smt Anagha A. Achrekar, Independent Member.
2. Shri S.S. Bansode, Technical Member.

On behalf of the Complainant : Shri Davindar Singh Sudan.

On behalf of the Respondent : Shri S.V. Fulpagare, DEVig(S)

Date of Hearing : 15/03/2022

Date of Order : 24/03/2022

Judgment

1. The complainant has grievance about respondent's decision of recovering amount Rs. 37808/- (Rs.22,541/-dues towards vigilance case and Rs. 18,904/- towards compounding charges = Rs.37,808/-) from the complainant. The complainant has requested this Forum to direct the Respondent/BEST Undertaking to refund the said amount to the complainant, which she had paid to respondent under protest.
2. The following facts can be said to be not in dispute between the parties:
 - a) There is a premises having address as "Flat No.6, 3rd floor, Fateh Manzil, Masjid, New Building, Mustafa Bazar, Victoria Road, Sant Savta Marg, Mumbai- 10." (Herein after it shall be referred to as "the premises")
 - b) The earlier occupier of the premises was one Mrs.Tahera A Hamid Surti and the respondent had been providing electricity to her in the said premises. Thus the said Mrs. Tahera A Hamid Surti was the earlier registered consumer of electricity supplied to the premises, under consumer a/c No. 523-007-023.
 - c) On 24.05.2011, the complainant made application to the respondent and requested that the consumer name about the supply of electricity to the said premises be changed from the name of Mrs.Tahera A Hamid Surti holding A/c No. 523-007-023 to the name of the complainant. Copy of the said application has been produced by the respondent in this proceeding before this forum, with their reply. It is contended in that application that the said earlier occupier/earlier registered consumer Mrs. Tahera A Hamid Surti has transferred her occupancy rights pertaining to the premises, in favor of the complainant, by executing documents to this effect. Along with that application, the complainant has given her undertaking. Copy of the said undertaking has been produced by the respondent in this proceeding before this forum with their reply. In that undertaking it has been contended that "Further, I hereby agree to pay revised amount of arrears or claim of A/c mentioned at (7) above as per regulations." In the said undertaking clause 7 is about details of previous electric connection if any and in response to the said clause 7, particulars given are "A/c No.523/007/023" i.e. pertaining to previous registered consumer Mrs.Tahera A Hamid Surti.
 - d) On the aforesaid application dt.24.5.2011, the Respondent has changed consumer name, about the electric connection provided to the said premises, from the name of earlier consumer Mrs.Tahera A Hamid Surti holding A/c No. 523-007-023 to the name of the complainant with allocation of new consumer No.523-007-002 with effect from 15.6.2011. Since then the electric bills of the premises are generated in the name of the complainant as consumer.
 - e) The Vigilance department of the respondent/BEST Undertaking has served upon the complainant, a notice dt. 23.11.2021, which is addressed to previous registered consumer Mrs.Tahera A Hamid Surti. In the said notice, reference has been made to

(1) vigilance case No.VGN/377/T08 Dt. 23/Mar/2009 and (2) Final Assessment Order Dated 27-Jun-2014. In that notice the respondent has mentioned that:

“With reference to above Vigilance case registered on 23-Mar-09 and Final Assessment order at 2 above issued on 27-Jun-14 this is to inform you that as per Final assessment order Vigilance Claim amount is Rs. 109541/- and compound charges are Rs. 37808/-.

It is observed from the records that you have not paid the dues of Rs. 22541/- towards vigilance claim alongwith the compounding charges of Rs. 37808/-.

You are hereby requested to manage to pay the above said dues within 15 days from the date of receipt of this letter, failing which necessary action will be initiated as per section 56(1) of the Electricity Act 2003 and meter No. J151745 will be removed.”

- f) The complainant has addressed a notice dt.17thDec.2021 to Vigilance department of the respondent/ BEST undertaking. In it the complainant has referred to (1) vigilance case No.VGN/377/T08 Dt. 23/Mar/2009 and (2) Final Assessment Order Dated 27-Jun-2014. In it, she has contended that she has received the notice from vigilance department bearing No. Vig/Maint-13/15512021 and that the respondent’s officials are illegally demanding complainant to make payment. The complainant also asked the respondent in the notice dt. 17th Dec. 2021 to issue the notice of demand addressing to her and to justify how it is the responsibility of the complainant to pay the dues of the previous owner (previous consumer) Thus in the said notice 17th Dec. 2021, the complainant has denied her liability to pay the dues pertaining to the (1) vigilance case No.VGN/377/T08 Dt. 23/Mar/2009 and (2) Final Assessment Order Dated 27-Jun-2014.
3. The Complainant’s case, as is mentioned in the grievance application and as submitted by her representative, in the course of hearing before this forum, may be stated as under:
- a) The vigilance department has forcibly recovered the dues of the former occupier/consumer from the complainant by cutting off the power supply. The representative of the complainant has submitted that after purchasing the occupancy rights of the premises from its earlier occupier, when the complainant applied for change of consumer name in May, 2011, the respondent did not point out that there was a vigilance-case about theft of energy by the earlier occupier/consumer. The respondent allowed the change of consumer-name in favor of the complainant without any objection or without bringing the pendency of the vigilance case to the notice of the complainant. Had the respondent pointed out to the complainant, at the time of change of consumer name in favor of the complainant, the complainant would have made the earlier occupier/consumer to pay the dues. Therefore, the representative of the complainant has submitted that the complainant is not liable to pay the alleged

dues pertaining to the alleged vigilance case of the year 2009 about the earlier consumer.

- b) The representative of the complainant has submitted that the claim of the respondent about the alleged dues is also barred by period of limitation of two years as prescribed by the provisions of sub-section (2) section 56 of The Electricity Act 2003. It is submitted that the said provision says that licensee cannot disconnect the electricity for nonpayment of dues pertaining to a period beyond two years from the date when it first became due. As the amount, forcibly recovered from the complainant, pertains to the period prior to 23.3.2009 and it is demanded by the notice dt. 23.11.2021 and recovered from the complainant there under in Dec. 2021, neither respondent has right to recover nor is the complainant liable to pay it. Still the respondent has illegally recovered it from the complainant. Therefore, the complainant has grievance against the said act of the respondent and the complainant is entitled for the relief from this forum for direction to the respondent to refund the said amount Rs. Rs.37808/-
 - c) The representative of the complainant has also submitted that without addressing the demand notice to the complainant, the respondent cannot recover the amount of dues from her. The notice was addressed to the earlier occupier/consumer Mrs. Tahera but was served to the complainant and under the threat of disconnection of supply, the amount of Rs. 37,808/- has been illegally recovered by the respondent from the complainant. According to the representative of the complainant, it is illegal and therefore, this forum has powers to undo the said illegality committed by the respondent, by directing the respondent to refund the said amount to the complainant.
 - d) The complainant in her grievance application and her representative in his submissions in the course of hearing have submitted that this forum may direct the vigilance department of the respondent to refund the amount paid by complainant along with interest and this forum may punish the erring official of the respondent for using his powers in an illicit manner.
4. The Respondent/BEST Undertaking (Licensee) has filed its reply and has submitted that the instant grievance application has no substance and it is liable to be dismissed. The case as pleaded by the Respondent/Undertaking and as submitted by its representative, in the course of hearing before this forum, may be summarize as under:
- a) According to the respondent, its vigilance department carried out inspection-cum-raid on 23rd March 2009 at the premises in question. During the inspection, consumer meter No. G977623 was found tampered. Accordingly the vigilance case No. VGN/377/T08 was registered u/s 135 of the Electricity Act, 2003 against the then consumer Smt. Tahera A Hamid Surti/Junned Surti for tampering the meter having consumer No. 527-007-023.
 - b) Vide letter dt. 23.03.2009, the consumer Smt. Tahera A Hamid Surti/Junned Surti was informed about the provisional vigilance claim of Rs. 1,72,962/- along with compounding charges of Rs. 37,808/- for the loss of 12812 Kwh units of electricity. The

claim period was 2 years i.e. from 23.3.2007 to 23.3.2009. On the date of raid, the consumer had paid Rs. 87,000/- i.e. approximately fifty percent of the provisional vigilance claim to avoid disconnection of supply.

- c) Then the matter was sent by vigilance department to the review committee (II) for review, vide AO No. 353 dt. 11.8.2010 and office order dt. 18.8.2010. Despite several notices having been sent to the consumer by the review committee, the consumer did not appear before the review committee. Hence the committee decided final assessment on ex parte basis. The committee revised the claim period from two years to one year. It revised the claim amount to Rs. 1,09,541/- and compounding amount to Rs. 18,904/- This decision of the review committee was informed to the consumer Mrs. Tahera A Hamid Surti vide registered AD letter Vig. (N)/Adm-21/28289/2014 dtd. 18.9.2014 and thereby she was also requested to pay the balance amount of vigilance claim of Rs.22,541/- and new compounding charges of Rs.18,904/-
- d) Meanwhile, CCE Ward informed to vig. Department that new consumer Mrs. Razia Mohd Aslam Waghoo (present complainant) had submitted an application for change of consumer-name on 24.5.2011. CCE Ward processed that application with the due undertaking of the said new consumer Mrs. Razia Mohd Aslam Waghoo (present complainant) to pay the revised amount of arrears of claim of old consumer a/c 523-007-023. In view of this the respondent effected the change of consumer name in favor of the new consumer Mrs. Razia Mohd Aslam Waghoo (present complainant) with effect from 15.6.2011 with allocation of new consumer a/c No. 523-007-002.
- e) On 30.06.2015, the complainant (the new consumer Mrs. Razia Mohd Aslam Waghoo) had visited the office of the vigilance (ES) North Department and informed to the then DE Vig. (N) that she shall pay Rs. 15,000/- on 06.7.2015. The respondent has referred to the report dtd. 10.7.2015 of sub-engineer of their recovery section, wherein this has been observed and reported by the sub-engineer. This report is produced by the respondent at page 53/C as Ehx-D. In spite of this assurance, the complainant has not deposited the balance payment of amount of Rs. 22,541/- and compounding charges of Rs. 18,904/-. Instead of paying it to discharge her liability, the complainant has raised the controversy by filing complaint in annexure 'C' on 09.7.2015. In that complaint the complainant had made following among other requests that: (i) balance amount of Rs. 22,541/-of old consumer a/c No. 523-007-23 (of Smt. Tahera A Hamid) should not be transferred to the new consumer a/c No. 523-007-002 of the complainant (Mrs. Razia Mohd Aslam Waghoo), (ii)The demand of Rs. 22,541/- should be declared as illegal (iii) Electric supply of a/c No. 523-007-002 of complainant should not be disconnected, (iv) Enquiry be conducted against all the officers who had acted arbitrarily and acted in gross abuse of power for making demand of balance vigilance claim of Rs. 22,541/-and new compounding charges of Rs. 18,904/-
- f) The DECCE of the respondent forwarded the reply to the complainant Mrs. Razia Aslam Waghoo vide their letter bearing No. DECCE/IGR-E/Annex-C/1882/2015 dt. 26.11.2015, informing her that civil liability in theft of electricity case is a charge on the premises

and hence, as per the undertaking given by her at the time of change of name of consumer in her favor, she is liable to pay the balance vigilance claim in the instant case. The respondent has referred to the notice dtd. 26.11.2015 of Ag. Divisional Engineer and report dtd. 10/07/2015 of Sub-Engineer of their recovery section, wherein this has been observed and reported by the sub-engineer. This report is produced by the respondent at page 59/C as Ehx-F. According to the representative of the respondent, the instant complaint is not tenable after the said order of the Internal Grievance Cell dt. 26.11.2015.

- g) Till date the full amount against the vigilance claim has been paid by the consumer. Complainant had issued three post dated cheques against compounding charges of Rs. 37,808/. Out of these cheques, two cheques amounting to Rs. 18,904/- against revised compounding charges will be deposited on due dates and the remaining one cheque amounting to Rs. 18,904/- will be returned to the consumer.
 - h) The respondent has referred to the provisions of regulation 12.5 of the Maharashtra Electricity Regulation Commission (Electricity Supply Code and Standards of Performance of Distributions Licensees Including Power Quality) Regulations 2021, (For short hereinafter it shall be referred to as MERC Supply Code 2021). The representative of the respondent has submitted that as per this provision, any charge for electricity or any sum other than a charge for electricity due to the licensee, which remained unpaid by the erstwhile owner/occupier of any premises, shall be a charge on the premises transmitted to the new owner or occupier and the same shall be recoverable by the licensee from the new owner/occupier of the premises. The representative of the respondent has submitted that the officials of the respondent had issued demand notice dt. 23.11.2021 u/s 56(1) of the Electricity Act 2003 and when the consumer did not respond to it, the respondent's officials had disconnected the supply of electricity on 23.12.2021. However, after payment of the balance vigilance claim and issuing of the post dated cheques against the compounding charges by the consumer, the electric supply to the premises was restored immediately on the same day. The representative of the respondent has submitted that the officials of the respondent have thus acted as per the provisions of Electricity Act and no illegality has been committed by them.
 - i) The representative of the respondent has submitted that as the dues are pertaining to theft of electricity and they are assessed by the respondent/licensee in consequence to the action u/s 135 of the Electricity Act 2003, this forum has no jurisdiction to entertain the instant complaint to oppose the rights of the respondent to recover the dues against the theft of energy.
 - j) Mentioning all the aforesaid circumstances, the representative of the respondent has submitted that the instant grievance application is liable to be dismissed.
5. We have heard the parties. In view of the respective pleadings, submissions and the documents of the parties, 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 to the relief, from this forum, for direction to the respondent to refund the disputed amount recovered by it from the complainant towards the dues against the vigilance case dtd. 23.9.2009 and the amount of compounding charges Rs. 37,808/-?	In negative, except that the complainant is entitled to get back the amount of Rs. 18,904/- out of the compounding charges, as mentioned in clause 3.7 of the reply filed by the respondent before this forum.
2	What order is required to be passed by this forum to dispose of this grievance application?	The grievance application is required to be partly allowed and it is necessary to direct the respondent to return the post dated cheque No. 12266127 bearing date as 01.06.2022 for Rs. 18,904/- given on 13.12.2021, by the complainant to the respondent and if that cheque has been encashed, then the respondent shall have to refund the amount of the cheque Rs. 18,904/- to the complainant. In these terms the grievance application will have to be disposed of as is being indicated in the operative order being passed herein below.

6. We record reasons for aforesaid findings on the above point No. (1) and (2) as under:

- a) We have noted the contentions of the parties as mentioned by them in their pleadings as well as in their oral submissions. We have also perused the documents submitted by the parties on record in the course of hearing. We have also noted the admitted facts in Para-2 herein earlier.
- b) From the facts pleaded and the documents produced by the parties and as noted herein earlier, it can be said that the case of the respondent is that its vigilance department carried out inspection-cum-raid on 23rd March 2009 at the premises in question. During the inspection, consumer meter No.G977623 was found tampered. Accordingly the

vigilance case No.VGN/377/T08 was registered u/s 135 of the Electricity Act, 2003 against the then consumer Smt. Tahera A Hamid Surti/Junned Surti for tampering the meter having consumer No. 527-007-023. Vide letter dt. 23.03.2009, the consumer Smt. Tahera A Hamid Surti/Junned Surti was informed about the provisional vigilance claim of Rs. 1,72,962/- along with compounding charges of Rs. 37,808/- for the loss of 12812 Kwh units of electricity. The claim period was 2 years i.e. from 23.3.2007 to 23.3.2009. On the date of raid, the consumer had paid Rs. 87,000/- i.e. approximately fifty percent of the provisional vigilance claim to avoid disconnection of supply. Then the matter was sent by vigilance department to the review committee (II) for review, vide AO No. 353 dt. 11.8.2010 and office order dt. 18.8.2010. Despite several notices having been sent to the consumer by the review committee, the consumer did not appear before the review committee. Hence the committee decided final assessment on ex parte basis. The committee revised the claim period from two years to one year. It revised the claim amount to Rs. 1,09,541/- and compounding amount to Rs. 18,904/- This decision of the review committee was informed to the consumer Mrs. Tahera A Hamid Surti vide registered AD letter Vig. (N)/Adm-21/28289/2014 dtd. 18.9.2014 and thereby she was also requested to pay the balance amount of vigilance claim of Rs.22,541/- and new compounding charges of Rs.18,904/-

c) All these facts as mentioned in the above para 7(b) herein and as stated by the respondent, can be said to have been established for the purpose of the present grievance application, in view that the complainant has not denied them in strict sense. What the complainant has contended is that the dues pertaining to the said vigilance case about theft of energy by the earlier consumer cannot be recovered from the complainant mainly for the following reasons:-

(i) The complainant has started to occupy the premises and started consuming electricity provided to the premises only after the date of purchase of its occupancy rights on or about 04.10.2010, and the vigilance raid was carried out by the vigilance department of the respondent prior to the date 04.10.2010 i.e. on 23.3.2009. Thus, the complainant is not responsible for the theft allegedly committed by earlier occupier/consumer.

(ii) No notice of demand of the said dues is ever addressed to the complainant and thus she has not been given opportunity to explain that the dues cannot be recovered from her, and

(iii) As the dues pertain to the period preceding to the date 23.3.2009, and recovery thereof is demanded by notice dt. 23.11.2021 u/s 56(1) of Electricity Act, 2003, the claim of respondent is barred by period of limitation of two years as prescribed u/s 56(2) of that Act of 2003.

d) On examination of the submissions of the parties, what we find is that none of the aforesaid contentions of the complainant can be good reason to reject the case of the respondent that under the provisions of regulation 12.5 of MERC Supply Code 2021, the

complainant being the new occupier of the premises is liable to pay the aforesaid dues as claimed by the respondent after the vigilance case dated 23.3.2009 about the theft of electricity at the premises has investigated and dues have been finally assessed by the officials of the respondent. The reasons of such findings may be found in the paras herein below.

- e) The complainant cannot claim as a matter of right that the supply to her premises cannot be disconnected on account of non-payment of the dues, even though the dues are pertaining to the period prior to complainant's occupancy-period. We have gone through the provisions of MERC Supply Code 2021. Regulation 12.5 of MERC Supply Code 2021 lays down the rule that any charge for electricity or any sum other than a charge for electricity due to the licensee, which remained unpaid by the erstwhile owner/occupier of any premises, shall be a charge on the premises transmitted to the new owner or occupier and the same shall be recoverable by the licensee from the new owner/occupier of the premises. In view of this, the respondent is entitled to recover the said dues by exercising their rights to disconnect the supply u/s 56(1) of the Electricity Act 2003 if the dues of charge on the premises are not paid. The person who does not want that supply of electricity to the premises in question should be disconnected may pay the dues which are considered as charge on the premises and stop the action of disconnection. Therefore, the current occupier has a liability to pay the dues of electricity charges or any sum other than charge for electricity, which is charge on the premises. The complainant, being the current occupier at the time of recovery proceeding is liable. Therefore it is not correct that the complainant is not liable because she has started to occupy the premises and started consuming electricity provided to the premises only after the date 23.3.2009 i.e. after the vigilance raid was carried out by the vigilance department of the respondent.
- f) About the objection of the complainant that no demand notice has been addressed in her name and thus she has not been given opportunity of giving explanation, it may be noted that the dues are pertaining to the theft of energy by the earlier occupier of the premises and the respondent has given opportunity of hearing to the earlier occupier, as can be seen from the copies of the correspondence addressed to the earlier occupier. The complainant cannot have any say in the allegation that the earlier occupier committed theft of energy and therefore the dues have been assessed about loss caused to the respondent due to the said theft. Moreover, it cannot be said that the complainant has not availed the opportunity of challenging the act of respondent about the assessment of the dues and the recovery. It is clear from the pleading and the documents produced by the respondent that on 09.7.2015 the complainant had filed grievance application in 'Annexure-C' form to the "Internal Grievance Redressal Cell" of the under the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2005, which were in force at that time. In that Grievance Application the complainant had raised almost same issues as have been raised in the instant grievance application before this forum. The said grievance application Annexure-C dtd. 09.7.2015 has been rejected by the "Internal Grievance Redressal Cell" on 26.11.2015. In this regard reference may be made to the copy of complainant's grievance application Annexure-C

dtd. 09.7.2015 and copy of letter dt. 26.11.2015 of Ag. Divisional Engineer Customer Care (E) Ward addressed to the complainant Razia Mohd. Aslam Waghoo. By the said letter dt. 26.11.2015, the “Internal Grievance Redressal Cell” has informed the complainant Razia Mohd. Aslam Waghoo that civil liability in the theft of electricity case is a charge on the premises and hence as per complainant’s undertaking given by her at the time of change of name application, she is liable to pay the balance of vigilance charges in the above case. Thus the grievance application in ‘Annexure-C’ of the complainant was impliedly rejected by the “Internal Grievance Redressal Cell” of the respondent. Under the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2005 which were in force then, the complainant could have challenged the said finding of the “Internal Grievance Redressal Cell” of the respondent before this forum. Admittedly the complainant has not filed any grievance application before this forum to challenge the rejection of her said grievance application dt. 09.7.2015 by the “Internal Grievance Redressal Cell”. From these circumstances, it can be said that the complainant’s contention is not correct that she had no opportunity to explain her case to the respondent.

- g) From the aforesaid circumstances, it can also be said that that now, after expiry of prescribed period of limitation of two years from 26.11.2015 i.e. the date of rejection of her grievance application-Annexure-C dt. 09.7.2015 by the “Internal Grievance Redressal Cell”, the present grievance application before this forum filed on or about 24.01.2022, is not tenable under the provisions of Regulation 8.1 of MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2020. The said Regulation 8.1 provides that consumer grievance redressal forum shall not entertain a grievance filed after expiry of two years from date of arising of the cause of action. In this case, from the aforesaid facts, it can be said that cause of action had arisen for the complainant to file grievance before this forum on 26.11.2015 when the “Internal Grievance Redressal Cell” of the respondent had rejected the grievance application-Annexure-C of the complainant. Within two years from 26.11.2015, the complainant should have filed her grievance. However it is filed after expiry of this prescribed period of two years. Therefore, under Regulation 8.1 of MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2020, this forum cannot entertain the instant grievance.
- h) We do not find substance in the contention of the complainant’s representative that as the dues pertain to the period preceding to the date 23.3.2009, the recovery thereof by the demand notice dt. 23.11.2021 u/s 56(1) of Electricity Act, 2003 is barred by period of limitation of two years as prescribed u/s 56(2) of that Act of 2003. The reason for such findings is two folded. First reason is that at the time of filing of her application dt. 16.5.2011 for change of consumer-name pertaining to the said connection to the premises in question, the complainant had given written undertaking and in clause (10) thereof it is stated that “.....Further, I hereby agree to pay revised amount of arrears or claim of A/cs mentioned at (7) above as per regulations.” The phrase “at (7) above” in this sentence of the undertaking denotes clause (7) of the undertaking. In Clause (7) of the undertaking, the details of previous electric connection a/c No. 523-007-023 have been given. From the documents produced by the parties, it is seen that this previous

a/c No. 523-007-023 was pertaining to the previous consumer Mrs. Tahera Surti, against whom the vigilance case about theft of electricity was being investigated when the complainant got the consumer name changed in her favor. Thus, by the aforesaid undertaking, the complainant had agreed to pay the claim, pertaining to the a/c No. 523-007-023 of the previous consumer/occupier Mrs. Tahera Surti, which was pending for final assessment at that time when the said undertaking was given by the complainant. On giving such undertaking, the complainant got the change in consumer-name in her favor from the name of the previous occupier/consumer Mrs. Tahera Surti. In view of such undertaking, the complainant is estopped from raising objection about expiry of prescribed period of limitation contained in sub-section (2) of section 56 of the Electricity Act, 2003. We do not find merits in the submission of the representative of the complainant that the undertaking does not make the provision of limitation, prescribed in sub-section (2) of section 56 of the said Act of 2003, ineffective. The undertaking is a sort of promise to waive the right to take benefit under said provision and hence the complainant is estopped from exercising the said right after such undertaking.

- i) The second reason for rejecting the contention about limitation of two years given in sub-section (2) of section 56 of the Electricity Act, 2003 is that it appears from the documents produced by the respondent that after the vigilance case dt. 23.3.2009, the respondent's vigilance department had been making investigations and proceeding for assessment and reassessment of the exact loss on account of theft of electricity was pending till recent. From time to time the assessment was revised. Thus the sum in question was continuously shown as recoverable as arrears of charges for electricity supplied or about loss on account of theft of it. In view of this, the provision containing exception to the applicability of limitation of two years contained in sub-section (2) of section 56 of the said Act of 2003 would come in to operation. It says that the said limitation would apply unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied etc.
- j) Thus we hold that the complainant is not entitled to get refund of amount recovered by the respondent from the complainant towards the dues of vigilance case and the compounding charges as assessed by the respondent as mentioned by the respondent in para 3.7 of their reply filed before this forum. In para 3.7 of their reply the respondent has stated that the respondent has reassessed the compounding charges recently and in view of this they are going to return the cheque of Rs.18,904/- received by them from the complainant. Hence except for return of this cheque of Rs. 18,904/- or if it has been encashed, for refund of the amount of this cheque Rs. 18.904/-, the complainant is not entitled for any relief from this forum in the instant grievance application.
- k) In view of the aforesaid reasons, we have recorded our findings on point No.1 accordingly. In view of this, the grievance application will have to be partly allowed and direction may be given to the respondent to return to the complainant her post dated cheque No. 12266127 bearing date as 01.06.2022 for Rs. 18,904/- given by her to the respondent on 13.12.2021, and if that cheque has been encashed, then the respondent

shall have to refund the amount of the cheque Rs. 18,904/- to the complainant. In these terms the grievance application will have to be disposed of as is being indicated in the operative order being passed herein below. Accordingly, we have answered the point (2) and in the aforesaid terms the present complaint is required to be disposed off by this Forum. Hence we pass the following order.

Order

1. The instant grievance application No.E-008-2022 dtd. 24/01/2022 filed before this Forum is partly allowed and disposed of in the following terms:
 - a) The Respondent / Licensee/BEST Undertaking is directed to return to the complainant the post dated cheque No. 12266127 bearing date as 01.06.2022 for Rs. 18,904/- given by her on 13.12.2021 and if that cheque has been encashed, then the respondent is directed to refund the amount of the cheque Rs. 18,904/- to the complainant.
 - b) The complainant is not entitled for any other relief from this Forum.
2. Copies of this order be given to all the concerned parties.

Sd/-
Shri. S.S Bansode
(Member)

Sd/-
Smt. Anagha A. Achrekar
(Member)

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