

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. 22853561

Representation No. N-F(S)- 223-2014 dtd. 24/03/2014

M/s Assay Developers Pvt. Ltd.Complainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri R U Ingule, Chairman

Member

1. Shri M P Thakkar, Member
2. Shri S.M. Mohite , Member

On behalf of the Complainant : 1. Shri Kailash Agarwal

On behalf of the Respondent : 1. Shri B.K. Shelke DECC(F/S)

Date of Hearing : 21/05/2014

Date of Order : 09/06/2014

Judgment by Shri. R.U. Ingule, Chairman

M/s Assay Developers Pvt. Ltd., C/o. M/s Nish Developers Pvt. Ltd., New Islam Mill Compound Mahadev Palav Marg, Curry Road, Mumbai - 400 012 has come before the Forum for dispute regarding refund of amount equivalent of tariff difference between applied temporary tariff and industrial tariff pertaining to A/c no.110-080-039 and other accounts.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 27/01/2014 for dispute regarding refund of amount equivalent of tariff difference between applied temporary tariff and industrial tariff pertaining to A/c no.110-080-039 and other accounts. The complainant has approached to CGRF in schedule 'A' dtd.14/03/2014 (received by CGRF on 20/03/2014) as the consumer is not satisfied with the remedy provided by the IGR Cell Distribution Licensee regarding her grievance. The complainant has requested the Forum to refund the amount of difference in the temporary tariff charged at a very high rate and permanent tariff rate with interest thereon@ 18% p.a. and prayed for compensation for inconvenience and the hardship they had required to face due to harassment by BEST Undertaking.

**Respondent, BEST Undertaking in its written statement
in brief submitted as under :**

- 2.0 M/s. Assay Developers Pvt. Ltd., had registered requisition No.81101124, dated 23.07.2010 for total load of 108.75 KW Motive power inclusive of mixture motor, water pump. and 3 KW of lighting load. Along with requisition documents like factory permit dated 16-06-2010, letter dated 21-12-2010, issued by Asst Engineer (B&F) F South Ward, MCGM, the consent letter dated 29-06-2010 issued by Maharashtra Pollution Control Board, Mumbai indicates that the activity of the applicant is only valid for a period 2 years or less than 2 years. The applicant further mentioned that “ the factory permit or license for running the plant cannot be granted on permanent basis , as the plant is situated in residential zone...”.
- 3.0 This requisition was treated for a temporary supply, as required supply is temporary in nature and accordingly service quotation No.811056 dated 07.10.2010 was forwarded to the applicant .
- 4.0 In reply to this Service Quotation, M/s. Assay Developer Pvt Ltd, vide letter dated 18-10-2010 has informed that “Assay Developers” are the permanent tenant of M/s. Nish Developers Pvt Ltd, and intended to run business for “**Manufacturing Mix Concrete**” on the said plot. It was further mentioned that they have got necessary ‘Industrial License’ from BMC and **requested to give permanent industrial meter** and charge accordingly.
- 5.0 The Islam Mill Compound is situated in residential zone and the permission granted for RMC plant under Section 309 of MMC Act on the said plot is on temporary basis, the applicant should be charged temporary tariff.
- 6.0 Thereafter vide letter dated 21.12.2010, M/s, Nish Developers Pvt. Ltd. on behalf of M/s Assay developers had come forward with a request that initially the RMC Plant to be charged at Industrial rate and in case RMC Plant is stopped before two years, it is to be charged at temporary tariff rates. In such case, M/s. Assay Developer will pay the

differences of amount, failing to which, M/s. Nish Developers in capacity of land owner have undertaken to pay the legitimate due amount.

- 7.0 After discussion, it was decided that the applicant shall deposit an amount equivalent to difference in revenue for a period of one year initially based on the estimated consumptions and difference in tariff and in case the period of operation is less than two years the deposit amount will be adjusted as per the temporary tariff and in case the duration continues for a period exceeding two years the deposit which shall be renewed after the year to be refunded to the applicant and same was informed vide letter 14.02.2011. Accordingly a difference of amount (industrial to temporary tariff) was worked out to Rs. 20,89,000/- for the period of one year and the same was communicated to the applicant vide our letter dated 21.06.2011.
- 8.0 The applicant had not deposited the said amount i.e the applicant had not shown any interest to get electric supply hence the said requisition was not processed further and no electric supply was connected against the said requisition.
- 9.0 Vide letter dated 14.05.13, M/s. Nish Developer has informed us that, "They are using electric supply to RMC Plant from one of the temporary electric connection and are paying the electricity bill at Temporary tariff and requested for refund of difference between cost of the electricity charges paid at temporary tariff and cost of electricity worked out at industrial tariff with contention that their RMC Plant is in use for more than 2 years.
- 10.0 In regards of non-payment of mutually agreed amount of special deposit, it is contended by applicant that to avoid uncertainty, instead of depositing amount of difference in industrial & temporary tariff, they have opted that let the plant run for 2 years and then request BEST to refund the amount of difference in tariffs. This indicates that the applicant themselves were not sure that the activity of RMC plant will continue for 2 years.
- 11.0 During site inspection on 10-10-2013, electric supply to RMC plant found used from one of the temporary supply connection A/C No. 110-080-037, Meter No.T110769 which is sanctioned for construction activity of site situated at same plot in the name of M/s. Nish Developer.
- 12.0 The applicant's request vide letter dated 14.05.2013, was not considered because of the same earlier reason i.e. the applicant have not deposited security deposit as per original approved proposal for which the applicant had earlier given letter of consent and also undertaking to deposit the mutually agreed amount of difference between industrial & temporary tariff. The applicant was accordingly informed vide our letter dated 27-12-2013.
- 13.0 Applicant's complaint is time barred. Even though the applicant was not provided electric connection against their requisition No. 81101124, dated 23.07.2010 for non-payment of specific security deposit which was mutually agreed upon, there was no communication / correspondence from applicant on this matter for quite longer period.
- 14.0 As per the Electric Supply Code and other Conditions of Supply (2.1.v), "Temporary Supply " means supply of electricity for a temporary period, not exceeding two (2)

years, as may be agreed between the Distribution Licensee and the applicant. In the subject case also, the decision for providing permanent electric connection and applying industrial tariff on depositing of specific amount of difference between industrial tariff & temporary tariff is taken with mutual consent of Distribution Licensee and the applicant. **If the applicant was aggrieved with this decision, he could have moved his grievances with appropriate authority for remedial measures as provided in Electricity Act 2003 i.e. either Internal Grievances Redressal Cell, Consumer Grievance Redressal Forum or Electricity Ombudsman at that time only.**

- 15.0 The applicant is not at all entitled for refund of amount of difference between temporary and industrial tariff for the supply he used from another temporary connection meter and as the applicant, has not paid the requisite Security Deposit which was mutually agreed between BEST Undertaking and the applicant.

REASONS

- 16.0 We have heard Shri Kailash Agarwal for the complainant Pvt. Ltd. Co. and for the Respondent BEST Undertaking Shri B.K. Shelke DECC(F/S), at the length. Perused documents placed on file.
- 17.0 At the outset this Forum finds the instant matter on its hand being '*an open and shut*' case. Admittedly a letter addressed by Nish Developers Pvt. Ltd. dtd. 21/12/2010 placed before this Forum by the Respondent BEST Undertaking manifests that as stated there in the complainant viz. *M/s Assay Developers Pvt. Ltd.*, has been a **tenant** of the *Nish Developers Pvt. Ltd.* and running its "Ready Mix Concrete (RMC) plant business" on obtaining NOC from all concerned departments of the Nish Developers Pvt. Ltd., until the complainant company is moved in its new premises, which would take between two to five years. It was further assured in this letter that in case the complainant company fails to pay its legal dues, then as a **landlord Nish Developers Pvt. Ltd.** has undertaken to pay the same.
- 18.0 It was stentorianly submitted before this Forum without any reservation by Shri Kailash Agarwal for the complainant company that till this date no separate electric connection for running RMC plant to the complainant company has been granted by the Respondent BEST Undertaking despite submitting requisition for the same dt. 23/07/2010. This Forum finds a copy of this requisition dtd. 23/07/2010 placed before us at Exhibit 'A' by the Respondent. It is also admitted by Shri Kailash Agarwal for the complainant company that for running the activity of RMC plant by the complainant company, electricity has been provided through the meters provided to the *Nish Developers Pvt. Ltd.* which has been a **landlord** wherein the complainant has been **tenant** and running a separate business of RMC plant.
- 19.0 At this juncture, it is significant to observe that the complainant company and the Nish Developers Pvt. Ltd. are different and distinct companies having separate business activities and identities in the eyes of law. Therefore, a stark naked fact emerges from this given set of facts, that the electric connection has been provided to the *Nish Developers Pvt. Ltd.* However, without obtaining any authorization from the Respondent BEST Undertaking, the complainant company has been using the

electricity to run its business of RMC plant from the meter provided to the **Nish Developers Pvt. Ltd.** As such in a *prima facie* views of this Forum, the present controversy raised before this Forum falls within four corners of section 126 of the Electricity Act, 2003, providing provision in regard to **unauthorized use** of electricity by various means stated therein.

20.0 This Forum finds it significant to reproduce the concerned provisions of law provided under section 126 of the E.A., 2003 and it runs as under :

Part XII

Investigation and Enforcement

126 Assessment - (i) to (vi)

Explanation - For the purposes of this section -

- a) xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx
- b) “unauthorized use of electricity” means the usage of electricity -
 - i) xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx
 - ii) by a means not authorized by the
 concerned person or authority or
 licensee; or
 - iii) xxx xxx xxx
 xxx xxx xxx
 xxx xxx xxx
 - iv) for the purpose other than for which the
 usage of electricity was authorized or ;
 - v) for the premises or areas other than
 those for which the supply of electricity
 was authorized.

21.0 In a *prima facie* views of this Forum admittedly the electricity connection was provided to the **Nish Developers Pvt. Ltd.** for undertaking its construction activity and not to the complainant company to run its RMC plant. To reiterate, the complainant company has already submitted a requisition dtd. 23/07/2010 demanding the electric connection for running its RMC plant which has yet not been granted by the Respondent.

22.0 Now we turn to the vitally significant Regulation 6.8 provided under the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation, 2006. This Forum finds it beneficial to reproduce the relevant provision of the said Regulation 6.8, which runs as under :

6.8 If the Forum is “*prima facie*” of the view that any grievance referred to it falls within purview of any of the following provision of the act, the same shall be “excluded” from “jurisdiction” of the Forum.

- a) unauthorized use of electricity as provided under section 126 of the Act ;
- b) xxx xxx xxx
- c) xxx xxx xxx
- d) xxx xxx xxx

23.0 This Forum finds it blatantly manifest *per se* that the instant grievance referred to us, falls within the purview of the section 126 of the E.A., 2003. Obviously therefore the same has been expressly excluded from the jurisdiction of this Forum. It is significant to observe at this juncture that the parties to the instant controversy, even by their **connivance** cannot assign a jurisdiction to this Forum to entertain their grievance when a statutory provision like Regulation 6.8 expressly exclude the same from the jurisdiction of this Forum. To conclude on this aspect, this Forum holds that the instant grievance falls out of the jurisdiction of this Forum, the same therefore cannot be redressed with by it.

24.0 The aforesaid observation in our view should give a complete quietus to the present controversy raised before this Forum, however in an anxiety to dispose of the instant matter on its another significant facet we proceed to assess the merit in the contention raised by the Respondent BEST Undertaking that as envisaged under Regulation 6.6 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman), Regulation 2006, this Forum has been debarred from admitting the instant grievance before it, as it has not been filed within a period of two years from the date on which the cause of action has arisen.

25.0 In this context this Forum observes that on submitting of the requisition no. 81101124 dtd. 23/07/2010, a copy of which has been placed before this Forum by the Respondent BEST Undertaking at Annexure ‘A’, the complainant has sought for supply of electricity for running its RMC Plant. The same has been replied by the Respondent BEST Undertaking by its letter dtd. 21/06/2011, a copy of the same is placed before this Forum at Exhibit ‘L’ directing therein that to pay the deposit amount of Rs. 20,89,000.00, the estimated difference between industrial tariff and temporary tariff for a period of one year. Giving other directions therein the said letter was concluded requesting the complainant therein to submit a clear factory license and comply with the other requirement as per the attached ESL/O.

26.0 As submitted in the instant complaint, the complainant company was not agreeing with the direction given by the Respondent BEST Undertaking in the said letter, for the reasons elaborately stated in the complaint submitted before this Forum. This Forum therefore has been in full agreement with the Respondent BEST Undertaking that the **cause of action** for raising the grievance before the Forum was arisen on 21/06/2011 when the complainant company did not agree with the directions given therein.

- 27.0 However, admittedly we find that the complainant company has raised the said grievance before the Internal Grievance Redressal Cell (IGRC) of the Respondent BEST Undertaking by filing a complaint in Annexure 'C' on 27th January 2014, and before this Forum on 20nd March 2014. This Forum thus finds that the **cause of action** has been arisen on 21/06/2011 while for the first time grievance in Annexure 'C' has been raised before the IGRC on 27/01/2014 and that before this Forum in Schedule 'A' on 14/03/2014.
- 28.0 We thus find that both these complaints in Annexure 'C' and Schedule 'A' have been filed beyond the statutory limitation of two years provided under Regulation 6.6 of the MERC (CGRF & EO). On this ground also this Forum finds the instant grievance being not liable to be entertained by it.
- 29.0 Before we part with this order we may observe that a lame and futile attempt has been made by the complainant company to contend that a letter dtd. 27/12/2013 under the signature of Shri B.K. Shelke DECC(F/S), brings the instant grievance within the statutory limitation provided under Regulation 6.6 of MERC (CGRF & EO), Regulation 2006. In considered view of this Forum, a bare perusal of this letter placed before us at Exhibit 'N' by the Respondent BEST Undertaking, manifests that referring to the letter dtd. 12/04/2013 and 14/05/2013 of the complainant, the signatory Shri B.K. Shelke has merely informed the non-compliance to its earlier decision taken and informed by the Respondent BEST Undertaking to the complainant vide its letter dtd. 21/06/2011. Significant to observe that in this letter dtd. 27/12/2013 accordingly Shri B.K. Shelke has brought to the notice of the complainant the said letter dtd. 21/06/2011. In consider view of this Forum thus there is no merit in the contention raised by of the complainant that the letter dtd. 27/12/2013 brings the instant grievance within limitation provided under Regulation 6.6.
30. In the aforesaid observation and discussion we find the instant complaint being hit by Regulation 6.6 & 6.8 provided under MERC (CGRF & EO) Regulation 2006. The complainant therefore is liable to be dismissed. Accordingly we do so.

ORDER

1. The complaint no. N-F(S)-223-2014 stands dismissed being not maintainable in law.
2. Copies be given to both the parties.

(Shri S.M. Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman