

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-B-84-09 dt . 17/09/2009

Mrs. Saeeda Saeed KaziComplainant

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.Mrs. Saeeda Saeed Kazi

2.Mr. Saeed Ahmed Kazi

3.Mr. Ahmed Mansoor

On behalf of the Respondent 1. Shri. Maruti Dagdu Sanap, AOCC,'B' ward

2. Shri. Narayanlal D. Mehta, Supdt.CC 'B'ward

Date of Hearing: 27/10/2009

Date of Order : 26/11/2009

Judgment by Shri. R.U. Ingule, Chairman

Mrs. Saeeda Saeed Kazi, Grd. flr, 6-A, Karachiwala Bldg, (Husaini Mansion), 107, Ibrahim Rehmatulla Road, Mumbai – 400 003, has come before forum for grievances regarding outstanding amount of electricity bill A/c No 425-241-041*1.

Complainant has submitted in brief as under

1. As per respondent A/c no. 425-241-041*1 is standing in the name of Mallika Shakeel Shaikh for the premises viz. 6-A, Grd. floor, 107, Karachiwala Bldg, plot no. 107, E.R. Road, Mumbai-400 003. Meter no. MO20963 pertaining to this A/c was removed on 30/1/2003 for non payment of bill amount.
2. Total OS amount against the said A/c. is Rs.1,53,793.75 including delayed payment charges and interest on arrears.
3. As per complainant Mrs. Saeeda Saeed Kazi, she purchased above said premises on 20/5/2005. She approached respondent for reconnection of electric supply for the same premises (A/c no 425-241-041*1). At that time respondent informed complainant that OS amount of Rs. 1,53,793.75 is still remained unpaid by earlier consumer.
4. The OS amount is pertaining to the old consumer it is the responsibility of the new consumer / owner / occupant of the premises as per Electricity Act 2003.
5. As per complainant said OS amount was before purchasing of said premises.
6. Complainant filed Annexure 'C' form dtd. 24/06/2009 requesting to revise the OS amount for 6 months as per MERC Regulation and give reconnection.

7. As per respondent on receiving Annexure 'C' form from complainant, respondent had informed complainant vide their letter no. DECC'B'/AOCCB/C-Form/OS/337/09 dtd. 7/7/2009 that respondent's management decided to waive the delayed payment charges and interest charges on OS amount of Energy Bill and to recover only net unpaid Energy charges. Hence, net payable amount is Rs.1,09,914.72.
8. Unsatisfied by the action taken by respondent against their complaint in Annexure 'C' format, vide their letter no. DECC'B'/AOCCB/C-Form/OS/337/09 dtd. 7/7/2009 the complainant lodged their grievances with CGR Forum in Annexure 'A' format on 17/09/2009.
9. Complainant once again request the Hon'ble Forum to direct respondent authority to revise the OS bill as per MERC rules date 2003.

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

10. As per respondent A/c no. 425-241-041*1 is standing in the name of Mallika Shakeel Shaikh for the premises viz. 6-A, Grd. floor, 107, Karachiwalal Bldg, plot no. 107, E.R. Road, Mumbai-400 003. Meter no. MO20963 pertaining to this A/c was removed on 30/1/2003 for non payment of bill amount. Thereafter, old consumer had paid Rs.5,000/- on 28/10/2003. At present, total OS amount against the said A/c. is Rs.1,53,793.75 including delayed payment charges and interest on arrears. When new consumer Mrs. Saeeda Saeed Kazi approached to respondent for new connection that OS amount of Rs. 1,53,793.75 was still remained unpaid by the earlier consumer. Therefore, complainant filed Annexure 'C' form dtd. 24/06/2009 requesting to revise the OS amount for 6 months as per MERC Regulation and give reconnection.
11. As per respondent on receiving Annexure 'C' form from complainant, respondent had informed complainant vide their letter no. DECC'B'/AOCCB/C-Form/OS/337/09 dtd. 7/7/2009 that respondent's management decided to waive the delayed payment charges and interest charges on OS amount of Energy Bill and to recover only net unpaid Energy charges for the cases whose meter was removed prior to 1/10/2006 (Administrative Order No. 164 dtd. 17/3/2009). In this case Meter No. MO20963 was removed on 30/1/2003 for non payment of bill and there is total OS amount of Rs.1,53,793.75 including D.P. Charges of Rs.11,961.61 & interest of Rs.31,917.42. Hence, net payable amount is Rs.1,09,914.72. Thereafter, complainant was requested to pay the same to enable his to process further in the matter. However, instead of paying the above

mentioned OS amount, complainant had submitted Annexure 'A' to CGRF for revision of OS amount as per MERC Regulation.

12. The said outstanding amount is pertaining to earlier consumer.
13. The OS amount is pertaining to the old consumer it is the responsibility of the new consumer / owner / occupant of the premises as per Electricity Act 2003. Therefore, when new consumer (applicant) approached to respondent's office, they have informed complainant about the said OS amount as stated by the applicant.
14. As the applicant (complainant) is present owner of this premises, it is the responsibility of the applicant (complainant) to pay the OS amount of electricity charges pertaining to this premises.

Reasons

15. We have heard the representative for the complainant and that for the respondent at length. Perused documents placed on record.
16. We find the controversy raised in the instant complaint, being moving in a very narrow compass therein we observed that as per the case of the complainant she has purchased the premises on 20th May, 2005 at the relevant time, there was no any supply of electricity to the said premises. The electric meter previously installed in the said premises was removed by the respondent for non-payment of electricity charges by the previous occupier. The complainant therefore applied for providing a new electric meter to the said premises vide their requisition dtd. 5th March, 2007. Therefore, the complainant learnt about the charges in arrears being of Rs.1,53,793.75. Therefore, on contacting the official of the respondent, the complainant submitted a new requisition on 5/5/2009. On account of huge electricity charges shown in arrears, the complainant decided to fill up 'C' form on 24/6/2009 for revised bill for 6 months only, as per MERC regulations.
17. In counter the respondent undertaking has submitted that for non-payment of the bill the electric meter standing in the name of erstwhile occupier Smt. Malika Shaikh was removed on 30/1/2003. Thereafter, the erstwhile consumer had paid only Rs.5,000/- towards the arrears on 28/10/2003. The total outstanding amount against the said account has been said Rs.1,53,793.75 including D.P. Charges and interest on arrears. On receiving application from the complainant in Annexure 'C' form, she has been informed by the respondent vide their letter dtd. 7/7/2009 about the decision taken by the management of the respondent to waive the D.P. Charges and the interest there upon and to recover only net unpaid energy charges namely Rs.1,9,914.72. Accordingly, the complainant was informed to pay the said net charges in order to avail the electric supply with meter. The complainant however refusing to pay such amount has prayed the

relief to this Forum for raising revised bills for 6 months as per MERC Regulations.

18. On the backdrop of the controversy referred to above we observed that in view of a well settled principles of law emanating from the decision of the Full Bench of a Supreme Court in a case of **Isha Marbles V/s. Bihar State Electricity Board & Anr [(1995)2SCC648]** unpaid electricity charges on the part of the erstwhile occupier / owner cannot run as a 'charge' on the premises. In our view, it is therefore explicit that the complainant cannot be directed by the respondent to pay even the net payable amount of Rs.1,9,914.72 which was required to be paid by the erstwhile occupier Smt. Malika Sakil Shaikh.
19. The complainant in support of her contention that she has been occupying the premises under consideration, has placed on file and a memorandum of understanding on affidavit dtd. 20th May, 2005. The complainant has also placed on file a registration certificate of establishment in respect of the said premises under consideration, issued by the inspector and authority, under the Bombay Shop Establishment Act, 1948. We therefore hold that the complainant has been in occupation of the premises under consideration for which she has submitted an application for obtaining a electric supply.
20. To conclude, we observed that the complainant cannot be held liable to pay the arrears of Rs.1,9,914.72 which was required to be paid by the erstwhile occupier. Significant to observe at the juncture that in the complaint filed in schedule 'A' the complainant has sought relief from this Forum for allowing her to pay a revised bill for 6 months as per MERC Regulation. In this connexion we observed that a proviso provided under regulation 10.5 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 restrict the payment of electricity charges to a maximum period of 6 months of the unpaid charges of electricity supplied to such premises. We wish to clarify at this juncture that the complainant has sought a relief for allowing her to pay a revised bill for 6 months as per said MERC Regulations. Forum is required to solve a controversy that raised in the complaint by the complainant. Evidently, therefore the controversial aspect to be resolved by this Forum remain confined to payment of the net outstanding amount of Rs.1,9,914.72. Accordingly, we have resolved this controversy as observed above and proceed to allow the complaint with relief sought therein.

Dissenting judgement by Mrs. Varsha Raut, the Member.

21. Saeeda Kazi complainant in this case has bought the premises on 20/5/2005 from the then owner Malika Shaikh whose meter was disconnected due to non payment on 30/1/2003.Respondent has

sought to recover the o/s dues of the then consumer Malika from Saeeda Kazi new occupant/ consumer as per regulation 10.5.

22. I would like to bring attention to the fact mentioned by Saeeda Kazi – new occupant in her 'c' form that Malika Shaikh resides in the same building on 2nd floor. At the time of hearing too, this was asked to Respondent about why recovery was not made by the then consumer who was /and is still staying in the same building?
23. At the time of hearing, the Forum also enquired about the same and asked to place any record of follow up with the then consumer for outstanding dues but neither satisfactory answer nor any documentary evidence was provided by Respondent. It is pertinent to note here that this old consumer is in the vicinity of the Respondent who is being served electricity bills every month by Respondent as she is residential consumer of Respondent.
24. On the background of this I fail to understand why Respondent has not recovered their dues from this consumer? Is it fair to just rely on the legal provisions for recovery until new consumer is arrived and burden him with the dues of the then consumer just because law permits us? In para 20 Learned Chairman and learned member have also agreed that previous consumer is not liable to pay.
25. Learned Chairman and learned member have observed that the complainant has admitted and undertaken to pay 6 months electric charges as provided under regulation 10.5. I disagree with learned Chairman and Learned member of charging new consumer i.e. Saeeda Kazi just because she has shown willingness to pay as per regulation 10.5 to get connection which was disconnected due to non-payment of the old consumer. I feel it will be unfair on my part to allow old consumer to go scot-free when the Respondent still can get hold of the old consumer. Respondent is well equipped whereby he can recover the o/s dues by way of suit of recovery.
26. The forum being a statutory body set up with a view to adjudicate the grievances of the electricity consumers and protect the interest of consumers and inform them about their rights. I am of the opinion that just because complainant has volunteered or agreed to pay certain amount either on account of ignorance of his rights or in good faith, this forum will not be justified in asking such complainant to pay such amount by ignoring his rights.
27. I am therefore of the view that with due respect I am unable to concur with the view of the majority and therefore say that the respondent in this case is liable to provide electric connection to the complainant without demanding any amount from her on account of past o/s dues of previous consumer.

28. For the forgoing reasons we proceed to pass the following order by virtue of majority's view.

ORDER

1. The complaint stand allowed.
2. The complainant has been allowed to pay the revised bill for 6 months as envisaged under Regulation 10.5 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.
3. Copies be given to both the parties.

(Shri. R.U. Ingule)
Chairman

(Shri.S.P.Goswami)
Member

(Smt. Varsha V. Raut)
Member