

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(N)-67-2009 dt . 26/3/2009

Mr. Prasad Shivkumar R. Complainant

V/S

B.E.S. & T. Undertaking Respondent

Present

Quorum 1. Shri. M.P. Bhave, Chairman
2. Shri. S. P. Goswami, Member
3. Smt. Vanmala Manjure, Member

On behalf of the Complainant 1. Shri. Shivkumar R. Prasad
2. Shri. Pramod Mayekar

On behalf of the Respondent 1. Shri. R.P. Gate, AO(F/N)
2. Shri. S.V. Shirke, OACC(F/N)

Date of Hearing : 17/04/2009

Judgment by Shri. M.P. Bhave, Chairman

Mr. Prasad Shivkumar R. FNG, 90-C, Grd floor, Dinbanbhu Nagar, Salt pan Road, Wadala, Mumbai – 400 037 has come before this Forum for his grievance regarding outstanding bill of A/c. No. 793-867-501*1 on 18/01/2009.

Brief history of the case

- 1.0 Complainant had approached respondent in Annexure-C format on 5/9/2007 wherein he had requested respondent to withdraw the arrears claim belonging to previous consumer M/s. Surywanshi Oil trading Co. and handover the correct electricity bill as per supply code regulation, clause 10.5 and install new meter for premises.
- 2.0 Vide letter dtd. 01.11.2007 respondent informed the complainant that he has not submitted any document to show his occupation of the premises. Further, respondent informed the complainant to pay outstanding amount to Rs.1,26,808.79 in order to initiate action for providing Electric Supply to the premises.
- 3.0 Vide letter dtd. 05.11.2007 the complainant informed that he is the rightful owner of the premises and enclosed the copies of agreement for sale, shops and establishment receipt dtd. 02.11.2007 & Shops & Establishment license.
- 4.0 Vide letter dtd. 23.11.2007 complainant informed that he was shown the last paid bill for September 2003 by the earlier consumer M/s. Suryawanshi Oil Trading Co., wherein it was shown that the entire electric charges were paid & there was no O/S towards electricity charges & shown readiness to pay Rs.14,066.40/- for getting new connection.
- 5.0 Respondent vide letter dtd. 28/11/2008 informed the complainant that his case is put up to management for approval through their legal department. Further it was informed that as the case pertains to new connection, supply code regulation 10.5 is not applicable.
- 6.0 Respondent vide letter dtd. 13.12.2007 informed the complainant to approach CGR Forum if he is not satisfied by the decision of IGR Cell conveyed vide letter dtd. 22.11.2007
- 7.0 Unsatisfied by the reply of the respondent, the complainant approached CGR Forum in schedule-A format on 24/3/2009 to get the relief in outstanding arrears as per section 10.5 of Electric Supply code and other conditions of supply.

Consumer in his application and during Hearing stated the following

1. He has purchased the premises on 5th August, 2007 viz. Shop No.FNG-90/C, Ground Floor, Dinbandhu Nagar, Sakari Agar, Salt Pan Road, Wadala, Mumbai – 400 037 from Shri. Mavji Liladhar Joishar, who was the owner running a shop namely M/s. Survanshi Oil Trading Co. in the said premises. The copy of (i) General Power of Attorney (ii) Affidavit (iii) sale Agreement (iv) Shops & Establishment License No.0012639 in the name of M/s. Suryavanshi Oil Trading Co. (v) License No.68241 issued by Ward Officer, F/N Ward, BMC in the name of M/s. suryawanshi Oil Trading Co. (vi) Form of Licence No.071943 issued by F/N Ward, BMC in the name of M/s.suryawanshi Oil Trading Co. (vii) Shops & est License No.760027098 issued by F/N ward, BMC in my/the name (i.e.) Prasad shivkumar Ramlal as

a employer, are enclosing herewith for ready reference & to prove that I am the rightful owner of the shop as mentioned above.

2. The meter of the said premises was removed on the 16.02.2004 due to non payment of arrears amount. It is to be noted that the outstanding amount of rs.1,26,808.79 (which was informed by BEST official when applied for reconnection of supply) is not the actual outstanding amount for the relevant premises. It is learnt that an amount of Rs.1,12,742.39 pertains to some other premises situated at 90, Grd. Floor, Dinbandhu Nagar, Wadala, Mumbai – 37, in the name of Shri. Kurmi Ramashri Ramprakash and the same was debited in the bill of relevant premises in the month of November 2003 under code 24. It is not understood how and why the arrears amount of another premises was debited in the bill of the relevant premises. Both the premises are not related in any way. It is not understood how arrears outstanding in the name of Shri Kurmi of different premises was debited in the bill of M/s. Suryawanshi Oil Trading Co. whose owner was Shri Mavji Liladhar Joshar.
3. As per the Section 10.5 of Maharashtra Electricity Regulatory Commission, Electricity Supply Code and other condition of supply “except in the case of transfer of connection to a legal heir the liabilities transferred under the Regulation 10.5 shall be restricted to a maximum period six months of the unpaid charges for electricity supplied to such premises.

It is evident from the above Regulation that any charge for electricity due to distribution Licensee which remains unpaid by the erstwhile owner/occupier of any premises shall be a charge on the premises transmitted to the legal representative successor in law or transferred to the new owner/occupier of the premises. In our case, the transfer of electricity connection is not to a legal heir. Therefore, as per the terms of provision under section 10.5 the liability so transferred is restricted to a maximum period of six months of unpaid charges for electricity supplied to such premises.
4. There is similar case in which the Hon’ble Ombudsman has given an order to recover the unpaid charges to a maximum period of six months before getting electricity connection (pl. refer case No. Elec Ombd. MERC 2006 213, dated 4th September 2006).
5. He is ready to pay the balance amount of Rs.14,066.40 which is actual unpaid charges of the premises, as an amount of Rs.1,12,742.39 pertains to other premises was debited in the month of November 2003.
6. He has already paid an amount Rs.1,27,000/- on 22.01.2008 under protest letter dated 21.01.2008 as he had borrowed money from his friends and was very badly in need of electricity for the premises. He could not start his commercial activities without electricity due to which he was suffering heavy financial loss from August 2007 to February 2008.
7. As per form of License there were two partners viz. Shri R.R. Chowdhary & Shri Liladhar Joishar. Later on 04.08.1997, name of Shri R.R. Chowdhary was deleted from the form of license. The O/S amount of Rs. 1,12,742.39 belongs to Shri. R.R.Chowdhary.

8. Gala No.90 & 90C are different.
9. O/S.of Rs.1,12,742.39 was debited in the account of Suryavanshi Oil Trading Co. in November 2003 & his meter was disconnected in February 2004. However, from November 2003 to February 2004 there was no follow up from respondent regarding recovery. He has not received break up of O/S. amount.

BEST in its written statement and during Hearing stated the following:

1. Shri. Kurmi R.R. residing at Ground Floor, Room No.90, Din Bandhu Nagar, Salt Pan Road, Mumbai – 400 037 was having Meter No. B962136 under A/c. No. 793-867-017 and said meter was removed on 09.02.2001 for non-payment of Rs. 1,12,742.39.
2. On same day Meter No, M011060 under A/c.No.793-867-501 was installed at same premises showing different address i.e. Ground Floor, R.No.90-C, Din Bandhu Nagar, Salt Pan Road, Mumbai – 400 037 in the name of Suryavanshi Oil Trading Co. During investigation it is found that Suryavanshi Oil Trading Co. made changes in the document to show R.No. 90 as R.No.90-C and has taken separate meter to avoid paying outstanding amount of Rs.1,12,742.39. Therefore amount of Rs.1,12,742.39 was debited from A/c.793-867-017 to the A/c.No.793-867-501 of M/s. Suryavanshi Oil Trading Co. The meter of Suryavanshi Oil Trading Co. was removed on 16.02.2004 for non-payment of bill amounting to Rs.1,26,808.78 (i.e. 1,12,742.39 of previous consumer Shri Kurmi R.R. & Rs.14,066.39 of Suryavanshi Oil Trading Co.) since 17.09.2003.
3. Thereafter, M/s. Suryavanshi Oil Trading Co. had sold the said premises to Shri Prasad Shivkumar R. in July 2007. He applied for new connection in Room No. 90-C and approached the Undertaking in Annexure `C' Form on 05.07.2007 stating that he is not liable for previous consumer arrears and he is only liable for 6 months arrears according to supply Code Regulation 10.5. As per CLA's advice, letter dt. 01.11.2007 was sent to Shri. Prasad Shivkumar R. to make full payment of arrears of Rs. 1,26,808.78. He paid the arrears of Rs. 1,27,000/- on account under protest on 22.01.2008 and supply was immediately provided to him.
4. Vide letter dt. 21.01.2008 Shri. Prasad Shivkumar R. requested us to settle disputed amount paid under protest and adjust the credit amount against the installation of new meter bill.
5. Therefore, the revised proposal was sent to the Management for approval through Legal Department. The Legal Department opined that "in Supply Code Regulation 10.1 it is clearly mentioned that a connection may be transferred in the name of another person upon application for change of name by the new owner or occupier. It means connection should be in existence and the Regulation 10.5 would apply in case of change of name and not in case of new connection.
6. In view the above, there is no bar to the Licensee to recover the outstanding of previous consumer when new application for fresh connection is filed by

any person. Accordingly, the opinion of the Legal Department was conveyed to Shri Prasad Shivkumar R. vide our letter dt.28.11.2008.

7. Consumer had met the indemnity bond with earlier consumer M/s. Surywanshi Oil Trading Co. in the Agreement for the Sale. In para 7 said Agreement for sale between Shri. Joishar (owner of Surywanshi Oil Trading Co.- First part)) & Shivkumar R. Prasad (Second part), Shri Joshar under took indemnify the party of the second part and the concerned authority, if they suffer any loss, damage or risk or any adverse claim arise in future on account of such transfer in the name of second part.
8. Respondent has agreed to produce ledger position of M/s. Surywanshi Oil trading Co. for the period two years prior to the disconnection of his meter.

Observations

1. O/S. amount of Rs.1,12,742.39 pertains to plot no. 90 belonging to Shri Kurmi Ramshri Ramprakash.
2. O/S. amount of Rs.1,12,742.39 pertains to plot no. 90 is debited in the account of plot no.90-C as according to the respondent both the premises are one & the same. More efforts are required on part of the respondent to prove that both the premises viz, 90 & 90(C) are the same.
3. In MERC (Electric Supply Code & Other Conditions of Supply), Regulations 2005, application of clause No.10.5 is under the heading change of name. As per respondent in the present case clause 10.5 is not applicable as the complainant has taken new connection.
4. The forum does not find any reference for allowing the licensee to recover dues of old consumer from new consumer in electricity act 2003 or MERC regulations.
5. In these circumstances only conclusion can be drawn that the new consumer has paid the amount on behalf of old consumer.
6. It may be noted that earlier owner of the premises M/s. Surywanshi Oil Trading Co., (owner Shri. Joishar) in sale Agreement under took to compensate the party of the second part i.e. Shri. Prasad Shivkumar R. and the concerned authority if they suffer any loss, damage or risk or any adverse claim arise in future on account of such transfer, to the name of party of the second part.
7. This empowers the Complainant to approach the appropriate court authorities to get compensation from earlier owner of the premises.

ORDER

1. In light of the observations made above, the case is disposed of with out any specific order.
2. Copies be given to both the parties.

(Shri. M. P. Bhave)
Chairman

(Shri. S. P.Goswami)
Member

(Smt.Vanmala Manjure)
Member