

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. S-A-81-09 dt. 12/08/2009

M/s. TCI Industries Ltd.,Complainant

V/S

B.E.S. & T. UndertakingRespondent

Present

Quorum

1. Shri. R. U. Ingule, Chairman
2. Shri. S.P. Goswami, Member
3. Smt. Varsha V. Raut, Member

On behalf of the Complainant

1. Shri. S.R. Chitlange
2. Shri. M.T. Jadhav
3. Shri. A.M. Khan

On behalf of the Respondent 1. Shri. H.Y. Bhosle, AO EDP
2. Shri. S.M. Jaunjal, AOCC 'A' ward
3. Shri. B.T. Singh, OACC 'A' ward

Date of Hearing : 4/11/2009

Date of Order : 7/12/2009

Judgment by Shri. R.U. Ingule, Chairman

M/s. TCI Industries Ltd, Mukesh Mill Compound, N.A. Sawant Marg, Colaba, Mumbai – 400 005 has come before forum for grievances regarding outstanding bills amount of tenants of M/s. Mukesh Textile Mill Compound.

Brief history of the case

1. Complainant i.e. M/s. TCI Industries had allotted staff quarters to their employees and workers, respondent had supplied electricity through meters to those employees/ workers in their name. However, these staff quarters got vacated and later on demolished. The outstanding amount of electricity dues of the occupant ex-employees remained unpaid. Complainant who is the present occupier /owner of the entire premises having electricity through Meter A/c. No. 100-027-089.
2. The Complainant states that they have been served with letter ref no. DECCA/O/S CCA/61313/2008 dt.26.09.2008, from Divisional Engineer, Customer Care (A) Ward (Respondent) by which it has requested the Complainant to pay the outstanding against supply of electricity under different accounts to the complainant's staff and workers who were occupying different premises in the complainant's staff quarter/chawl rooms. By the said letter the respondent has also informed to debit sum of Rs.7,82,471/- to the complainant's Meter account No. 100-027-089, after 15 days from the date of the said letter without further intimation to the complainant.

3. Complainants strongly dispute, object to and deny the right or authority of the respondents to recover the alleged sum of Rs.7,82,471/- from the complainants on the grounds, that the arrears which have been accrued under these meter accounts were neither in the complainant's name, nor allotted to the complainant.

There is no privity of contract between respondent and the complainant in respect of the electricity supplied by respondent to the complainant's ex-staff and workers or in respect of various electricity meter connection/account given by respondent to them without any reference/recourse to the complainant.

The complainant has never undertaken or guaranteed to pay any amount to respondent in the event of default by their staff/workers towards payment of charge for electricity which may have been supplied by respondent to them. Complainant has not been 'consumer' of Respondent.

The Complainant states that the Respondents have no right, power of authority in law to add or debit the alleged arrears of third parties (who were respondent's consumers) to Meter account no. 100-027-089 of the complainant.

4. The complainant registered their grievances in Annexure 'C' format on 17/10/2008.
5. Unsatisfied by the action taken by BEST against the complaint in Annexure 'C' format, vide BEST letter ref no. CC'A'/A.O.IGR Cell/'C' form/76519/2008 dt.17.12.08, the complainant lodged its grievances with this Forum in Annexure 'A' format on 12/08/2009.

Respondent BEST Undertaking in its written statement and during Hearing in counter has stated as under:

6. Complainant (M/s. TCI Industries) had allotted staff quarters to its employees and workers and respondent had supplied electricity through meters to these employees/ workers in their name. However, these staff quarters were vacated by the complainant without clearing electricity dues and premises were found demolished. The outstanding amount of electricity dues remained unpaid. Respondent had claimed these outstanding amount from the owner i.e. M/s. TCI Industries Ltd., Vide letter dtd. 24.09.08. Complainant who is the present occupier

/owner of the entire premises having electricity supply through Meter A/c. No. 100-027-089.

7. Respondent requested the complainant to pay the outstanding amount of 185 consumers who were its employees / workers.
8. The recovery of outstanding dues is as per Provision Regulation 10.5 of MERC Rules & Regulation of 2005
9. (a) Respondent is therefore requesting this Forum to direct complainant to pay the outstanding amount.

(b) Security Deposit will be adjusted against the outstanding amount. Balance outstanding amount is required to be paid by the owner of the premises.
10. At the time of hearing respondent submitted before the Forum that they would submit ledger folio of 185 consumers to the Forum.
11. Respondent alongwith their note dtd. 11th November, 2009 submitted ledger folio of 185 consumers before the Forum.

Reasons

12. We have heard representative of complainant company and that of respondent BEST Undertaking. Perused papers
13. A letter dtd. 26/9/2008 served on the complainant company claiming an outstanding electricity consumption charges amount of Rs. 7,82,471/-, against various meter accounts of the staff quarters provided in the premises of the complainant, has triggered of the controversy to be resolved by this forum in the instant complaint. We observe that, the complainant had provided a staff quarters to its 185 employees wherein the electricity was supplied by the respondent. As per the contentions of the complainant these staff quarters got vacated and later on demolished more than 10 years ago i.e. during 1997 to 2001. The respondent licensee cannot claim any electricity consumption charges in respect of the concerned ex-employee of the complainant as it is not a `consumer', within

meaning of definition provided under Section 2 (15) of the Electricity Act 2003. There has not been any privity of contract existing between the complainant and the respondent. The complainant has never given any undertaking or assurances to the complainant to pay any arrears of the electricity consumption charges in respect of its ex-employees. Therefore, as per the contentions of the complainant the claim of Rs. 7,82,417/- made by the respondent licensee against the complainant has been highly unsustainable in law and fact.

14. At the outset, we find the claim of electricity charges made by the respondent licensee against the ex-employees of the complainant Undertaking being hit and shattered by provisions provided under sub section (2) of section 56 of the Electricity Act 2003. We may observe that, legislature has provided a provision under section 56 enabling the electricity distribution licensee to disconnect supply of electricity when a person neglects to pay any charges for electricity consumed by it after giving not less than 15 days clear notice in writing. We further observe that by providing the provision under sub section (2) of section 56 a legislature in its wisdom has put a fetters and shackles on the electricity distribution licensee to claim the dues after a lapse of a prescribed period. The legislature therefore in order to make electricity distribution licensee prompt and vigilant in recovering consumption charges has provided a time period in the said sub section (2) of section 56.

15. We find it appropriate to reproduce the relevant sub section (2) of section 56 as it plays a vital role in resolving the controversy under our consideration. The said sub section (2) runs as under:

“Section 56 (1) xxx xxx xxx
xxx xxx xxx

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

16. A bear perusal of section 56(2) thus manifest that, the distribution licensee has been entitled to recover the electricity charges due, for a period of 2 years from the date when such sum becomes first due. An exception has also been provided thereafter that the due amount would be recoverable provided such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee should not cut off the supply of the electricity.

17. It has been contended on behalf of the respondent licensee that it has been continuously showing the amount due, being recoverable as arrears of charges for electricity supplied to the ex-employees of the complainant undertaking. In support of its contention the respondent licensee has placed before this forum the copies of the ledger showing an entry of the amount of arrears quantified for preparation of the bill to be served on the concerned 185 ex-employees of the complainant undertaking. The respondent Undertaking therefore urge that, the entry of the quantified amount of arrears in ledger shows the bill being prepared and served on the concerned consumers.
18. Assuming for a moment that the respondent Undertaking has been continuously showing the consumption charges in arrears, being recoverable from the concerned consumers. In our observation that itself is not enough providing any entitlement to the respondent licensee to recover the arrears for the entire past period. A bear perusal of the provision provided under sub section (2) of section 56 blatantly manifest that a legislature has provided a rider that in such contingency the licensee should not cut off the supply of the electricity.
19. We are therefore of the view that for claiming electricity consumption charges in arrears for past period exceeding the stipulated period of 2 years, firstly, it is obligatory on the part of the respondent licensee to show continuously the amount due being recoverable as arrears of charges for electricity supplied and at the same time not to cut off the supply of electricity. However in the matter on our hand, a bear perusal of written submission submitted before this forum dtd. 21/8/2009 manifest that, as admitted therein staff quarters of 185 consumers were vacated by the complainant and later on they have been demolished. It is also the contention of the complainant undertaking that during the period from 1997 to 2001 the staff quarters allotted to the ex-employee consumers were vacated and later on demolished. We thus, find that it is not in dispute that about from the year 2000 there has not been any electricity supply to the 184 consumers under consideration in respect of whom the complainant has been directed to pay their arrears. At this juncture, it is significant to observe that, the entries in the legislature maintained by the respondent licensee from January 2000 onward also manifest the consumption of electricity being zero unit.
20. We thus, find that such admitted fact between the litigating parties clearly lays down that, the respondent licensee had cut off the supply of the electricity some 10 years back and despite it went on showing the consumption charges being in arrears in its ledger in respect of the 185 consumers under consideration. An

attempt has been made on part of the respondent licensee to contend that the said electricity was required to be cut off at the instance of the complainant undertaking as the staff quarters have been demolished by them. Therefore, the claim made by respondent licensee should not get hit by the provisions provided under sub section (2) of section 56. In our considered view admittedly the concerned 185 consumers are not in occupation of the staff quarters provided by the complainant undertaking from last 10 years. The respondent licensee for the first time vide its letter dated 26/9/2008, demanding an arrears amount of Rs. 782471/- from the complainant. A bare perusal of the provision provided under subsection (2) of section 56, manifest intention of legislature to prohibit licensee to claim amount of arrears after the period of 2 years from the date when such sum became first due. This provision under subsection (2) of section 56 needs to be interpreted and construed keeping harmony in achieving the object of the legislature. The acceptance of the contention raised by respondent licensee, would amount to putting premium on its lethargy in claiming arrears and that would also run counter to the intention and object of the legislature. We therefore find ourselves unable to accept the said contention raised by the Respondent.

21. To conclude on this aspect, we proceed to hold that the respondent licensee has not been entitled to claim any amount of arrears of electricity consumption either from the concerned 185 consumers or from the complainant Undertaking, being prohibited by sub section (2) of section 56 of Electricity Act 2003.
22. The complainant Undertaking has also submitted before this forum that in the first instance the respondent licensee cannot claim any arrears of electricity consumption charges in respect of the concerned 185 consumers, as it has not been 'consumer' envisaged under the electricity act 2003. There has not been any privity of contract existing between the complainant undertaking and the respondent licensee. Besides it, the complainant undertaking had never given any assurance or Undertaking to the respondent licensee to pay the electricity charges in case the same has not been paid by its ex-employees occupying the quarters allotted to them.
23. In this connexion we observe that, there is no any warrant to deal with this controversy raised by the complainant, for a reason it succeeded in the instant complainant by virtue of sub section (2) of section 56 of the Electricity Act 2003. However, in an anxiety to dispose off the controversy raised in the instant complaint in its entirety we proceed to observe that, the documents placed on file by the respondent licensee in respect of ex-employee Shri Mahadev Govind

Vaingankar, occupying room no. 11, chawl no. K manifest that on the reverse of it against clause (g), there is a mention in regard to a change of name from Colaba Textile Mill Pvt. Limited meter No. 358781. Same is the case in respect of another ex-employee Shri Laxman Rupa occupying room no. 1, chawl no. K showing against clause (g) a change of name from Colaba Textile Pvt. Limited meter no. 358787.

24. We therefore, uphold the contentions raised by respondent licensee that initially the meters provided in the staff quarters of the complainant Undertaking were standing in its name and later on the name of the occupant ex-employee was entered as a `consumer' with the respondent licensee after completing the necessary procedure. We therefore, hold that, it therefore cannot lie in the mouth of complainant to submit that the respondent BEST has supplied electric connection to its ex-workers without any reference / recourse to the complainant. In this context, we refer to its written submission dtd. 28/7/2009 placed before us. Besides it, significant to observe that, the respondent licensee has provided the electricity supply with meter to the concerned 185 consumers as they were occupying the staff quarters allotted to them by complainant undertaking. Explicitly therefore, the electricity supply with meter was provided to the staff quarters of the complainant as contended by the respondent licensee and the employees occupying such quarter thereafter became the consumer. We thus, find that, one of the essential conditions to avail the electricity supply, the concerned consumer was required to be the employee of the complainant undertaking. In view of this set of facts we do not find any merit in the contentions raised by the complainant that there being no privity of contract existing between complainant and the respondent licensee and the erstwhile has been merely the third party.
25. To reiterate, our aforesaid observation however does not provide any assistance and further the case of the respondent licensee for a simple reason that their claim of arrears of Rs. 7,82,471/- made against complainant Undertaking has been found by us being highly unsustainable in law by virtue of provisions provided under sub section (2) of Section 56 of the Electricity Act 2003. In the net result, the complaint needs to be allowed along with prayers made therein.

Dissenting Judgement by Shri S.P. Goswami, Member

26. Having received a notice of payment from respondent for the unpaid electricity charges of their ex-employees the complainant M/s. TCI Industries Ltd. has come before this forum for restraining respondent not to transfer the old arrears of their

employees to their account. Main weightage in their complaint is given by the complainant that the old arrears should not be transferred to them & not for the bill of arrears being time barred.

27. The complainant have not complaint the amount being old and therefore they are not liable to pay, under the provision of Section 56 (2) of EA 2003, but in fact prayed for the charges to be restricted to 6 months.
28. The complainant had also expressed that the total charges be restrained to six months realizing that they are responsible to pay unpaid charges of their employees being the owner of the premises, as envisaged under E.A.2003 section 2 sub-section (15) for being a consumer and section 2 sub-section (51) for being owner of the premises.
29. This Forum has agreed in principle that the complainant is duty bound to make recovery of the unpaid electricity bills of their ex-employees through the final bills. Hon'ble Justice M.S. Rane as President of The Maharashtra State Consumer Disputes Redressal Commission, Mumbai has opinioned in the matter of BEST Undertaking & CPWD that it is the duty of employer to recover such electricity bills from their employees. Copy of the interim order passed by the Hon'ble Justice Shri Rane has been placed before us.
30. Sub Section (2) of Section 56, of E.A. 2003 provides as follows:
“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.
31. The Section 56(2) has been interpreted by the Hon'ble High Court in the matter of Brihanmumbai Municipal Corporation (through the General Manager, BEST Undertaking) Vs. Yatish Sharma & Ors. (In the High Court of Judicature at Bombay, Writ Petition no. 264 of 2006), wherein it is concluded that any sum due to a company becomes first due when the bill is served.

- 32 I would like to site the latest Judgement given by the two bench judges (Smt. Ranjana Desai & A.A. Sayaed, JJ) of Hon'ble Bombay High Court in the matter of M/s. Rototex Polyester & Anr. Vs. Administrator, Administration of Dadra & Nagar Haveli (U.T.), Electricity Dept, Silvassa & Ors. [2009(5) ALL MR 579] which has confirmed the above interpretation of section 56(2) & mentioned as follows:

“We are in respectful agreement with the learned Singe Judge. In this case the demand notice with revised bill dtd. 03.10.2007 was served on 09.11.2007. Therefore the revised bill amount first becomes due on 09.11.2007. Hence, section 56(2) of the Electricity Act 2003 would not come in the way of the respondents for receiving the said amount under revised bill.”

- 33 In the instant case the bill is served to the employer company on 26.09.2008 and the arrears amount is shown continuously as the bills were being served regularly including for 4 nos. of meters which were existing on the name of complainant company, satisfying all requirement under Section 56(2) of EA 2003, & therefore the said section would not come in the way of the respondents for receiving the arrears from the complainant's ex-employees. Further, the respondent has not disconnected the electric supply of the complainant to whom the outstanding arrears are asked.
- 34 The CGRF is not a court of law like a regular Court. It is clear from the very fact that the advocates are not allowed to appear before the forum & the judgements be based on principle of natural justice as envisaged in clause no.3.1 of MERC (CGRF & EO) Regulation, 2006. The proceedings are supposed to be centered around the main compliant of the complainant and no way it is to be stretched to possibilities of legal terminology else appearance of the advocates in CGRF would have become essential.
- 35 If this forum allow the organizations or employers not to hold responsible for recovery of the dues of their employees, in spite being convenience that it's their duty and responsibility then it will lead organizations to behave irresponsibly and to manipulate by taking various supply connections of their establishments on their employees name and washing away their hands after accumulation of arrears.

- 36 The Hon'ble Supreme Court has observed that the public property (in this case the electricity charges) zealously be protected by the various forums. It may therefore be concluded that the complainant company be asked to pay full charges of electricity of their ex-employees waiving the D.P. and Interest.
- 37 For the forgoing reasons we proceed to pass the following order by virtue of majority's view.

ORDER

1. The Complaint No. S-A-81-09 dt. 12/08/2009 stands allowed.
2. Respondent licensee has been restrained from claiming any arrears of electricity consumption charges from the complainant undertaking in respect of its ex-employees under consideration.
3. Copies to be given to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member