

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-E-268-2015 dtd. 14/09/2015.

Simran Feroz Ahmed AnsariComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.Y. Gaikwad, Member
2. Shri S.M. Mohite, Member CPO

On behalf of the Complainant :
1. Shri Saqib Khan
2. Shri Ansari Feroz
3. Shri Rizwan Shaikh

On behalf of the Respondent :
1. Shri D.H. Chaudhari, AECC(E)
2. Smt. P.V. Sutar, AAM(E)

Date of Hearing : 13/10/2015

Date of Order : 27/10/2015

Judgment by Shri. Vinayak G. Indrale, Chairman

Mrs. Simran Feroz Ahmed Ansari, Ground floor, Shop No. 5-6, Suryaji Compound, Tank Pakhadi Road, Mumbai - 400 010 has come before the Forum for dispute regarding recovery of outstanding in the name of Shri Amritlal Makwana pertaining to a/c no. 537-597-005 amounting to Rs. 12,10,562.00 when reapplied for electric supply vide Requisition no. KLG No. 212475 dtd. 29/06/2015.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 22/07/2015 for dispute regarding recovery of outstanding in the name of Shri Amritlal Makwana pertaining to a/c no. 537-597-005 amounting to Rs. 12,10,562.00 when reapplied for electric supply vide Requisition no. KLG No. 212475 dtd. 29/06/2015. The complainant has approached to CGRF in schedule 'A' dtd. 08/09/2015 (received by CGRF on 10/09/2015) as she was not satisfied by the remedy provided by the IGR Cell Distribution Licensee regarding their grievance.

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

- 2.0 Smt. Simran Feroz Ahmed Ansari came before the Forum regarding her grievances of recovery of outstanding amount in the name of Shri Amritlal Makwana at the time of reconnection of electric supply.
- 3.0 Electric supply was given to Shri Amritlal Makwana on 20.9.2006 for commercial purpose through meter no. N064495, A/c.No.537-597-005. Electric Supply of Shri Amritlal Makwana was disconnected by removing meter no. N064495 for non-payment of electricity charges amounting to Rs. 6,37,670.13 on 24/08/2009.
- 4.0 Meter no. N064495 has recorded NIL consumption from the date of installation upto March 2007. Later on meter has recorded electrical consumption as 32,953; 0; 4114; 4000; 4709; 5456 and 2331 units from April 2007 to October 2007. As complainant had not paid electricity dues from the date of installation of the meter, his electric supply was disconnected by removing meter on 24/08/2009 when outstanding amount of Rs. 6,37,670.13. This amount has increased to Rs. 12,10,562.00 as on by levying DP charges and interest on arrears.
- 5.0 The complainant has applied for reconnection of electric supply vide his requisition dtd. 06/01/2015. This requisition was sanctioned on 07/02/2015 subject to recovery of outstanding amount of Rs. 12,10,562.00 pertaining to Shri Amritlal Makwana, the earlier occupier of the premises. This requisition was automatically cancelled on 01/05/2015 due to non-compliances of sanctioning letter.
- 6.0 As per request of Smt. Simran Feroz Ahmed Ansari, her requisition dtd. 06/01/2015 which was cancelled on 01/05/2015 was re-registered on 29/06/2015.

REASONS

- 7.0 We have heard arguments of Shri Saqib Khan, authorised representative of the complainant and for the Respondent BEST Undertaking Shri Shri D.H. Chaudhari, AECC(E), Smt. P.V. Sutar, AAM(E). Perused the documents placed before this Forum.

- 8.0 After hearing the arguments of both parties it is admitted fact that one Shri Amritlal Makwana was in possession of shop no. 5-6 as tenant and on his application electricity supply was given to him on 29/09/2006 through meter no. N064495 and it was disconnected on 24/08/2009 for non-payment of electricity charges due amounting to Rs. 6,37,670.13. It is admitted fact that the complainant is in possession of said shop as tenant and requested for reconnection of electricity in said shop by filing requisition Exhibit 9/C dtd. 06/01/2015. It appears that the Respondent BEST Undertaking requested the complainant to pay the electricity dues of Rs. 12,10,560.00 as due on the date requisition for reconnection.
- 9.0 I have gone through the grievance of the complainant under Annexure 'A' and according to him there is negligence on the part of the respondent to recover the said electricity charges from said Shri Makwana / earlier occupier and therefore request to waive DPC and interest. Thus from the grievance of complainant it appears that he is not shirking his whole liability of electricity charges due towards Shri Makwana / earlier occupier but prayed to waive DPC and interest. The Respondent BEST Undertaking has submitted that as per clause 23.4 of Terms and Conditions of Supply of BEST Undertaking, supply can be reconnected only on payment of electricity dues.
- 10.0 Having regard to the above said submissions of both parties the issue which is raised in this grievance is whether arrears of unpaid electricity charges can be claimed from the complainant, who is subsequent occupier as tenant and if so, what is the quantum of those charges to which the complainant is liable. The representative of the complainant has submitted that the complainant seeks a fresh electricity connection and not the restoration of the earlier connection which was disconnected for non-payment of charges and hence the complainant is not liable to pay the outstanding of the erstwhile occupier. The Respondent BEST Undertaking has submitted that as per clause 23.4 of Terms and Conditions of Supply of the Undertaking and as per Regulation 10.5 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005 unpaid electricity dues constitute a charge on the property and can be recovered from the subsequent occupier subject to proviso to Regulation 10.5.1 will discuss on Regulation 10.5 in later part of order.
- 11.0 The Respondent BEST Undertaking has submitted that while filing requisition, the complainant has filed consent for payment of arrears of electricity Exhibit 15/C and undertaking Exhibit 17/C and thereby admitted the responsibility of payment of arrears of electricity dues which she knew and therefore now the complainant cannot deny her liability of arrears of electricity dues. I find substance in this submission of the Respondent BEST Undertaking as in view of the consent letter Exhibit 15/C for payment of dues and undertaking Exhibit 17/C the complainant is estopped from denying his liability on the basis of principle / doctrine of estoppels. Thus the complainant cannot approbate and reprobate at the same time.
- 12.0 The Respondent BEST Undertaking has filed requisition dtd. 06/01/2015 Exhibit 9/C as if she ws applied for new connection. But in view of above said document Exhibit 15/C and 17/C it can be very well held that the case of the complainant falls under

category of reconnection and change of name as per Regulation 10.0. The Respondent BEST Undertaking has submitted that by supply code and regulation, the Distribution Licensee with permission of MERC has framed rules that dues in regard to the electricity supplied to the premises should be cleared before electricity is restored or new connection is given to a premises. It appears that such condition imposed by Distribution Licensee cannot be termed as unreasonable or arbitrary. It is submitted by the Respondent BEST Undertaking that in requisition from Exhibit 9/C and Exhibit 11/C in column no. 10(c) the complainant has admitted that she is bound by regulations framed from time to time and therefore the complainant cannot deny her liability to pay dues of earlier occupier in case of reconnection or restoration of supply.

13.0 Having regard to the above said reasons, the case of the complainant is to be governed by Regulation 10.5. I think it just and proper to reproduce the said Regulation as under.

10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be :

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charge for electricity supplied to such premises.

14.0 As per proviso to MERC Regulation 10.5, except in case of transfer of connection to a legal heir, the liability transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for the electricity supply to such premises. So the liability of the complainant shall be restricted to maximum period of six month of the unpaid charges for the electricity supplied to such premises. In proviso to Regulation 10.5 there is no clarification from which period six month's period is to be counted. In view of this aspect, it is discretion of Distribution Licensee to choose the period of six months. The Respondent BEST Undertaking has placed on record Meter Ledger Folio at Exhibit 37/C to 39/C. After perusal of the same it is clear that said Shri Amritlal Makwana had consumed units of 32953 for the month of 01/04/2007, units 4114 for the month of June, units 4000 for the month of July 2007, units 4709 for the month of August 2007, units 5456 for the month of September 2007, units 2331 for the October 2007. There was no consumption of electricity for the month of may 2007, so the same cannot be counted in the period of six month and therefore excluded. It appears that since November 2007 to till removal of the meter, there was no consumption of the electricity as in Meter Ledger Folio unit is shown as

zero unit. Under such circumstances period of six months cannot be counted since before six months of disconnection as there was no consumption of electricity, so there was no question of unpaid charges. Thus as per proviso to Regulation 10.5, the complainant is liable to pay the electricity charges for the month of April 2007, June 2007, July 2007, August 2007, Sept. 2007 and October 2007.

- 15.0 The next question poses before the Forum is whether the complainant is liable to pay DPC and interest. The first line of Regulation 10.5 runs as “*Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee*”. In view using the word as any sum other than electricity due, in Forum’s opinion DPC and interest on unpaid electricity charges comes under “any sum other than a charge of electricity and therefore the complainant is liable to pay DPC and interest on arrears of electricity due.” One may say that in proviso to Regulation 10.5 the language used as liability restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises. The said proviso is for fixing liability for maximum period of six months and in Regulation 10.5 the word “*any sum*” is used and therefore the unpaid charges for maximum period of six months includes DPC and interest. Here we wish to refer the MERC Regulation 15.5.4 which is in respect of DPC and interest.

15.5.4 *A consumer who neglects to pay his bill is liable for levy of delayed payment charges and interest on arrears in accordance with relevant the orders of the Commission, appropriation of security deposit and / or disconnection of supply in accordance with the provisions of the Act and these Regulations.*

- 16.0 Thus in view of Regulation, the action of Respondent BEST Undertaking of charging DPC & interest appears to be in consonance with MERC Regulation. It appears that in view of statutory provision the complainant is liable to pay the arrears of electricity dues of earlier occupier as having knowledge of electricity dues of earlier occupier Shri Makwana, the complainant came in possession of the said property as tenant and asked for connection and therefore liable to pay the said dues. It is not out of place to state that the complainant has every right to recover the said charges, which she is required to deposit for reconnection from Shri Makwana by filing suit for recovery of amount. Thus in any case it cannot be held that the complainant is remediless. Thus for reconnection the complainant is liable to pay arrears of Rs. 12,10,560.00 being a “**charge**” on the premises i.e. the outstanding amount of a/c no. 537-597-005 and as shown in bill for the month of June 2015.
- 17.0 For the above said reason, this Forum did not find any substance in the complaint as in view of MERC Regulation 10.5, the complainant is liable to pay electricity charges for the period of six month, including DPC and interest. Considering amount of DPC and interest, we think it just and proper not to make the complainant liable to pay DPC and interest on arrears since July 2015 and to direct the Respondent BEST Undertaking to accept arrears of Rs. 12,10,560.00 as due on June 2015 and to give electricity

connection to premises in possession of the complainant. In result we pass the following order.

ORDER

1. The complaint No. N-E-268-2015 dtd. 09/06/2015 stands dismissed.
2. The Respondent BEST Undertaking is directed to accept arrears of Rs. 12,10,560.00 from the complainant and give electricity supply within a period of 10 days from the date of payment of the electricity charges in arrears as directed above, if complainant fulfills other terms and conditions required for giving electric supply.
3. The Respondent BEST Undertaking further directed to report the compliance of this order to the Forum within a period of one month there from.
4. Copies of this order be given to both the parties.

(Shri S.Y. Gaikwad)
Member

(Shri S.M. Mohite)
Member

(Shri V.G. Indrale)
Chairman