

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

Representation No N-FN-367-2018 dtd. 28/08/2018

Dr. Tilakdas Sudhakar ShettyComplainant

V/S

B.E.S.&T. UndertakingRespondent

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 : 1. Smt. S.S. Darne, Sr. AO CC(F/N)
2. Shri S. V. Shetye, DyE CC (F/N)
3. Smt. T.Y. Rege, Ag. AO CC(F/N)

On behalf of the Complainant : 1. Dr. Tilakdas Shetty

Date of Hearing : 16/10/2018

Date of Order : 23/10/2018

Judgment by Shri. Vinayak G. Indrale, Chairman

Dr. Tilakdas Sudhakar Shetty, 402-403, 4th floor, Trisandhya CHS., 97 - Dadasaheb Phalke Road, Dadar (E), Mumbai - 400 014 has come before the Forum for his grievance about new connection of electric supply vide Requisition no. 333688 dtd. 05/12/2017 for commercial purpose.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 08/01/2018 for his grievance about new connection of electric supply vide Requisition no. 333688 dtd. 05/12/2017 for commercial purpose. The complainant has approached to CGRF in schedule 'A' dtd. 21/08/2018 received by CGRF on 21/08/2018 as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee on his grievance.

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

- 1.0 Dr. Tilakdas S. Shetty, the complainant came before the Forum regarding his dispute about giving electric supply to garage 1 & 2 under reference for commercial purpose.
- 2.0 Dr. Tilakdas S. Shetty has applied for electric supply for garage 1 & 2 under reference for commercial purpose vide requisition no. 333688 dtd. 05/12/2017 along with requisition he had attached the following documents.
 - a) Zerox copy of electricity bill for the month of May 2018 in the name Shri Sudhakar A. Shetty having a/c no. 581-338-023.
 - b) PAN card.
 - c) Letter of Undertaking.
 - d) Letter dtd. 21/10/1976 to Shri Sudhakar Shetty from Talib Construction informing that plans of garages are approved.
 - e) Zerox copy of agreement between Trisandhya Construction Co. and Shri Sudhakar Shetty.
 - f) Zerox copy of Maintenance Receipt dtd. 26/12/1977 and 24/10/1977 given by Trisandhya Co-op. Hsg. Soc. Ltd. for garage premises etc.
- 3.0 The Managing Committee Members of Trisandhya Co-op. Hsg. Soc. Ltd. (Society) have raised objection for giving electric supply to the complainant's premises vide email dtd. 18/11/2017 addressed to DGM(ES) of BEST Undertaking. In this email Society has stated that there are two open places having no electric supply at ground floor 'B' wing since 1975. These open spaces are disputed property and there is dispute between members of society and the society itself.
- 4.0 The Committee Members of society have sent another email dtd. 20/11/2017 to DECC(F/N) and copy to GM, DGM(ES), DECC(N/E) with attachments i.e. Lawyer's opinion and draft of Minutes of Meeting (MoM) of Annual General Body Meeting held on 23/09/2017. In attached MoM it is mentioned that no NOC for BEST's meter and maintenance receipt of the open spaces would be issued in the name of complainant.
- 5.0 As a proof of occupancy the complainant has submitted many documents, but documents don't prove lawfulness of applied premises and society has raised the objection for giving electric supply. The applicant has not submitted relevant documents to prove authenticity of applied structure.

REASONS

- 1.0 We have heard the complainant in person and for the Respondent BEST Undertaking Smt. S.S. Darne, Sr. AO CC(F/N), Shri S. V. Shetye, DyE CC (F/N) and Smt. T.Y. Rege, Ag. AO CC(F/N) at length. Perused the papers.
- 2.0 The complainant has vehemently submitted that he is in possession of two garages which are on back portion of Trisandhya Co-op. Housing Society (CHS) since the year 1976-77, on the basis of agreement entered with builder by his father Late Shri Sudhakar A. Shetty. He has further submitted that he has filed a copy of agreement of two garages for which he has paid municipal tax and name of his father has been recorded in Municipal Tax Assessment Register. Thus according to the complainant his late father and late mother both have filed an application with the society to record the flat and these two garages in his name and thus he being a legal owner and in possession of the said garages, the action of the Respondent BEST Undertaking refusing to give electricity supply is illegal and not warranted by law. Against this, the Respondent BEST Undertaking has submitted that, they had sought legal opinion from their Legal Dept. who opined that documents does not prove lawfulness of applied premises and therefore they have rejected the application filed by the complainant for electric supply. The Respondent BEST Undertaking has further submitted that the Secretary of Trisandhya CHS has strongly objected to give NOC to the complainant for supply of electricity, therefore they withhold to give electricity connection.
- 3.0 Having regard to the above said oral submissions of both the parties and after perusal of documents filed by either parties to the proceeding, the question poses before the Forum is whether the Distribution Licensee can withhold to give electric supply on the ground that the applicant fails to prove his legal title or legal occupation.
- 4.0 The complainant has filed documents to show that his late father and late mother have entered into an agreement with builder in respect of purchase of the said two garages. The complainant has also filed on record an application dtd. 04/07/1988 by which his father Late Shri Sudhakar Shetty applied to Municipal Corporation of Greater Bombay for repairs of the garage and accordingly Corporation has granted the permission along with map, location of garages and said permission letter is placed at pg. 11. The complainant has also filed bill dtd. 01/04/2014 for payment of property tax arrears towards garages premises of Rs. 7656.00 and receipt no. 37 dtd. 25/09/2017 is for payment of Rs. 1,190.00 towards Municipal Tax of garage to the Trisandhya CHS. He has also filed a bill no. 40 dtd. 01/07/2017 showing payment of Rs. 1,190.00 towards Municipal Tax for garages for the month of July - September 2017. Accordingly, the said tax was paid through cheque vide Receipt no. 37 dtd. 25/09/2017. The complainant has also filed zerox copy of application dtd. 30/11/2015 submitted by the Secretary of Trisandhya CHS to MCGM for change of user. The said application is at pg. 17. The complainant has relied upon on the above referred document and submitted that the society has no right to take any objection for giving electricity supply to the garages which are in his possession since 1976-77. He has also placed on record zerox copy of said agreement which is at pg. 23-34. The Respondent

BEST Undertaking has submitted that the said agreement is not registered and therefore it is hit by section 17 of Indian Registration Act. On this point we have to take recourse of Section 149 of Indian Registration Act which empowers the Forum or Court to read unregistered document for collateral purpose to ascertain the possession of person in whose name the agreement is executed.

- 5.0 The Respondent BEST Undertaking has submitted that the society has objected for giving electric supply as well as the legal opinion which they sought from the department is against the complainant therefore their action of withholding to give electric supply is legal. We think it just and proper to reproduce the legal opinion which is as under :

In this matter applicant Dr. Tilakdas Shetty applied for electric connection to the garage no. 1 & 2 situated at Ground floor, Trisandhya CHS, Dadar (E). Perusal of the documents in the file it is observed that garage was open space presently it is closed with wall and Iron Shutter. Now applicant has applied for electric supply to the premises. As a proof of occupancy applicant submitted many documents but documents don't prove that lawfulness of applied premises. Article of agreement submitted by applicant is not registered. Unless it is registered cannot consider as proof of occupancy. We have also come across the letter dtd. 28//07/1984 of A.E.B & F of F/S ward. By said letter notice under 53(1) issued under MRTTP is dropped but notice under 354(A) of BMC Act dtd. 13/12/1976 for stop work they have not mentioned anything, it means it was continued. The applicant has not submitted relevant documents to prove the authenticity of the applied structure.

In view of above it is not legally possible to give supply to the premises.

- 6.0 Thus according to us the legal opinion given by Legal Dept. of the Respondent BEST Undertaking that the complainant has not submitted the legal document to prove his lawfulness of applied premises seems to be not proper. We are saying so because by various judgments of High Court, it has been held that Distribution Licensee has no right to see legal title or legal possession. The Distribution Licensee is required to see "occupation" as stated under Section 43 of E.A., 2003. The identical provision for electric supply finds place in Regulation 4 of MERC (Electricity Supply Code & Other Conditions of Supply), Regulation 2005. On this legal aspect the complainant has referred ruling of Bombay High Court in W.P. 1856 of 2017 in which following observations are made by the Hon'ble High Court. The Distribution Licensee has nothing to do with the private dispute particularly in relation to right title and interest in the immovable property that Court is not bound to take note of the fact that electric supply was provided to the premises on the request of the petitioner. Merely because such supply is provided to the premises occupied by the petitioner it does not mean that he has been conferred a legal status much less as a tenant of the premises.
- 7.0 On this point we rely upon the ruling of Hon'ble Calcutta High Court reported in *AIR 2011 Calcutta 64 Abhimanyu Mujumdar v/s Superintending Engineer & Anr.* In this case law it has been held that the phrase 'Lawful occupier appeared in rules for

implementation of the object of E.A., 2003 to construe the same as person in settled possession whose possession can be defended against the threat of dispossession otherwise than due process of law even by the lawful owner. Therefore a person in settled possession of a property be it unauthorized occupiers, encroachers or any premises and squatters of any premises he is free to apply for supply of electricity without consent of the owner of same and is entitled to get electricity and enjoy the same until he is evicted by due process of law. The ratio laid down in this case law is squarely applicable to the case of the complainant.

- 8.0 In view of the ratio laid down in the above case law, it appears to us that merely because office bearers of the Society objected for giving electric supply to one of its member for garage that does not prevent Distribution Licensee from giving electric supply. If society has any grievance about legal construction or about any title of the said garages, they have every right to approach the proper Court and seek remedy by filing proceeding against the complainant. On the contrary the documents filed by the complainant in this case certainly goes to show that the society had accepted property tax of the said two garages since the year 1976-77 and recently issued the receipt for payment of property tax by the complainant. If viewed from this angle, we do not find any substance in the objection taken by the Secretary or other members of Trisandhya CHS for not giving NOC to the Respondent BEST Undertaking for giving electric supply to the complainant as by accepting property tax of garage, the society admits occupation of garage by the complainant.
- 9.0 It is further submitted by the Respondent BEST Undertaking that the complainant cannot use the space of said garage for other purpose than that of car parking, as the said clause has been incorporated in agreement. If the society had any grievance about the same, they can approach before the proper authority and take recourse from them. The Respondent BEST Undertaking has further submitted that the said two garages were initially open and the complainant's father has carried out construction and occupied the same. If this would be the case then certainly the society has every right to take legal recourse before the proper authority and record goes to show that Corporation has withdrawn the notice of demolition issued to father of the complainant.
- 10.0 We have cautiously gone through the record more particularly, inspection done by the officer of the Respondent BEST Undertaking after filing the application for electric supply and it appears that he has shown the said garages marked as A having shutter and same is at pg. 69. In the said report it has been specifically mentioned that the said premises is on the back portion of Trisandhya CHS having two shutters and four walls. This shows that the complainant is in settled occupation of the said premises for which he has applied for electricity for commercial purpose and the Respondent BEST Undertaking's action for withholding to give electric supply appears to be not proper and legal as well as not in accordance with provision of section 43 of E.A., 2003. Thus, the complaint deserves to be allowed. Accordingly we pass the following order.

ORDER

- 1.0 The complaint no. N-FN-367-2018 dtd. 28/08/2018 stands allowed.
- 2.0 The Respondent BEST Undertaking has been directed to give electric supply to the complainant's premises as requested by him vide Requisition no. 33688 dtd. 05/12/2017, after due compliance if any and report the compliance within 15 days there from.
- 3.0 Copies of this order be given to both the parties.

Sd/-

Shri K. Pavithran
Member

Sd/-

(Dr. M.S. Kamath)
Member

Sd/-

(Shri V.G. Indrale)
Chairman