

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-F(S)-189-2013 dtd. 25/02/2013

Mr. Pradeep Shetty & OthrsComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum : Chairman
Shri R U Ingule, Chairman

Member
1. Shri M P Thakkar, Member
2. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri Pradeep Shetty

On behalf of the Respondent 1. Shri Parshuram B. Kewat, Supdt. CC(F/S)
2. Smt P.S. Kirtikar, Ag. ALA

Date of Hearing : 03/04/2013

Date of Order : 23/04/2013

Judgment by Shri. R.U. Ingule, Chairman

Shri Pradeep Shetty & Othrs., Room no. 22, Gr. Flr., Marathi Granth Sangrahalaya Marg, Mumbai - 400 014 has come before the Forum for grievance regarding outstanding claim of erstwhile consumer pertaining to A/c no. 580-497-083*4.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 16/11/2012 regarding outstanding claim of erstwhile consumer pertaining to A/c no. 580-497-083*4. The complainant has approached to CGRF in schedule 'A' dtd. 07/02/2013 (received in CGRF 21/02/2013) as they are not satisfied with the remedy provided by the Distribution Licensee regarding their grievance. The complainant has requested the Forum to set aside the purported claim of Rs. 4,03,202/- & vigilance claim amount of Rs. 2,14,800/- of erstwhile consumer and provide new meter connection to their premises etc.

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

2.0 We respectfully submits that the dispute raised by the Complainant regarding vigilance claim amount of Rs.2,14,800/- is not within the jurisdiction of this Hon'ble Forum and therefore on this ground itself, the dispute filed before this Hon'ble Forum regarding vigilance claim amount of Rs.2,14,800/- deserves to be dismissed at the very threshold as the same is not maintainable in law. We further submit that the Regulation No.6.8 of the Consumer Grievances Redressal Forum and Electricity Ombudsman Regulations, 2006 reads as under :-

"If the Forum is prima facie of the view that any Grievance referred to it falls within the 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) Offences and penalties as provided under Sections 135 to 139 of the Act;
- c) Accident in the distribution, supply or use of electricity as provided under Section 161 of the Act; and
- d) Recovery of arrears where the bill amount is not disputed."

In view of the aforesaid regulations, this Hon'ble Forum has no jurisdiction to entertain and try the dispute pertaining to tampered meter case. Without prejudice to aforesaid contentions, we submit the true and correct facts are as under :-

3.0 Shri Shiva Dayaram Shetty applied for new meter vide application No.81301927 dated 10.09.2012 to the premises situated at Room No.22, ground floor, Suleman Kasam Mitha Chawl Building, Dadar, Mumbai - 400 014. During the inspection, it was found that arrears payment of Rs.4,03,202/- is pending against the said premises and as per records of the Undertaking electricity connection to the said premises was standing in the name of Shri C.M. Abdullah. The same was therefore informed to the Complainant, Shri S.D. Shetty vide letter dated 11.09.2012. In response to which on 16.11.2012, Shri Pradeep Shetty filed complaint in Annexure "C" before the IGR of the Undertaking in respect of above application which was registered in the name of Shri Shiva Dayaram Shetty. Since Shri Pradeep Shetty was neither applicant nor the intended consumer, it was informed to him vide letter dated 15.01.2013 to visit to our office on any working day for solving grievances raised. However, Shri Pradeep Shetty did not turn up for the reasons best known to him and instead he filed above complaint before this Hon'ble Forum.

4.0 It is submitted that according to Undertaking's record, Shri C.M. Abdullah was registered consumer for above premises since 29.11.2002 under A/c. No.580-497-083. Due to non-payment of arrears of Rs.4,03,202/- his meter was removed on 10.08.2009.

5.0 With reference to para 2 of the complaint, we submit that under Section 43 of Electricity Act, 2003 every distribution licensee is under legal obligation to supply electricity within one month after receipt of the application for supply from owner or occupier to his premises. The explanation to Section 43 states that "application" means the application completed in all respects in the appropriate form as required by the distribution licensee alongwith documents showing payment of necessary charges and other compliances. It is submitted that the occupier of any premises means lawful occupier on the date seeking electric connection. In present case, applicant failed to submit registered tenancy deed. Therefore, possession of the Complainant cannot be considered as lawful possession. It appears that the Complainant applied for new electricity connection to the premises only with intention to avoid payment of the outstanding dues lying against the earlier consumer.

6.0 With reference to para 3 of the complaint, we submit that after submitting the requisition on 10.09.2012, the Complainant was visiting our Customer Care (F/S) Ward occasionally to enquire about the requisition in question and he was every time categorically being informed that the requisition will be only processed provided he make payment of the arrears of the earlier account holder. But the applicant was not responding to the same. Therefore, he was not called for any hearing during the period but he was called to discuss the issue afresh, so as to enable us to settle the claim and issue meter to the applicant.

7.0 With reference to para 4 of the complaint, we submit that the Complainant has not given the reason as to why he couldn't meet the concerned officer as all the officers concerned have already explained him about the procedure of sanctioning new meter on many occasions on his visits to the department.

8.0 With reference to para 5 of the complaint, we submit that as per the procedure, when the department receives any requisition for giving electric meter to particular premises, it is checked by the department whether any amount is outstanding against the said premises. If it is found that there is an amount outstanding against the said premises, a letter is forwarded to the Complainant to clear the outstanding amount of earlier consumer and thereafter new meter connection is given to the premises. In the present case, the same procedure was followed. The application against Annexure "C" was not accepted as the name on the requisition was Shri Shiva Dayaram Shetty and name on the application of Annexure "C" was Shri Pradeep Shetty. If Shri Dayaram Shetty would have applied Annexure "C", we would have replied the same application.

9.0 With reference to para 6 of the complaint, we submit that from the CIS report, it can be seen that there are total five premises in the said location and the Complainant was using electric meter on one premises using the same for some period and after huge amount has remained as outstanding the same meter was being removed and he used to apply for another premises from the said location. The account of Shri Suraj Pandey on whom there is a vigilance claim was being used for giving electricity to other premises in question. As the vigilance case does not fall under the jurisdiction of the CGRF, the same will be dealt with separately.

10.0 With reference to para (b) and (c) of the complaint, we submit that according to Undertaking's record our registered consumer for above premises was C.M. Abdullah and occupancy proof submitted by the applicant does not prove rightful owner of the premises as tenancy deed is not registered. We further submit that only with an intention to avoid the payment of said outstanding amount of earlier consumer, Complainant has applied for the new connection. The Complainant should be lawful owner or occupier of the premises seeking electric connection.

11.0 According to 10.5 any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remain unpaid by erstwhile owner or occupier shall be a charge on the premises and the same shall be recoverable by Distribution Licensee as due from new owner or occupier.

12.0 In view of the above, unless the Complainant shows his lawful occupancy, he is not entitled to seek a relief from Hon'ble Forum and therefore we pray to this Hon'ble Forum to dismiss the complaint.

REASONS

13.0 We have heard the complainant Shri Pradeep Shetty in person and for the Respondent BEST Undertaking Shri Prashuram B. Kewat along with Smt. P.S. Kirtikar, Ag. ALA, at length. Perused documents.

14.0 At the outset this Forum finds that there is a merit in the complaint preferred by the complainant before us. The gamut of the complaint has been that the complainant has submitted a requisition dtd.10/09/2012 demanding an installation of a new meter in the premises viz. Room no. 22, Suleman Ksaam Mitha Chawl Bldg. occupied by him along with the rest of the applicants.

15.0 However, instead of providing such new electric meter, the Respondent BEST Undertaking directed to pay the complainant an arrears of Rs. 4,03,202.00 and Rs. 2,14,800.00, allegedly payable by Shri C.M. Abdulla having an A/c no. 580-497-075 and of Shri Suraj Pandey having A/c no. 580-497-069 respectively. The complainant vehemently contends that after obtaining the said premises on rent basis from the Chairman of Sir Suleman Kasam Mitha Dadar Market Trust, he has applied for a new electric connection along with his colleague occupants. Therefore he is neither liable to pay the arrears of Rs. 4,03,202.00 in respect of the erstwhile occupier of the said premises Shri. C.M. Abdulla nor of Rs. 2,14,800.00 in respect of Shri Suraj Pandey.

16.0 The complainant however further submitted that at the most the Respondent BEST Undertaking would be entitled to claim electricity charges for a maximum period of six months of the unpaid charges for electricity supplied to the premises presently occupied by him along with rest of the occupants. The complainant has thus shown his ready and willingness to pay for six months of unpaid charges of the electricity supplied to the said premises presently occupied by him. However, he has stoutly denied to pay the entire arrears of the erstwhile occupier Shri C.M. Abdulla and that of Shri Suraj Pandey.

17.0 This Forum observes that the Respondent BEST Undertaking has candidly submitted in its written statement that the dispute raised by the complainant regarding vigilance claim amount of Rs. 2,14,800.00 has not been within the jurisdiction of this Forum, as contemplated under Regulation no. 6.8 of the CGRF and EO Regulation 2006. This Forum therefore finds that in regard to arrears of Rs.2,14,800.00, the Respondent BEST Undertaking has already proceeded to file a criminal complaint vide CR no. 240/2001 dtd. 05/09/2001. Accordingly, this Forum finds an endorsement passed under the Vigilance Dept. claim letter of the Respondent BEST Undertaking, placed before this Forum at pg. 59. To reiterate the Respondent BEST Undertaking has already submitted in its written statement about this Forum having no jurisdiction to decide the controversy in the respect of the said amount. This Forum therefore holds that the controversy in respect of the arrears amount of Rs. 2,14,800.00 falls out of purview of this Forum.

- 18.0 At this juncture this Forum finds it expedient to advert to a vivid fact emerging from the documents placed on file , especially the office note dtd. 07/09/2001 addressed by Chief Engineer Distribution North to Asst. General Manager (Electric Supply). On perusing all these documents this Forum finds that the Respondent BEST Undertaking has miserably failed to bring to the notice of this Forum as to how for the recovery of the aforesaid amount of Rs. 2,14,800.00, a new electric connection to the present complainant along with his colleague occupants could be denied. This Forum further observes that the Respondent BEST Undertaking could not bring to the notice of this Forum any provision of law or any rules or regulation having statutory force, which would dis-entitle the present complainant and his colleague occupants, to seek a new electric connection to the premises under consideration in the past occupied by the erstwhile consumer Shri C.M. Abdulla. This Forum therefore proceeds to hold that on the ground of recovery of the aforesaid alleged arrears of Rs. 2,14,800.00, the electric connection now sought by the present complainant, cannot be denied to him.
- 19.0 Now we turn to the other controversy raised by the complainant in respect of the alleged outstanding claim of Rs. 4,03,202.00 in respect of erstwhile occupier Shri C.M. Abdulla, claimed from the present complainant. In this connexion while resisting the application for installation of a new meter dtd. 10/09/2012 submitted by the complainant, the Respondent BEST Undertaking has vehemently submitted that the complainant has utterly failed in submitting any document to the Respondent BEST Undertaking, about he being a *lawful tenant* of the premises wherein he has applied for installation of a new meter. To buttress its contention the Respondent BEST Undertaking has turned down the *terms of the tenancy* document signed by the Chairman of Sir Suleman Kasam Mitha Dadar Market Trust, showing the complainant being a tenant of the premises under consideration, on the ground that the said tenancy agreement has not been a registered document. Therefore, the complainant can not call himself a *lawful tenant*, and in the result thereof, the complainant would not be entitled to get the electric connection as envisaged u/s 43(1) of the Electricity Act, 2003.
- 20.0 This Forum finds the said contention raised by the Respondent BEST Undertaking, has been devoid of any merit. In the first instance, the said document has not been an agreement, as the same has not been signed by both the parties. As mentioned above this document simply enumerates the terms of the tenancy stipulated by the Trust. This Forum further observes that there has been total miscomprehension of law emanating from subsection (1) of section 43 of the Electricity Act, 2003 on the part of Respondent BEST Undertaking. In consider view of this Forum the Respondent BEST Undertaking can not give a Nelson Eye to the expression employed by the legislature in subsection (1) of section 43, which blatantly manifest that the application for electric connection, is required to be made by the *owner* or *occupier* of any premises. It is therefore conspicuous on the very face of subsection (1) that the legislature in its wisdom has refrained from using the expression *tenant* and instead of that employed a wider term viz. *occupier*.
- 21.0 During the hearing of this complaint the representative of the Respondent BEST Undertaking has candidly agreed that every tenant would be an occupier but every occupier would not be necessarily a tenant. In view of this Forum there has been thus an obvious difference and distinction between these two expressions viz. *occupier* and *tenant*.
- 22.0 Besides the law position discussed above emanating from subsection (1) of section 43, this Forum finds that the document of *terms of tenancy* placed on file at pg. 21 blatantly manifest that on the rent basis the premises under consideration has been given to the

complainant by the said trust. Besides it , the complainant has also placed on file the rent receipt for the month of July 2010 in respect of the premises under consideration, showing the complainant and his colleague as a tenant of the said premises and paying rent of Rs. 100.00. The said rent receipt has been issued under the sign of authorized signatory of the said trust. This Forum therefore holds that these two documents submitted to the Respondent BEST Undertaking, candidly shows that the complainant has not been a rank trespasser but he is an *occupant* of the said premises under consideration, on rent basis with the permission and consent of the concerned owner trust.

- 23.0 This Forum thus observes that despite the complainant could submit the aforesaid cogent evidence about his *occupancy* in the premises under consideration, the Respondent BEST Undertaking has denied the electric connection on a highly unsustainable ground i.e. he is not a *legal tenant*. This Forum on perusing a written submission submitted by the Respondent BEST Undertaking finds that therein adverting to section 43 of the Electricity Act, 2003 it has been categorically submitted that the occupier of any premises means a lawful occupier from the date seeking electric connection. The Respondent BEST Undertaking further submits that as the applicant has failed to submit a Registered Tenancy Deed therefore he cannot be considered in a lawful possession of the premises.
- 24.0 The Respondent BEST Undertaking while concluding its submission has further submitted in para 10 that unless the complainant shows that he is in *lawful occupancy* of the premises he would not be entitled for any relief from this Forum. In consider view of this Forum the documents pertaining to occupancy of the premises on rent basis were already submitted by the complainant. During the course of hearing, the Respondent BEST Undertaking has not termed these documents being fabricated or manipulated one.
- 25.0 This Forum therefore finds that there was a cogent documentary evidence available to the Respondent BEST Undertaking to reach to a conclusion that the complainant has not been *rank trespasser* but in *lawful possession* of the premises. Besides it, in view of this Forum if at all there was any shred of doubt in the mind of the Respondent BEST Undertaking about whether the said premises being occupied by the complainant or not, the Respondent BEST Undertaking could have paid a personal visit to the said premises and by contacting the authorized representative of the owner trust could have very well verified and confirmed about the *occupancy* of the premises by the complainant. This Forum however, finds a total failure on the part of the Respondent BEST Undertaking to undertake such exercise to verify the *occupancy* of the premises by the complainant by contacting the owner as observed above. To conclude on this aspect this Forum holds that the complainant has been a *lawful occupier* of the premises wherein the electric connection has been sought by him.
- 26.0 Now we turn to the last but not the least contention raised by the complainant that at the most as envisaged under Regulation 10.5 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005, he is liable to pay electricity charges in arrears to a maximum period of six months of unpaid charges of electricity supplied to said premises.
- 27.0 In this context this Forum finds it significant to advert to a law laid down by Hon'ble Division Bench of the Bombay High Court in the case of *M/s NAMCO v/s State of Maharashtra (WP no. 9906 of 2008)*. This Forum observes that in case of *M/s NAMCO (supra)* the Hon'ble Division Bench of the Bombay High Court has thoroughly considered the provision provided under Regulation 10.5, thereafter also referred to a judgment handed down by the Hon'ble Supreme Court in a case of *M/s Isha Marble v/s Bihar State Electricity Board (1995 2 S CC 648)* wherein it has been observed that in the Electricity

Act, 1910 there was no *charge* over the property. Therefore, the new occupier / owner can not be called upon to clear the past arrears as a condition precedent while granting electric supply. However, thereafter the Hon'ble Bombay High Court proceeded to hold that the said inadequacy in law noticed by the Hon'ble Supreme Court in its decision in *M/s Isha Marble (supra)*, has been now rectified by framing a statutory regulation like 10.5 under the provision of Electricity Act, 2003, wherein electricity dues would be a *charge* on the property and can be recovered by the licensee from the new owner / occupier, with a qualification that except in a case of transfer of electricity connection to a legal heir the liability is restricted to a maximum period of six months of the unpaid charges for electricity supplied to the premises.

- 28.0 In the aforesaid law position adverted to above, this Forum does not have any hesitation to hold that the complainant is liable to pay the electricity charges in arrears of the erstwhile owner / occupier of the said premises, to a maximum period of six months of the unpaid charges for electricity supplied to the said premises, and not the entire arrears of electricity charges payable by the erstwhile occupier Shri C. M. Abdulla of Rs. 4,03,202.00. Accordingly, we proceed to pass the following order.

ORDER

1. The complaint no. N-F(S)-189-2013 stands partly allowed.
2. The Respondent BEST Undertaking has been directed to issue a fresh electricity bill to the complainant for claiming arrears of electricity charges for a period of six months of the unpaid charges for electricity supplied to the premises occupied by the erstwhile occupier Shri C.M. Abdulla, as envisaged under Regulation 10.5 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulation 2006, within a period of one month from the date of passing this order.
3. The Respondent BEST Undertaking further directed to provide the electric supply as demanded by the complainant within a period of fortnight from the date of receiving the amount of arrears as mentioned above from the complainant.
4. The Respondent BEST Undertaking further directed to inform this Forum the compliances of this order within a period of one month therefrom.
5. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman