

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-HVC-372-2018 dtd. 28/012/2018

The Partner,
Splendid Creations LLPComplainant

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. Shri S.M. Sakpal, DE(HVC)
2. Shri D.G. Patil, AE (HVC)

On behalf of the Complainant : 1. Shri Bhavesh R. Kapadia

Date of Hearing : 27/02/2019

Date of Order : 28/02/2019

Judgment by Shri. Vinayak G. Indrale, Chairman

The Partner, Splendid Creations LLP, Room no. 209, 2nd floor, Elar Bldg. No. 524, Senapati Bapat Marg, Dadar (W), Mumbai - 400 028 has come before the Forum for dispute regarding high bill in the month of March 2018.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 22/10/2018 dispute regarding high bill in the month of March 2018. The complainant has approached to CGRF in schedule 'A' dtd. 15/12/2018 received by CGRF on 27/12/2018 as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee on their grievance.

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

- 1.0 The Partner, Splendid Creations LLP came before the Forum regarding his dispute about debiting Rs. 4,31,234.00 towards tariff difference between LT-III (Industrial upto 20 kw load) and LT-IV (a) (Industrial above 20 kw load) for the period September 2012 to February 2016 and Rs. 36,583.00 towards tariff difference between LT-III (A) (Industrial upto 20 kw load) and LT-III (B) (Industrial above 20 kw load) for the period March 2017 to September 2017 in the bill for the month March 2018 pertaining to a/c 200-007-065*5.
- 2.0 Prior to September 2015, the complainant's premises under reference was having electric supply through meter no. P083647 in the name of Archies. Meter no. P083647 was replaced by meter no. P087178 under technical complaint on 09/09/2015 having sanctioned load 15.30 kw having LT-III (Industrial upto 20 kw load).
- 3.0 While checking transaction for cumulative amendment - e-Unit statement pertaining to a/c no. 200-007-065 of meter no. P083647 (old) and P087178 (new) it was observed that Maximum Demand (MD) is above 20 KVA since September 2012, thus more than 20 kw load being used by the consumer.
- 4.0 During the site inspection on 10/07/2017, it was observed that connected load is 49.125 kw and applicable tariff is LT-IV (a) (Industrial above 20 kw load).
- 5.0 Necessary Dr/Cr was carried out for tariff difference between LT-III (Industrial upto 20 kw load) and LT-IV (a) (Industrial above 20 kw load) for the period September 2012 to February 2016 and LT-III (A) (Industrial upto 20 kw load) and LT-III (B) (Industrial above 20 kw load) for the period March 2017 to September 2017 resulted in net debit of Rs. 4,31,234.00 and Rs. 36,583.00 respectively. The same was informed to the complainant vide letters dtd. 22/02/2018 stating that difference amount will be adjusted in ensuing bills. Same was reflected in the bill for the month March 2018 and the complainant has objected for the same.
- 6.0 Prior to June 2006, premises under reference was occupied / owned by Archies in the year June 2006, Archies has sold this premises to Shri Anup L. Anand and Shri Tanmay A. Anand by entering Sale Deed dtd. 15/06/2006. Shri Anup L. Anand and Shri Tanmay A. Anand have sold this premises to present occupier / complainant by entering Sale Deed dtd. 18/01/2012.
- 7.0 Electricity bill was not transferred in the name of Splendid Creations LLP. Till today electricity bill stands in the name of Archies. All notices / correspondence in respect of amendment bill were done in the name of Archies. Vide letter dtd. 06/09/2018, Archies has put up the facts before the Licensee.

- 8.0 In light of various directives given by High Court, amendment bill served to the complainant is justified and the complainant has to pay the same.

REASONS

- 1.0 We have heard the argument of Shri Bhavesh Kapadia who is representative of the complainant and for the Respondent BEST Undertaking Shri S.M. Sakpal, DE(HVC), Shri D.G. Patil, Asst. Engr. Perused the documents filed by either parties to the proceeding.
- 2.0 The representative of the complainant has submitted that the action of the Respondent BEST Undertaking claiming difference of tariff amount for the period from September 2012 to February 2016 amounting to Rs. 4,31,234.00 and for the period from March 2017 to September 2017 amounting to Rs. 36,583.00 is barred by limitation as per Section 56(2) of E.A., 2003 and therefore the Demand Notice issued by the Respondent BEST Undertaking is patently illegal.
- 3.0 Against this the Respondent BEST Undertaking has submitted that the sanctioned load to the premises was 15.3 kw and against this the complainant was utilizing the electricity of 49.125 kw i.e. more than sanctioned load and therefore it amounts to unauthorized use and for that the Respondent BEST Undertaking has taken action u/s 126 of E.A., 2003 and in view of this proceedings, the complainant has deposited 50% amount of Rs. 5,17,506/- and matter is still pending before the Electrical Inspector. If this would be the case of the Respondent BEST Undertaking, then the question poses before us is, as to whether the tribunal has jurisdiction to entertain the case as it is a case of unauthorized use of electricity as contemplated u/s 126 of E.A., 2003.
- 4.0 Before discussing the above said legal aspect, we would like to state as to whether the complainant has *locus-standi* to file the complaint as electricity bill is still in the name of Archies. We made the query to the representative of the complainant as to why the complainant, Splendid Creations LLP has not taken any efforts to effect the change of name and the representative has submitted that the Respondent BEST Undertaking has not accepted their application for change of name as the premises for which the electric supply has been supplied has been purchased by the complainant from one Shri Anoop L. Anand and Shri Tanmay A. Anand, who had purchased the said property from Archies in the year 2006. We have perused the record and it appears that the complainant has filed xerox copy Sale Deed dtd. 18/01/2012.
- 5.0 After perusal of this Sale Deed, it appears that on 15/06/2006, Mrs. Diwaliben Ramji Gala and Shri Jayesh Ramji Gala sold the said premises to Shri Anoop Anand and Shri Tanmay Anand for consideration of Rs. 65,75,000.00. It appears that the said premises has been purchased by the complainant Splendid Creations LLP on 18/01/2012 from Shri Anoop Anand and Shri Tanmay Anand for consideration of Rs. 1,66,000.00 only. Considering these documents, it appears that there was no hitch for the Respondent BEST Undertaking as well as for the complainant to effect the change of name in the name of Splendid Creations LLP.

6.0 Considering these documentary evidence, it appears that the complainant is the owner of the premises for which the electric supply has been given and still it is in the name of Archies. The complainant being an owner is challenging the said Demand Notice by filing these proceedings. If we go through the definition of “Consumer” as defined u/s 2 (15), the complainant certainly termed as “Consumer” in view of definition which includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of Licensee. In view of this aspect of the case although from the document it appears that electricity bill is in the name of Archies and so the complainant appears to be owner of the premises and therefore certainly he can be termed as a “Consumer” within a definition of Section 2(15) of E.A., 2003, thus we do not find any force in the argument advanced by the Respondent BEST Undertaking that the complainant has no *locus-standi* to file the complaint.

7.0 We have cautiously gone through the record and it is crystal clear that for the period September 2012 till issue of Demand Notice for difference of tariff amount, the complainant was using the electricity load more than sanctioned load and therefore it is the case of unauthorized use as contemplated u/s 126 of E.A., 2003. If this would be the case then certainly the action of the Respondent BEST Undertaking claiming difference of tariff amount for the period September 2012 to February 2016 and March 2017 to September 2017 is not proper and justified. It appears that the Respondent BEST Undertaking has only initiated action u/s 126 for the period from March 2016 to February 2017 only and issued Show Cause Notice for unauthorized use and matter is now subjudised before the Electrical Inspector. It is conceded by both the parties in lieu of action u/s 126 that the complainant has deposited Rs. 5,17,506/- before the Electrical Inspector and case is still pending before the Electrical Inspector. Thus, it appears that the action of the Respondent BEST Undertaking issuing notice under 126 for the period March 2016 to February 2017 only is not proper and they have to take action u/s 126 for the period September 2012 to February 2016 as well as March 2017 to September 2017. It is not the choice of the Respondent BEST Undertaking to take action u/s 126 for some period and not to take action u/s 126 for earlier and subsequent period, we think it just and proper to reproduce Section 126 of E.A., 2003.

- (1) *If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer come to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.*
- (2) *The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*
- (3) *The Person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.*

- (4) *Any person served with the order or provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.*
- (5) *If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*

As per Section 126(5), the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection. In the instant case unauthorized use of electricity has been already ascertained by the Respondent BEST Undertaking while carrying out the inspection on 30/09/2016 and therefore this is not the case wherein the period of unauthorized use cannot be ascertained.

8.0 In view of this aspect, we arrived at the conclusion that the action of the Respondent BEST Undertaking for initiating the action u/s 126 of E.A., 2003 for the period of 12 months only is not justifiable and they have to take action u/s 126 of E.A., 2003 for the whole already ascertained period.

9.0 If viewed from the above said angle, the moot question poses before us is whether this tribunal has jurisdiction to entertain the complaint which is pertaining to unauthorized use of electricity. On this point, we have gone through the Regulation 6.8 of MERC (CGRF & EO) Regulation, 2006 which runs as under.

6.8 If the Forum is prima-facie of the view that any grievance referred to it falls within a purview of any of the following provisions of the Act the same shall be excluded from the 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*

10.0 In view of Regulation 6.8 (a) of MERC (CGRF & EO) Regulation, 2006, we arrived at the conclusion that this Forum has no jurisdiction to entertain the grievance as it is the case of unauthorized use of electricity as provided u/s 126 of E.A., 2003. In view of this aspect, we do not wish to comment upon the merits of the case, as to do so, will amount to futile efforts on our part. We further observed that to discuss on the merits of the case, it will prejudice to either party, so we constrain not to make any discussion on other aspects of the case regarding limitation of issue of Demand Notice.

- 11.0 Having regard to the above said discussion, we have arrived at the conclusion that this Forum has no jurisdiction to entertain the grievance as per Regulation 6.8 of MERC (CGRF & EO) Regulation, 2006. Before parting to pass the final order, we wish to observe that in number of cases which we have decided, it reveals that electricity may stands in the name of earlier occupier and the complaint is filed by the person who is not in actual possession of the premises. This is not proper on the part of the Respondent BEST Undertaking also as it is always better that electricity bill must be in the name of the person who is in actual possession of the property with a view to ascertain the liability of payment of electricity dues. In the instant case the representative of the complainant has vehemently submitted that he approached the Respondent BEST Undertaking for so many times for change of name but the Respondent BEST Undertaking did not give any response as the complainant has purchased the property from Shri Anoop Anand and Shri Tanmay Anand who had purchased the same from owners of the Archies.
- 12.0 We feel that the Respondent BEST Undertaking must take precaution while effecting the change of name and insist the consumer to effect the change of name by deleting the name of earlier occupier. With this observation, we dismiss the complaint. In result we pass the following order. As the complainant himself has filed an application for adjournment on 14/02/2019, there is little bit delay in deciding the order.

ORDER

- 1.0 The complaint no. N-HVC-372-2018 dtd. 28/12/2018 stands dismissed.
- 2.0 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