

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. S-D-313-2017 dtd. 01/02/2017

Murga Giran CHS.Complainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.V. Fulpagare, Member
2. Shri S.M. Mohite, Member, CPO

On behalf of the Complainant :
1. Shri Abul Bakar A. Balwa
2. Shri Sonlakar Javed
3. Shri Safik Karadia
4. Shri Abdul R. Momin

On behalf of the Respondent :
1. Shri H.V. Vagal, DECC(D)
2. Smt. S.S. Redkar, AAM CC(D)
3. Smt. A. Kanse, AAO CC(D)

Date of Hearing : 21/03/2017

Date of Order : 03/04/2017

Judgment by Shri. Vinayak G. Indrale, Chairman

Murga Giran CHS., Ground Floor, Plot 166, Patthe Bapurao Marg, Mumbai Central, Mumbai - 400 008 has come before the Forum for refund of interest on disputed claim amount Rs. 2,33,373.50 as the case bearing no. S-D-275-2015 dtd. 27/11/2015 for disputed amount was allowed by the Forum on 27/01/2016.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 05/10/2016 for refund of interest on disputed claim amount Rs. 2,33,373.50 pertaining to a/c no. 819-096-001. The complainant has approached to CGRF in schedule 'A' dtd. 08/12/2016 (received by CGRF on 25/01/2017) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution.
- 2.0 The complainant has registered its grievance for refund of interest amount which the Respondent BEST Undertaking has charged on debit note of Rs. 2,33,373.50 issued on 18/11/2013 for amendment bill for the period from 15/05/2008 to 04/08/2008.
- 3.0 The complainant has further submitted that in earlier complaint no. S-D-275-2015 they have prayed to withdraw the said debit note as it is barred by limitation. The said comment was allowed on 27/01/2016. The complainant has prayed to refund the interest which approximately comes to Rs. 80,000.00 as the debit note passed by the Respondent BEST Undertaking was barred by limitation and therefore the Forum has allowed their earlier complaint.

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

- 4.0 The Respondent BEST Undertaking has filed their written submission and stated that in earlier complaint the complainant has not prayed the relief for refund of interest amount and therefore now they have no right to file this complaint and claim the relief for refund of interest.
- 5.0 They have further contended that multiplicity of litigation is highly unsustainable in law. The principles of law depreciate, disallow and discourage such practice. There has been total blanket ban and restrain in indulging into such act of multiplicity of litigation. The complainant was under statutory obligation to raise his all grievances in earlier complaint no. S-D-275-2015 in which they have not claimed the relief for refund of interest and so complaint is not at all maintainable. The complaint therefore now estopped from claiming the interest amount in the present complaint. Hence prayed to dismiss the complaint.

REASONS

- 6.0 We have heard argument of the complainant and for the Respondent BEST Undertaking, Shri H.V. Vagal, DECC(D) and Smt. S.S. Redkar, AAM CC(D). Perused the documents filed by the complainant along with Schedule 'A' and written statement filed by the Respondent BEST Undertaking alongwith documents marked at Exhibit 'A' to 'G'.
- 7.0 The complainant has vehemently submitted that in earlier case bearing no. S-D-275-2015 they have prayed to set aside the debit note of Rs. 2,33,375.50 as barred by

limitation. He has further submitted that they have inadvertently not claimed the refund of interest amount on the said arrears charged by the Respondent BEST Undertaking. The Respondent BEST Undertaking has submitted that in earlier case they have caused delay of 1 ½ year in moving the complaint before CGRF and they have not prayed for refund of interest as calculated on the said debit note and therefore now they are precluded from claiming the interest by filing separate complaint.

8.0 In order to appreciate the nature of dispute between the parties we have cautiously gone through the proceedings of earlier complaint S-D-275-2015. We have perused the Schedule 'A', in that complaint they prayed to withdraw the recovery of Rs. 2,33,375.50 as it is barred by limitation. We think it just and proper to reproduce the prayer of the complainant in earlier case "we are therefore requested / forced to withdrawal and close this erroneous case for recovery of amendment bill dues of Rs. 2.33,375.50 as per provision of section 56(2) of the E.A. 2003 and MERC Regulation.

9.0 In view of this prayer, it appears that although the complaint was moved after 1 ½ year of issuing the debit note as well as they had knowledge about charging interest & DPC , they have not claimed refund of interest amount as charged on the said arrears. On this aspect we find identical provisions in Order II Rule 2 of Civil Procedure Code. We think it just and proper to reproduce Order II Rule 2 of CPC.

Suit to include the whole claim - (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim - Where a plaintiff omits to sue in respect of or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation : For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

10.0 The above said provision has been incorporated with a view to prevent the multiplicity of litigation, otherwise party will file proceedings for reliefs which they have already omitted to pray. This principle is based on logic that there must be end to litigation.

- 11.0 Having regard to the above said legal position now the complainant is not entitled to claim the refund of interest as charged on the debit note. It is pertinent to note that the complainant had knowledge that the interest was being charged on the arrears, they have not brought to the notice of the said fact to the Forum and kept mum and after deciding the earlier case they again came to the Forum and prayed for refund of interest. We have gone through the record in the earlier case and it appears that in earlier complaint they have claimed that the amount under debit note be debited to the account of M/s Lakdawala Developers as he is responsible for payment of the said amount. It is not out of place to state that the complainant has got changed the name in place of name of M/s Lakdawala Builders without paying electricity dues and escaped from payment of the said arrears under debit note. The best reason known to the Respondent BEST Undertaking as to why they have not recovered the said amount from the complainant while change of name as per Regulation 10.4. This circumstances disentitled the consumer from claiming refund of interest.
- 12.0 Considering the above said facts in any case the complainant is not entitled to get the relief of refund of interest. Thus we do not find any substance in the complaint filed by the complainant and therefore it deserves to be dismissed.

ORDER

1. The complaint no. S-D-313-2017 dtd. 01/02/2017 stands dismissed.
2. Copies of this order be given to both the parties.

(Shri S.V. Fulpagare)
Member

(Shri S.M. Mohite)
Member

(Shri V.G. Indrale)
Chairman