

		Date	Month	Year
1	Date of Receipt	07	10	2021
2	Date of Registration	14	10	2021
3	Decided on	31	01	2022
4	Duration of proceeding	109 days		
5	Delay, if any.	49 days		

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-C-446-2021 dtd. 14/10/2021

M/s. Jeetmal Chhogmal Complainant

V/S

(1) B.E.S.&T. Undertaking First Respondent

(2) B.M.Shah & Co. Second Respondent

Present

Coram : Chairman
Shri S.A. Quazi, Chairman

Members

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

On behalf of the Complainant : Shri A. O. Mendonca

On behalf of the first Respondent : Shri S. S. Dongre

On behalf of the Second Respondent : Shri Jiten Shah

Date of Hearing : 03/01/2022

Date of Order : 31/01/2022

Judgment

1. This complaint was received on 07/10/2021 and registered on 14/10/2021 in the office of the Forum. However, due to pandemic of Covid-19, lockdown was declared by the Government from 23/03/2021 onwards and it was extended from time to time and subsequently the guidelines were issued by MERC in that respect. The consumer was not ready for hearing through Video Conferencing. For these reasons, the matter could not be heard for long period. After relaxation of lockdown, the matter was fixed for hearing physically on 03/01/2022. Accordingly, the matter was heard on 03/01/2022 and now the judgment is being given. For these reasons the matter could not be decided within the time prescribed by the Regulations. Therefore, the delay of 49 days has occurred in deciding this complaint.
2. The complainant has grievance about first-respondent/licensee's decision of change of name of consumer from complainant's name to the name of the second respondent in respect of the electric-connection bearing consumer No.364-059-403 a/c No. 1229518 and regarding complainant's premises, described in the electric bill as "Room No. 2, Floor-Ground, 50 Bhatia Niwas, Babu Genu Road, Hanuman Lane, Kalbadevi, Mumbai-400004." (Herein after this premises shall be referred to as premises in question). This change was effected from the month of October 2020. After the change, the consumer number has been changed to 364-059-012 and a/c Number is changed to 300010365 in the name of the second respondent. According to the complainant, the said change in consumer-name is illegal, unjustifiable and invalid. The complainant has requested in the instant complaint that the said change in consumer-name be set aside and the complainant's name be restored as consumer of the said electric connection.
3. The following facts can be said to be not in dispute between the parties:
 - a) The complainant is in occupation of part of the premises described in the electric bill as "Room No. 2, Floor-Ground, 50 Bhatia Niwas, Babu Genu Road, Hanuman Lane, Kalbadevi, Mumbai-400004," since the year 1956 under the leave and license agreement between complainant and the second respondent. The electric connection has been given to the premises since the year 1960. On the date of the disputed change in consumer-name effected from the month of Oct. 2020 in the name of the second respondent, the registered consumer was the complainant and the consumer a/c was also in the name of the complainant/M/s. Jeetmal Chhogmal.
 - b) The second respondent has filed R.A.E. Suit No. 1922 of 2015 against the complainant and one Vijay Trading Co. for evicting them from the said part of the premises and that suit is pending in the Small Causes Court, at Mumbai. Meanwhile the second respondent made application dt. 16.01.2020 to the first respondent for correction in the description of the address of the premises. Then second respondent also made application for change of name of consumer. On such applications the first respondent changed the name of consumer from complainant to the respondent with effect from Oct. 2020.

4. The Complainant's case, as is mentioned in the grievance application and as submitted by his representative, in the course of the hearing before this forum, may be stated as under:
 - a) The complainant is paying the electric bills continuously since the year 1960. Till Sept. 2020 complainant has paid the bills, but the premises was required to be kept closed from March 2020 to Sept. 2020 due to lock-down on account of epidemic of Covid-19.
 - b) However, the complainant came to know that on the application made by second-respondent, during the said lock-down period, the first respondent has effected change in the consumer-name in respect of the said connection from complainant's name to the name of the second respondent/ M/s. M.B. Shah. This act of the respondent is totally illegal and unjust. The complainant is in lawful occupation of the premises. No decree has been passed by the court so far in the aforesaid suit against the complainant. Hence, the second respondent is not entitled to get removed name of the complainant as consumer in respect of the above electric connection. Despite this, the first respondent has effected the change in consumer-name, which is illegal. This has been done by the respondents without any notice to the complainant. No opportunity of hearing has been given to the complainant by the first respondent before removing the name of the complainant.
 - c) It is submitted by the complainant's representative that on 10.02,2021, the complainant gave complaint about the above change to the Customer Care Department of the first Respondent, but the grievance of the complainant has not been satisfactorily settled. Therefore the complainant has filed the instant complaint before this Forum. It is submitted by the representative of the complainant that the said change in consumer-name be set aside and the complainant be restored as consumer of the said electric connection.

5. The first Respondent/BEST Undertaking (Licensee) has filed its reply and has submitted that the instant grievance application has no merits and it is liable to be dismissed. The case, as pleaded by the Respondent/Undertaking and as urged by their representative in the course of hearing, may be summarized as under:
 - a) The old CIS record of the first respondent shows that the electric connection to the said premises was given in the year 1960 but the in the year 1998, the change in consumer was effected in the name of the complainant and since then complainant has been the consumer.
 - b) The second respondent gave an application to the first respondent on 16.01.2020 for correction in the description of room number of the premises. He requested to insert room No. 2. As per record of the first respondent room number was not mentioned. The second respondent submitted rent receipt in his name. The first respondent's

official visited the site and found that the second respondent was present there. Then the second respondent made application dt. 24.01.2020 for giving electric connection in his name in respect of the said premises. According to the first respondent, the second respondent had not disclosed that the suit was pending in court about the said premises. The second respondent is entitled for change in consumer in his favour as per the occupancy of the second respondent. Therefore, the first respondent has effected the change as above.

c) For all the aforesaid circumstances, the representative of the first respondent has submitted that the instant grievance application is liable to be dismissed.

6. The second respondent/ M/s. B. M. Shah has filed its reply and has submitted that the instant grievance application has no merits and it is liable to be dismissed. The case, as pleaded by the Respondent/ M/s. B. M. Shah and as urged by their representative in the course of hearing, may be summarized as under:

a) The record of the first respondent shows that only from the year 1998, the consumer name was changed to the name of the complainant. There is no record as to who was consumer prior to the year 1998. The second respondent is the original tenant of the entire premises admeasuring 1062 sq. ft carpet area. In the year 1956 the second respondent gave part of that premises to the complainant on leave and license agreement. However, the complainant got changed consumer-name in the year 1998 without knowledge of the second respondent. Second respondent recently came to know about it and therefore it applied for the change, which is rightly allowed by the first respondent.

b) The second respondent has filed suit against the complainant and another for their eviction from the premises and the said suit is pending in the small causes court at Mumbai.

c) It is urged by the representative of the second respondent that the second respondent is entitled to get its name recorded as registered consumer as compared to the complainant and hence the instant complaint filed before this forum is liable to be dismissed.

7. 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 decision of the first respondent about the change of consumer name from the	In negative.

	complainant to the second respondent is legal and valid ?	
2.	Whether the complainant is entitled to get its name restored as consumer in respect of the electric connection and consumer account ?	In affirmative.
3.	To what relief, if any, the complainant is entitled from this forum and what order is required to be passed to dispose of this grievance application?	The complainant is entitled to get its name restored as consumer in respect of the electric connection and consumer account involved in this case. Hence it is required that name of the second respondent be removed from the record as consumer and name of the complainant is required to be restored as consumer in respect of the said electric connection and consumer account . Accordingly In these terms the instant Grievance application is being allowed and disposed of, as is being directed in the operative order being passed herein below.

8. We record reasons for the aforesaid findings on point No. (1) to (3), 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-3 herein earlier.
- b) At the outset, it is necessary to observe here that the complainant has produced on record before this forum the copy of plaint in REA Suit No. 1922 of 2015, filed by the second respondent in the small cause court Mumbai and copy of the written statement filed in that suit by the complainant. These documents have been also referred to in the pleading in the complaint filed before this forum. The respondents have not denied these documents. From these documents it can be said that it is not in dispute that the complainant is in occupation of part of the premises described in the electric bill as "Room No. 2, Floor-Ground, 50 Bhatia Niwas, Babu Genu Road, Hanuman Lane, Kalbadevi, Mumbai-400004," since the year 1956 under the leave and license agreement between complainant and the second respondent. The electric connection has been given to the premises since the year 1960. On the date of the disputed change in consumer-name effected from the month Oct. 2020 in the name of the second respondent, the registered consumer was the complainant and the consumer a/c was

also in the name of the complainant/M/s. Jeetmal Chhogmal. The second respondent has filed R.A.E. Suit No. 1922 of 2015 against the complainant and one Vijay Trading Co. for evicting them from the said part of the premises and that suit is pending.

- c) It appears that the second respondent had made application dt. 16.01.2020 to the first respondent for correction in the description of the address of the premises regarding room number. The respondents have come with the case that official of the first respondent visited the premises to enquire about this application and he found that the second respondent was present there. Then second respondent also made application for change of name of consumer on the basis of such finding of the official of the first respondent. On such applications the first respondent changed the name of consumer from complainant to the respondent with effect from Oct. 2020.
- d) The question that arises is whether on the basis of the above finding of the official of the first respondent the name of the registered consumer i.e. name of the complainant could have been removed from record to change it to the name of the second respondent. The answer to this question has to be in negative. The reason being mainly that the second respondent has not denied that the complainant's name has been there on the record as registered consumer at least from the year 1998, if not prior to it. The second respondent has not denied that since the year 1956, the complainant is in occupation of part of the premises under some agreement between the parties. In such circumstances, the complainant is entitled to be continued as consumer and no case has been made out by the second respondent for effecting change in the consumer name.
- e) Moreover, we find merits in the submissions of the complainant that in view of the fact that the complainant has been a registered consumer for about more than two decades, the first respondent should have served show-cause notice to the complainant to give a fair opportunity of hearing before effecting any change in consumer from the name of the complainant to the name of the second respondent. We have no doubt in our mind that the first respondent has also contravened the principles of natural justice by refusing to give opportunity of hearing to the complainant before effecting the change.
- f) For all the above reasons, we have recorded negative findings on point No. (1) and affirmative findings on point No.(2).
- g) In view of the negative findings on point No. (1) and affirmative findings on point No.2, we hold that **the complainant is entitled to get its name restored as consumer in respect of the electric connection and consumer account involved in this case. Hence it is required that name of the second respondent be removed from the record and in its place the name of the complainant is required to be restored as consumer in respect of the said electric connection and consumer account. Accordingly, in these terms the instant Grievance application is being allowed and disposed of, as is being directed in the operative order being passed herein below.**

Accordingly, we have answered the point (3) and in the aforesaid terms the present complaint is required to be allowed and disposed of by this forum. Hence we pass the following order.

Order

1. The instant grievance application No. S-C-446-2021 dtd. 14/10/2021 stands allowed and disposed off in the following terms :
 - a) The First-Respondent/BEST Undertaking is directed to **remove the name of the second-respondent/ B.M.Shah & Co. from the record and, in its place, restore the name of the complainant/ M/s. Jeetmal Chhogmal as consumer of the electric connection and the premises involved in the instant case.**
 - b) The First-Respondent/BEST Undertaking shall make the compliance of the above directions within one month from the receipt of this order.
 - c) Copies of this order be given to all the concerned parties.

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

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

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