

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-GS-389-2019 dtd. 11/07/2019

Asian Restaurant & StoresComplainant

V/S

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

Shri Hussain H RamodiyaRespondent 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 U. J. Karekar, Ag.Suptd.
2. Shri N. L. Wattti, AAM(G/S)

On behalf of the Respondent no. 2 : 1. Shri Afshin Ramodiya
2. Shri Mitesh Mosy

On behalf of the Complainant : 1. Shri John Barboza
2. Smt Shahnaz Doneshwar

Date of Hearing : 04/10/2019

Date of Order : 10/10/2019

Judgment by Shri. Vinayak G. Indrale, Chairman

Smt. Parin Rustom Amodiya, The Partner, Asian Restaurant & Stores, Shop No 1 to 4, Ground Floor, Ramodiya Mansion, Dr, Annie Besant Road, Mumbai - 400 025 has come before the Forum for dispute regarding reconnection of electric supply at above referred address pertaining to a/c no. 726-463-075.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell dated 01/08/2019 received on 01/08/2019 for dispute regarding reconnection of electric supply at above referred address pertaining to a/c no. 726-463-075*2 and 726-463-077*6. The complainant has approached to CGRF in schedule 'A' dtd. 13/08/2019 received by CGRF on 16/08/2019 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 Smt. Parin Rustom Amodiya , the partner, Asian Restaurant & Stores came before the Forum regarding her dispute about reconnection of electric supply to her commercial premises. She further mentioned that, her financial problems has been sort out and she is in need of electric supply to her premises for restarting her business.
- 2.0 Electric supply was given for shop no 1, 2 & 3 and shop no 4 having a/c no. 726-463-075*2 and 726-463-077*6 respectively. The electric supply was disconnected for non payment of electricity dues on 12/01/2012 & 11/04/2011 respectively.
- 3.0 The complainant has applied for electric supply to the premises under reference through application number 398132 dated 19/03/2019 for commercial purpose. Along with application, she has submitted old rent receipt for the period October 2004 to March 2005 and April 2010 to September 2010 as an occupancy proof. The applicant has not submitted latest rent receipt as occupancy proof. Because of non compliances of terms and conditions of sanctioning letter, the application was cancelled by the system.
- 4.0 The land lord of the premises has requested to the Undertaking not to give electric supply vide letter dated 05/03/2019. He further mentioned that, R.A.E. suit no 743/1173 of 2012 is filed by him in Small Causes Court - Mumbai.
- 5.0 As per practice direction given by MERC, the applicant has to submit only three documents, Identity Proof, premises ownership / occupancy proof and Test Report of the installation. The complainant has failed to comply the same.

Submission of Respondent no. 2 : Shri Hussain H. Ramodiya

- 1.0 Shri Hussain H. Ramodiya, in his submission has mentioned that, he is the landlord of the premises under reference. The complainant is tenant and not paying rent since 2011. He has taken the matter to the Small Cause Court at Mumbai. The complainant's premises have been shut for several years with multiple outstanding of Government agency payment such as BMC Ground Rent, Liquor License Fee, Property Tax etc. He has not also paid dues of BEST Undertaking.
- 2.0 The documents submitted by the complainant as Shop & Establishment license is a just intimation receipt. He fears that it is his responsibility to clear all unpaid dues in case of property redevelopment.

REASONS

- 1.0 We have heard argument of Shri John Barboza, the representative of complainant, for the BEST Undertaking Shri U. J. Karekar Supdt CCGS, Shri N. L. Watti, AAM(G/S) and Shri Afshin Ramodiya as a son of landlord, Respondent no. 2. pursued documents filed by either party to the proceedings and written submission file by Respondent no. 1 & 2.
- 2.0 The representative of complainant vehemently argue that the complainant has complied all requirements as required under Regulation 4 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 and the Respondent no.1 refuse to give electric supply only on the ground that landlord objected to give electric supply as well as rent receipt filled by complainant is not latest. Son of the landlord has submitted that suit bearing RAE no. 743/1173 of 2012 is pending before the Small Cause Court, Mumbai and the complainant has refused to pay the rent and therefore not entitled to get electric supply. He has further submitted that the complainant is to pay huge amount of Govt. dues amounting to near about Rs. 23 lacs therefore not entitled to get electric supply. The complainant has submitted that, they have paid outstanding electricity dues and done other compliance as well as they have applied for Shop & Establishment license of which they have filed copy of intimation receipt and therefore entitled to get electric supply.
- 3.0 We have cautiously gone through the record and it appears that, there is relationship of landlord & tenant in between Respondent no. 2 and Complainant. It is also admitted that, the Respondent no. 2 has filed eviction suit against the complainant for recovery of possession of premises for which electric supply was given and after removal of meter again after seven years the complainant has filed the application for new electric supply. Considering all these admitted facts the question poses before us is whether action of Respondent no. 1 directing the complainant to file consent letter of landlord is legal and proper. As we generally observed that more particularly in Bombay due to shortage of space the dispute between landlord and tenant goes upto

the Hon'ble Supreme Court. It is not out of place to observe that the landlord is always interested to harass the tenant and evict from the rented premises. If viewed from this angle, it appears that the action of Respondent no 1 to direct the complainant to file consent letter of landlord is arbitrary and against the regulations, more particularly practice directions issued under regulation 22 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 by MERC on 25/03/2019. The complainant has filed old rent receipt for the year September 2009. He has further submitted that he has deposited the rent in the court as the landlord refused to accept it. From all the circumstances, we have least hesitation to hold that the complainant is in settle possession as a tenant of the suit premises for which electric supply is demanded.

- 4.0 We wish to reproduce the wording used by IGR in letter dated 13/08/2019 issued to complainant while passing the order of rejection of application form for supply of electricity.

“Further, the landlord Shri Hussain H. Ramodia has submitted a letter wherein he has stated that no electric meter to be installed for the said premises as suit No 743/1173 of 2012 is filed by him small causes court for non payment of Rent / Maintenance.”

“In view of the above, you are hereby once again requested to submit rent receipt & NOC from landlord or interim court order for installation of meter, please.”

Considering the above said version in letter dtd. 13/08/2019 issued to complainant by Customer Care G/S Ward, it appears that concerned Customer Care Dept. has not applied mind in proper sense and only rejected the application for supply as landlord has objected for the same. It also appears that the complainant has only eight employees for the restaurant business and therefore intimation receipt as issued under Rule 9 in Form 'G' is sufficient to prove occupation of complainant.

- 5.0 The Respondent no. 1 did not dispute the facts that, the complainant has not deposited the connection fees and Security deposit as well as electricity dues. It appears that the Respondent no. 1 has mentioned in the submission as complainant has not complied their direction and it is therefore , they have to filed the application given for supply of electricity. As we have already held that there is no need to obtain consent letter of landlord, under such circumstance the Respondent no.1 is bound to supply electric supply to the complainant.
- 6.0 Regulation 4 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations- 2005 deals with application for supply and procedure. Irrespective of the procedure laid down under regulation 4 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005, MERC has issued practice direction under electric supply code regulation 22 on 25/03/2019 with a view to make the procedure easy for filing application for electric supply. As per said directions para 2, the distribution licensee shall seek only 2 documents i.e 1) Identity Proof 2) Premises ownership / occupancy proof along with the application form. It appears from the

record that the complainant has filed proof of identity such as Pan card & Adhar card to prove their identity as well as declaration as required under regulation 2.1 of practice direction under regulation 22 of supply code 2005. We wish to observe that, even though the above said practice direction has been issued by MERC, the concern person who are looking after Customer Care Dept. and IGR has not followed the said directions. We do not find any force in the submission of landlord that there are huge dues of Govt. towards complainant therefore not entitled to get electric supply. This apprehension in the mind of landlord has no legal force as Govt. will take necessary step for recovery of those dues.

- 7.0 Having regards to the above said discussion, we arrive at conclusion that the action of Respondent no. 1 refusing to give electric supply to complainant is illegal and against the practice direction issued by MERC on 25/03/2019. We have carefully gone through the record and it appears that in Schedule 'A' form Parin Rustom Amooyan has signed as partner of the Asian Stores & Restaurant. Application for supply is signed by Parin Rustom Amooyan and one Saint Amooyan. It seems that they are the partners of Asian Stores & Restaurant, but there is no documents filed by complainant in that regard. We think it just and proper to direct the complainant to file a Partnership Deed of Asian Stores & Restaurant with a view to know the names of partners as well as Test Report and to make other necessary compliance if any for electric supply.
- 8.0 Considering all the above circumstances and reasons the complainant, is entitled to get electric supply after due compliance if any. The action of Respondent no. 1 denying the electric supply is illegal as well as against the Regulations framed by MERC. There is relationship of landlord and tenant in between Respondent no. 2 & Complainant and suit for eviction is pending, therefore it can be easily concluded that, complainant is in settle possession and therefore entitled to get the electric supply. Thus the complaint deserves to be allowed and accordingly we pass the following order.

ORDER

- 1.0 The grievance no. N-GS-389-20419 dtd. 21/08/2019 stands allowed as under.
- 1.1 The Respondent no. 1 is hereby directed to give electric supply within 15 days from the date of receipt of this order, after due compliance if any i.e partnership deed of Asian Restaurant and stores & test report.
- 1.2 The Respondent no. 1 is hereby directed to comply the order within one month from the date of receipt of this order and accordingly report the compliances.
- 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