

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. CGRF/158/2010 dt . 3/8/2010
(Pre-admission Hearing)

Mr. R.S. ChandokComplainant

V/S

B.E.S. & T. UndertakingRespondent

Present

Quorum 1. Shri. R.U.Ingule, Chairman
2. Shri. S. P. Goswami, Member

On behalf of the Complainant 1. Shri. J S Chandok
2. E M Francis

On behalf of the Respondent 1. Shri. N H S Husain, AO CCGS
2. Shri. S B Lande, AE CCGS
3. Shri. S V Chhabria, OA CCGS
4. Shri. A P Rodrigues, Sup CCGS

Date of Hearing: 15/09/2010

Date of Order : 23/09/2010

Judgment by Shri. R.U.Ingule, Chairman

Mr. R.S. Chandok, 107 A Sunmill Compound, , Lower Parel, Mumbai – 400 013, approached the CGR Forum for his Grievance regarding dispute against amendment claim pertaining to A/c No.677/261/001. He has prayed for withdrawal of charges levied in his account & requested to give interim relief of non disconnection of his electricity connection till the final outcome of the case.

Complainant's contention in brief are as under

1. Complainant Mr. R.S. Chandok, has approached the Internal Grievance Redressal Cell of respondent BEST on 4/8/2009 for his Grievance regarding debiting the claim amount of Rs.1,46,947.07 in the electricity bill & not effecting the change of name for the meter no. R860118 under consumer A/c No. 677-261-001.
2. In response to his grievance, the IGR Cell of the Respondent vide letter dtd. 11/9/2009 informed that, the claim amount of Rs.1,46,947.07 was worked out for the period from 20/6/2006 to 20/6/2007 as per the section 126 of Electricity Act, 2003 for unauthorized use of electricity & the same is payable by the complainant.
3. Unsatisfied by the reply of respondent's IGR Cell, complainant approached CGR Forum in Schedule 'A' format on 2/8/2010 for his grievance regarding outstanding bill of A/c No. 677-261-001. He has prayed for withdrawal of charges levied in his account & requested to give interim relief of non disconnection of his connection till the final outcome of the case

In counter Respondent, BEST Undertaking has submitted its contention *inter alia* as under

4. The consumer A/c.No.677-261-001 was in the name of Shri KIV Group Industries. The supply to the premises was ON through 4 meters bearing meter No.(1) G892270, (2) R860118, (3) E964262 and (4) B015616 On 20.6.2007 during the site investigation, it was observed that the supply through meter No.R860118 was being used for commercial purpose, whereas this meter was originally sanctioned for industrial purpose
5. The case was registered for unauthorized use of electricity under Section 126 of Electricity Act,2003 and the same was informed to the consumer by our letter No.SCN/DyEGS/CHTR/14787/07 dated 10.7.2007 and asked him to file his grievances if any within seven days There was no response from the consumer. Hence, vide our letter SCN/DyEGS/Amend/CHTR/21086/07 dated 19.9.2007 the consumer has been informed that commercial tariff for meter No.R860118 is applied from 8.8.2007 and amendment claim at penal rate in respect of change in tariff would be preferred in due course
6. The amendment claim of Rs.1,46,947.87 was worked out for unauthorized use of electricity for the period 20.6.2006 to 20.6.2007. The consumer was informed to make the payment of said amount vide our "Hand Delivery" letter

DECC(G/S)/DyEGS/CHTR/648/08 dated 18.12.2008. The amount was not paid by the consumer, hence same was debited in the bill of March 2009 after informing consumer vide our letter DECC(G/S)/Amend/CHTR/49/08 dated 23.1.2009.

7. After our site investigation on 20.6.2007, the consumer had registered the requisition No.60801397 dated 7.8.2007 for extension of load for commercial purpose with change of name and removal of old meters. Accordingly, the requisition was processed. After necessary compliance by the consumer all four meters were removed and new meter No.M031320 was installed on 23.11.2007 under the same account number in the name of Rajinder Singh Chandok for commercial tariff.
8. From the 'Transfer Deed' submitted by the consumer along with requisition form for extension of load and change of name, it seems that the said transfer deed was effected on 31.8.2002 for which stamp duty of Rs.4,32,000/- was paid by the applicant vide Receipt No.3807 dated 31.8.2002 between Mr.Paul S. Varghese, Philip S. Varghese & James S. Varghese (Seller) and Mr.Rajinder Singh Chandok (Purchaser). It means the applicant had purchased the said premises in the year 2002 whereas, he had registered requisition No.60801397 for extension of load and change of name in the year 2007, that is only after our site investigation on 20.6.2007.
9. Prior to letter dated 18.12.2008 referred by the consumer, the consumer vide our letter dated 10.7.2007 and 19.9.2007 has been informed about the unauthorized use of electric supply through meter No.R860118 during the site investigation on 20.6.2007. Vide these letters consumer has also been informed that the necessary amendment will be preferred in due course. However, there was no response from the consumer. Hence, the claim was prepared for the period of one year preceding to the date of inspection at the penal rate and the same was intimated to the consumer. As per our record the said account was in the name of KIV GROUP INDUSTRIES. The present consumer Shri Rajinder Singh Chandok has not informed about the purchase of the said property till the site inspection.
10. Since the claim amount was not paid by the consumer, it was debited in the bill of March 2009. As the bill amount was not paid by the consumer he was informed vide our letter dated 7.7.2009 to pay the outstanding bill amount of Rs.1,69,646.00
11. It is not correct on the part of the consumer to state that the above said amount was arrears pertaining to previous consumer. Along with the application submitted by the consumer for extension of load and change of name he had submitted the copy of the transfer deed between 1) Paul S. Varghese, 2) Philip S. Varghese and 3) James S. Varghese and Rajinder Singh

Chandok to establish the occupancy of the said premises in his name. From the transfer deed it is observed that the said premises was transferred in the name of Rajinder Singh Chandok on 31st August 2002. However, same was not intimated to the BEST Undertaking, hence the account remained in the name of KIV GROUP INDUSTRIES. In fact a claim of Rs.1,46,947.87 was preferred to the consumer for the period from 20.6.2006 to 20.6.2007 for unauthorized use of electricity.

12. Section 126 of Electricity Act, 2003 deals with "Unauthorized use of Electricity". The description of Section 126 is as under:
"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 comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use".

The consumer's contention that nothing is pending in his account is not correct. The outstanding balance as on 25.6.2010 is Rs.1,94,389/- which includes the unpaid claim amount also.

13. The consumer's contention that he has not committed any irregularity is not correct. This can be established from our submission.
14. The applicant had purchased the premises in the year 2002 and he is using supply through meter No.R860118 for commercial purpose whereas this meter was billed under industrial tariff. During the site investigation on 20.6.2007 the above fact was noticed by us. In fact, the consumer was using "commercial" tariff for meter No.R860118 even prior to the amendment period. However, as per Section 126, claim has been preferred for only one year i.e. from 20.6.2006 to 20.6.2007.

REASONS

15. We have heard Shri J. S. Chandok and Shri E. M. Francis for the complainant and Shri N. H. S. Husain, AO, CCGS, Shri S. B. Lande, AE, CCGS, Shri S. V. Chhabria, OA CCGS and Shri A. P. Rodrigues, Sup. CCGS for respondent BEST Undertaking at length. Perused papers.
16. It is significant to observe at the outset that, the present matter on our hand has been as per the contentions raised by the Respondent BEST Undertaking, covered under Section 126 of the Electricity Act 2003. Therefore, it is urged before this forum that it does not have any jurisdiction to entertain the complaint

preferred by the complainant. Therefore, the present matter has been posted to decide whether this forum is having a jurisdiction to entertain the present complainant.

17. In this connexion, it is significant to observe that, as provided under Regulation No. 6.8 of MERC (Consumer Grievance Redressal and Electricity Ombudsman) Regulation 2006, this forum has been under obligation to see 'prima facie', whether the present matter on our hand has been covered under Section 126 of the Electricity Act 2003. The moment this forum comes to a 'prima facie' view that the present matter has been covered under Section 126, then this forum would not have any jurisdiction to entertain the present matter, for redressing the grievances raised by the complainant.
18. Admittedly, present complainant has purchased the premises wherein the electric meter under considerations were installed, from the erstwhile owner vide Deed of Transfer dtd. 31/8/2002. The respondent BEST Undertaking by adverting to the clause no. 2 in the said deed of transfer, has pointed out that, in consideration of the entire amount paid by the purchaser i.e. complainant to the erstwhile owner, the premises under consideration has been handed over by placing the present complaint in the actual vacant and peaceful possession of the said premises and further have sold, conveyed, transferred, assigned and assured all the estate, right, title, interest, claim and demand in the property in favor of the present complainant.
19. We therefore observe that, the said premises referred to above in the Deed of Transfer and as admitted by the complainant before this forum, has been owned and possessed by the present complainant from 31/8/2002. It is further significant to observe that the clause no. 6 in the said Deed of Transfer dtd. 31/8/2002 recites that the purchaser i.e. present complainant agrees to pay and discharge all taxes and / or other outgoings payable to any municipal government and / or any other authorities concerned on and from the date in a respect of the property and undertaken to keep the seller indemnified against non-payment thereof. The BEST Undertaking has further pointed out that the present complaint has further undertaken in writing on a non-judicial stamp paper of Rs. 20/- on 19/9/2007 to undertake to pay all the claims made by the respondent BEST Undertaking in regard to past arrears of electricity charges.
20. We therefore, 'prima facie' observe that, the present complainant has been in possession of the premises wherein the electric meter under consideration have been installed, from 31/8/2002 onwards. The complainant has also admitted before this forum that on some occasion he was paid electric charges. We therefore, of the 'prima facie' view that the unauthorized use of electricity supply as envisaged under Section 126 of the

Electricity Act 2003 has been taken place during the period when the said premises was in the occupation and use of the present complainant.

21. To conclude, 'prima facie' we find no error on the part of respondent BEST Undertaking to proceed against the complainant under Section 126 of the Electricity Act 2003. In the net results as envisaged under Regulation No. 6.8 of MERC (Consumer Grievance Redressal and Electricity Ombudsman) Regulation 2006, this forum does not have jurisdiction to entertain the present complaint, as it has been 'prima facie' covered under Section 126 of the Electricity Act 2003. We may hasten to observe at this juncture that the provisions of law provided under Section 126 and 127 of the Electricity Act 2003, blatantly manifest that the complainant was not left remediless or in a wilderness, as he could have raised all his contentions and grievances before the concerned authorities, for its redressal.
22. In view of the forgoing observations and discussion, we proceed to pass the following Order

ORDER

1. The complaint no. CGRF/158/2010 dtd. 3/8/2010 stands dismissed for want of jurisdiction to this forum, as envisaged under Regulation no.6.8 of MERC (CGRF & EO) Regulations, 2006
2. Copies be given to both the parties.

(Shri.S.P.Goswami)
Member

(Shri. R.U. Ingule)
Chairman