

		Date	Month	Year
1	Date of Receipt	03	06	2021
2	Date of Registration	04	06	2021
3	Decided on	09	11	2021
4	Duration of proceeding	158 days		
5	Delay, if any.	98 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. N-FS-433-2021 dtd. 04/06/2021

Shri Tukaram Krishnajee PawaleComplainant

V/S

B.E.S.&T. UndertakingRespondent No. 1
Sanjay Shivaji PawaleRespondent No. 2

Present

Chairman

Coram : Shri S.A. Quazi, Chairman

Member

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

On behalf of the Complainant : 1. Shri Ravindra Tukaram Pawale

On behalf of the Respondent No. 1: Shri Patil R.B., DECCFS

On behalf of the Respondent No. 2: Shri Sanjay Shivaji Pawale

Date of Hearing : 02/11/2021

Date of Order : 09/11/2021

Judgment

- 1.0 This complaint/application was received on 03/06/2021 and registered on 04/06/2021 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 complainant was not ready for hearing through Video Conferencing. For these reasons, the matter could not be heard for long period. Now the lock down conditions have been relaxed to some extent. Therefore, the matter was fixed for hearing physically on 02/11/2021. Accordingly, the matter was heard on 02/11/2021 and was reserved for passing judgment. Hence, now the judgment is being given. For these reasons the matter could not be decided within the time prescribed by the MERC Regulations. Therefore, the delay of 98 days has occurred in deciding this complaint.
- 2.0 The instant grievance application of the complainant / applicant is about the change of name of consumer from his name to the name of his brother Shri Shivaji Krishnaje Pawale (who was father of the opponent Sanjay Pawale and who has admittedly died on 03/04/2021).
- 3.0 The following facts do not appear to be disputed between the parties:
- a) Since 27/6/1976, the Respondent/Licensee supplies electricity to the premises having address as "Room No. 29, ground floor, 83/85 Hirji Jivraj Chawl, T.J. Road, Sewree, Mumbai-400015." (Hereinafter this premises shall be referred to as consumer-premises) The electric connection was given by installing electric meter in the premises on 27/6/1976 in the name of the complainant Tukaram Krishnaje Pawale. The premises is tenanted premises and land lord is one Rohitbhai.
- b) The complainant's elder brother Shri Shivaji gave an application to the Respondent/Licensee some where in the month of Feb. 2020 for change of name of consumer from the name of the complainant to his own name. In the month of March 2020, the Respondent/Licensee allowed the said application and effected the said change by opening the consumer account in the name of Shri Shivaji Pawale and started issuing electric bills in his name from March 2020. It is also not disputed that said Shri Shivaji Pawale has died on 03/04/2021. His son Sanjay Shivaji Pawale has appeared before this forum as his representative (heir) to oppose the present grievance application of the complainant.
- 4.0 The complainant's case, as contended in his complaint application and the submissions made by his representative Shri Ravindra Tukaram Pawale in the course of hearing before this Forum, may be stated as under:
- a) According to the complainant, he and his brother Shivaji were residing in the consumer-premises till the year 1974-75. Thereafter, brother Shivaji left the premises and started residing with his family in some other premises and orally consented for

transfer of tenancy to the complainant and consequently, the landlord started issuing rent receipts in favor of the complaint. According to the complainant, therefore, the Respondent/Licensee had accepted the complainant as occupier and consumer of the electricity supplied to the said premises since beginning.

- b) The complainant further submits that in view of the above facts, the complainant deserves an opportunity of hearing or to give his explanation why the application of his brother Shivaji for change of name of consumer should be rejected. However, the Respondent/Licensee has failed to give any such opportunity of hearing to the complainant before allowing Shivaji's application for change in consumer name. It is only after the Respondent/Licensee stopped giving bills in the name of the complainant and when he did not receive bills for some months, complainant made enquiry and came to know about the said change in consumer. Immediately thereafter, he made grievance application to the Internal Grievance Redressal Cell (IGRC) of the Respondent/licensee and requested to restore his name as consumer. However, his grievance is not removed by the IGRC. The IGRC has failed to consider the documents produced by the complainant about his long-standing occupation of the premises and that it is only on 03/9/2019, Sanjay son of Shivaji Pawale trespassed in the premises by breaking complainant's lock and illegally and unauthorizedly took possession of the premises from the complainant. The complainant further submits that in view of the above facts, possession of said Sanjay son of Shivaji Pawale should not have been considered by the Respondent/Licensee as lawful occupation to change the consumer-name from the name of the complainant to the name of his brother Shri Shivaji. The complainant submits that therefore, the said decision of the Respondent/licensee is illegal and is liable to be set aside by this Forum by allowing this grievance application.
- c) The complainant submits that it is true that his said brother Shivaji Pawale had filed RAD suit No. 1253/2003 against the land lord and the complainant in the Small Causes Court at Mumbai seeking reliefs of declaration that he is the tenant of the consumer-premises and also to restrain the land lord from transferring tenancy in favor of the complainant. It is also true that said reliefs have been granted by the small cause court and the appeal filed by the complainant against it has been dismissed by the appellate bench of small cause court and the revision application filed by him in high court has also been rejected. However, these decisions have not granted any relief to the said Shivaji to take possession of the premises from the complainant. Therefore, possession of the complainant is legal and valid, until it is taken away by due process of law. The son of Shivaji unauthorizedly took possession of premises on 03/9/2019 and hence his occupation is not legal and authorized so as to change the consumer-name from complainant to the name of his brother Shivaji in the aforesaid circumstances.
- d) Moreover, the complainant submits that he has filed appeal in respect of the aforesaid dispute, but it is yet to be registered and admitted. However, on the basis of this, it can be said that the said decisions are not final and they are subject to the final

decision in the proceeding allegedly filed by the complainant in the Honorable High Court.

- e) The complainant submits that the Respondent/Licensee should have considered that documents on record, including Adhar Card of Shri Shivaji show that he is not residing in the consumer-premises, but his address in the said Adhar Card is shown as B-163/41, Jafarbai Kanji Chawl, Rambhau Bhogle Road, near Cotton Green Station, Kalachowki S.O. Mumbai city 40003. If this is so, how the Respondent/Licensee could consider him as occupier who can be treated as consumer.
- f) For all the above reasons, the complainant submits that Respondent/Licensee liable to be directed by this Forum to restore the name of the complainant as consumer in respect to the above said premises by allowing this grievance application.

5.0 The Respondent/Licensee has filed its reply to the aforesaid grievance application of the complainant before this Forum. The case of the Respondent Undertaking, as mentioned by them in their reply as well as mentioned by their representative Shri. R.B. Patil in his submissions before this Forum in the course of hearing, may be stated as under:

- a) The Respondent/Licensee Undertaking has submitted that complainant's brother Shri Shivaji had presented an application to the Respondent/Licensee for change of consumer-name from complainant to his own name on the basis of decision of small causes court Mumbai in his suit bearing RAD Suit No.1253/2003, dt. 26/4/2007. In this decision the Small Causes Court has decreed the suit of said Shivaji and granted the relief of declaration that he is tenant of the consumer-premises and also granted the relief of injunction restraining the land lord of the premises from transferring the tenancy in favor of the present complainant. This decision has been confirmed by the appellate bench of the Small Causes Court by its decision dt.19/3/2014 thereby dismissing the appeal No. 427/2007 filed by the present complainant. These decisions were challenged by the complainant before the Honorable High Court of Bombay by filing Revision Application No. 423/2014. Honorable High Court of Bombay has dismissed the said Revision Application No. 423/2014 by its order dt. 26/2/2016 thereby confirming the said decision of small causes court Mumbai in the suit bearing RAD Suit No.1253/2003, dt. 26/4/2007
- b) According to the Respondent/Licensee in view of the documents produced by the said Shivaji Pawale, he could only be the consumer for the purpose of user of the electricity supplied by the respondent to the said premises. Therefore, there was no legal bar in granting the said application of Shri Shivaji Pawale for change of consumer-name from the name of the complainant to the name Said Shivaji Pawale. Hence the Respondent/licensee changed the consumer-name from the name of the complainant to the name Said Shivaji Pawale with effect from March 2020.

- c) It is further case of the Respondent Undertaking that, the complainant had submitted grievance application to the IGRC of the respondent/licensee against the above said decision of Respondent Undertaking about change in consumer-name. But for the aforesaid reasons the said change of name of consumer is legal and proper, the IGRC rightly rejected the said grievance application of the complainant.
- d) According to the Respondent/Undertaking, thus the decision taken by it is perfectly legal and proper. Therefore, the Respondent has submitted that the complaint filed before this Forum is liable to be dismissed.
- 6.0 The notice of this grievance application was issued addressing to the said Shivaji Pawale, in whose favor the consumer-name was changed. His son Shri Sanjay Shivaji Pawale has appeared before this forum and contended that his father Shivaji has died on 03/4/2021 and, therefore, Sanjay Pawale being heir of his father Shivaji Pawale has filed reply and documents to oppose the present grievance application. The said Sanjay Pawale is mentioned as Respondent No. 2 herein this judgement. His case as submitted by him may be stated as under:
- a) Respondent No. 2 submits that the premises was obtained by his father Shivaji on tenancy in the year 1967 and since then he was residing in it. The complainant Tukaram was simply allowed to reside with Shivaji Pawale. Shivaji Pawale never surrendered tenancy rights, but complainant was trying to get tenancy transferred in his favor from the land lord. Immediately on coming to know about such intentions of the complainant, Shri Shivaji filed RAD suit No. 1253/2003 in the Small Causes Court seeking declaration that he is tenant and seeking injunction to restrain the land lord from transferring rent receipt in favor of present complainant. The complainant was party to the suit along with the land lord. He contested it. After hearing the parties present, the Small Causes Court has decreed the suit and granted the reliefs of declaration and injunction. The Complainant had challenged this judgement and decree by filing appeal No. 427/2007, before the appellate bench of the Small Causes Court. The appellate bench has dismissed the appeal and confirmed the judgement and decree passed by the Small Causes Court. The Complainant had then challenged judgement and decree passed in the said RAD Suit No 1253/2003 and judgement and decree passed in the said appeal No. 427/2007, before the Honorable Bombay High Court by filing Civil Revision Application No. 423/2014. The Honorable Bombay High Court has dismissed the said Civil Revision Application No. 423/2014 and thereby confirmed the judgement and decree passed by the Small Causes Court and the appellate bench of it.
- b) Thus, the complainant is not entitled to be treated as consumer in respect of the said premises in view that deceased Shivaji Pawale is declared to be tenant by the court. This respondent No. 2, being heir of the tenant Shivaji Pawale, is residing in the premises as he has all the rights to this effect. Hence, the present complaint is liable to be dismissed.

7.0 We have heard the submissions of parties. Their submissions are mostly similar to their pleadings and documents, as we have noted their respective contentions herein earlier. In view of the above submissions of the parties, 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 decision of the Respondent No.1 (Licensee), about change of consumer-name from the name of complainant to his brother Shivaji Krishnajeew Pawale, is legal and valid?	In affirmative
2	What order should be passed?	The complaint is dismissed.

8.0 We record the reasons for aforesaid findings, as under:

- a) We have recorded the admitted facts in the para (3.0) herein earlier. The contentions of the parties would reveal that there is a residential premises having address as "Room No. 29, ground floor, 83/85 Hirji Jivraj Chawl, T.J. Road, Sewree, Mumbai-400015." The premises is tenanted premises and its land lord is said to be one Rohitbhai. Since 27/6/1976, the Respondent/Licensee supplies electricity to the said consumer-premises. The electric connection was given by installing electric meter in the premises on 27/6/1976 in the name of the complainant Tukaram Krishnajeew Pawale and since then the complainant was treated as consumer by the respondent/licensee till the consumer-name came to be changed to the name of his brother Shri Shivaji Pawale with effect from March 2020. This change was effected by the Respondent/Licensee after the said brother Shri Shivaji submitted an application on 28/02/2020.
- b) The complainant's grievance comprises of mainly three contentions namely: (1) The aforesaid change is done by Respondent/Licensee without giving any prior notice to the complainant calling upon him to show cause, (2) The decision of small causes court has not granted any relief to Shri Shivaji Pawale or his heirs to take actual possession of the premises from the complainant and therefore unless and until possession is taken from complainant by following due process of law, the possession taken by Sanjay Shivaji Pawale on 03/9/2019 is unauthorized and it cannot be considered legal occupation to hold Shri Shivaji as occupier of the premises and to hold him legally entitled for change of consumer-name from complainant's name to his name as occupier, and (3) The Adhar Card and other documents show residential address of Shri Shivaji other than the address of consumer-premises.
- c) However, we find more weight and substance in the submissions of the Respondents that after the decree having been passed by the Honorable Small Causes Court Mumbai and confirmed by the Honorable appellate court and Honorable Revision Court (High Court), it is well established fact that the actual and real tenant of the premises is Shri Shivaji

Pawale and the Honorable court has refused to accept the complainant as tenant. So, comparatively Shri Shivaji has more legal right to occupy the premises as per the said decision of the Honorable Small Causes Court. Basically, the Respondent/Licensee is entitled to see that it's consumer should have a legal right to occupy the premises to which power is supplied by it and it involves also security in respect of the payment of bills raised by the Licensee regularly.

- d) We have gone through all the documents produced by the parties, particularly the decisions of the Honorable courts referred to above. It is seen from these documents that the said Shri Shivaji had filed suit No. 1253/2003 in Small Causes Court, Mumbai. He raised contentions in the suit that he obtained the premises on rent in the year 1967 and started residing therein. Subsequently, his brother (Complainant) was allowed by him to stay with him in the premises. The complainant never surrendered the tenancy rights. When he came to know that the complainant was intending to get transferred the tenancy in his own favor, Shivaji filed the said suit for seeking relief of declaration that he is tenant of the premises and also for injunction restraining the land lord from transferring tenancy in favor of the complainant. It appears that the complainant contested the said suit. After hearing him and his brother Shri Shivaji, the Small Causes Court has decreed the suit and granted the said reliefs of declaration and injunction in favor of Shri Shivaji. The said judgement is dt.26/4/2007. In para 11 of this judgment, the Small Causes Court has observed that the present complainant (defendant No. 2 therein) has admitted in cross examination that he is residing in some other premises. The relevant observations in this regard in the said judgment are in following words:

“In cross examination of this witness by the advocate of the plaintiff, it is admitted that, presently the defendant No. 2 is residing at Taranath Apartment at Hirji Baug, J.B.Road Sewree for last three years and said premises stands in his name. He resides there along with his wife and daughter. He has not produced any evidence to show that his two sons are residing in the suit premises. He has admitted that, his ration card is not at the address of the suit premises. According to him, before he went to reside in Taranath Apartment premises he was residing in the suit premises with the plaintiff.”

- e) From the above said documents produced by the parties, it appears that the aforesaid courts have accepted that the premises was obtained by Shivaji on rent in the year 1967 and subsequently the complainant was allowed to reside in the premises. However, the tenancy was never surrendered by Shivaji. Therefore, the courts have held that Shivaji is the tenant of the premises. The complainant has stated in the complaint filed before this Forum that on 3rd September 2019 his brother Shivaji's son Sanjay entered in the premises by breaking open complainant's lock on the premises. He has produced a copy of First Information Report, which was lodged in this regard by the complainant's son Shri Ravindra Pawale on 23rd February 2020 against Shivaji's son Sanjay Pawale.

- f) From the aforesaid circumstances mentioned by the complainant, it is clear that presently the complainant is out of occupation of the premises at least from the date of 3rd September 2019 and on the date when the application was made for change of the name of consumer on 28th February 2020 and on the date when the change was affected in the name of Shivaji with effect from the month of March 2020. In view of this, the objection of complainant to the change of consumer-name on the ground of address of Shri Shivaji mentioned in Aadhar Card and other documents cannot be accepted. If from the documents, the Respondent/Licensee could be satisfied, it is not necessary for the Respondent/Licensee to issue any notice, before change of name, to the consumer, whose name is required to be removed from the consumer's account. Therefore, this change of name in the name of Shri Shivaji cannot be said to be illegal, for the reason that no notice was issued to complainant. The respondent/licensee is also justified in doing change in consumer-name in view that the respondent licensee is concerned to see that more security in respect of its interests about payments of bills of power lies in the fact that the consumer is rightful and legal occupier of the premises, because, such an occupier of the premises would be more responsible to pay the electric charges. In view of these circumstances, the contention of the complainant that the issue about legality and validity of possession of Shivaji or his heirs is yet to be decided by competent court of law, loses its relevance. The complainant also submits that dispute is not yet final, as according to him, a proceeding is filed by him before the High Court. He submits that although it is yet to be registered and admitted, still the litigation can be said to be pending in court. We hold that even assuming it to be correct, unless and until proper and appropriate relief is granted by competent court of law, in the totality of the aforesaid facts and circumstances of the case, the decision of the respondent/licensee to consider Shivaji as consumer instead of the complainant, cannot be found fault with.
- g) In view of the above reasons, we have held that the decision of the Respondent/Licensee about change of consumer-name in the name of Shivaji is legal and valid and, therefore, we have recorded affirmative findings on point No.1. In view of this, the complaint filed before this forum is liable to be dismissed and accordingly we have answered point number No. 2. Therefore, we proceed to pass the following order:

ORDER

- 1.0 The grievance no. N-FS-433-2021 dtd. 04/06/2021 is dismissed.
- 2.0 Copies of this order be given to all the concerned parties.

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

sd/-
(Smt. Anagha A. Acharekar)
Independent Member

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