

BEFORE THE COMPLAINANT GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of E.A. 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai - 400 001

Telephone No. 22853561

Representation No. S-C-164-2012 dtd. 09/08/2012

M/s Ansh EnterprisesComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : i. Shri R U Ingule, Chairman

Members

- ii. Shri S P Goswami, Member
- iii. Shri S M Mohite, Member

On behalf of the Complainant : Shri. Niranjan P. Sashittal

On behalf of the Respondent : i. Shri. P. Subhash, DECC(C)
ii. Shri H.K. Shendge, Supdt. O&M(CS)

Date of Hearing : 05/09/2012

Date of Order : 08/10/2012

Judgment by Shri. R.U. Ingule, Chairman

M/s Ansh Enterprises, Shop no. 4., D.R. Wagle Trust Bldg., 362 Shankarsheth Marg, Adjacent to Thakurdwar Post Office, Mumbai - 400 002 for their grievance regarding (i) recovery of arrears of other a/c no. 354-127-031 and (ii) demand notice served u/s 126 for unauthorized use of electric supply.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 21/04/2012 for their grievance regarding two demand notices for Rs. 8,145/- u/s 56(1) and Rs. 56,034/- u/s 126 of Electricity Act (for short E.A.) , 2003 issued by BEST Undertaking which is absurd, time barred, unauthorized, illegal & untenable and then collecting the same defiantly under the threat of disconnection of supply to their business premises. The complainant has approached CGRF in schedule 'A' dtd. 30/07/2012 (received by CGRF on 07/08/2012) as no remedy is provided by the Distribution Licensee regarding their grievance. The complainant has requested the Forum to direct the Respondent to refund the amount paid by him along with interest and also the compensation.

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

- 2.0 First intimation to pay outstanding dues left by Shri Vagal was sent to the consumer under reference since during site inspection on 10.03.2011, it was noticed that out standing premises previously used by Shri Vagal are occupied by M/s. Ansh Enterprises and supply thereat was being used through its meter meant to record consumption for its Account No. 354-127-037.
- 3.0 As such outstanding bills amounting to Rs. 8145/- of Shri Vagal was recovered from M/s. Ansh Enterprises in terms of Rule 10(5) MERC Regulations 2005, which states that dues pending of Ex-consumer is to be paid by existing consumer, who is using the premises at present.
- 4.0 As regards our claim under Section 126 of E.A., 2003, no comments are given since in earlier case of Shri Mohd. Hussain Ali Mohd. Qureshi this Forum has held that cases under 126 of E.A., 2003 does not come within purview of CGRF.

REASONS :

- 5.0 We have heard Shri Niranjn Sashittal for the complainant Enterprises and for the Respondent BEST Undertaking Shri P. Subhash, DECC(C) and Shri H.K. Shendge, Supdt. O&M(CS). Perused papers.
- 6.0 In the instant complaint, the complainant Enterprises has assailed the two demands viz. of Rs. 8,145/- and Rs. 56,034/- made by the Respondent BEST Undertaking, being time barred, illegal and unauthorized one.

I. CONTROVERSY IN REGARD TO CLAIM OF RS. 8,145/-.

- 7.0 In this context this Forum observes that the said unpaid amount of Rs. 8,145/- has been in respect of the deceased consumer Shri Y.M. Vagal who was provided with meter 817130 and D818099 and these meters were removed on account of non-payment of regular electricity bill on 13/08/2001. We further observe that the total outstanding amount in respect of the said consumer for a period from August, 1998 to July, 2001 was Rs. 15,979.32. The said amount was included energy charges of

Rs. 8,114.49, DP charges of Rs. 4,570.44 and interest of Rs. 3,294.39. However, as per the PO 164 dtd. 17/03/2009, the Respondent BEST Undertaking proceeded to waive the DP charges and interest on the said arrears amount and proceeded to recover only the energy charges of Rs. 8,145.00 from the complainant Enterprises.

- 8.0 It is further significant to observe that by providing the information under the Right To Information (for short RTI) Act, 2005, the Respondent BEST Undertaking vide its letter dtd. 16/02/2010 has stated that the said arrears amount of energy charges has been worked out for a period from August, 1998 to July, 2001 considering average bi-monthly bill of Rs. 300.00 payable by the deceased consumer Shri Y.M. Vagal.
- 9.0 This Forum further observes that the energy charges in arrears of Rs. 8,145.00 payable by the ex-consumer, Late Shri Y.M. Vagal, sought to be recovered from the present complainant by the Respondent BEST Undertaking, on a ground that the portion of the premises which was previously occupied by Late Shri Y.M. Vagal has been taken into possession and later on provided with the electricity supply through its meter by the present complainant Enterprise.
- 10.0 The said stand taken by the Respondent BEST Undertaking was informed to the complainant vide its letter dtd. 30/12/2009. Accordingly we find placed on file the copy of this letter having the acknowledgment of the complainant at the foot of it and placed before this Forum at Exhibit 25-L. Therein the Respondent BEST Undertaking has informed the complainant that as per the rule no. 10(5) provided under the E.A., 2003, the dues pending of ex-consumer is to be paid by the existing consumer i.e. the complainant, as it has been using the premises at present which was previously occupied by ex-consumer Shri Y.M. Vagal. It was further informed to the complainant for paying the dues within 15 days or else there would be disconnection of existing supply provided through the meter allotted to the complainant Enterprises.
- 11.0 In a considered view of this Forum before considering the controversy whether the Respondent BEST Undertaking has been entitled to recovery the dues of Rs. 8,145/- payable by the ex-consumer, Shri Y.M. Vagal from the present complainant, either u/s 56(1) of the E.A., 2003 or Maharashtra Electricity Regulatory Commission (for short MERC) Regulation 10(5), it would be appropriate and justified to ascertain whether the said unpaid energy charges have been based on any cogent evidence at all.
- 12.0 On perusing the entire documents placed on file before this Forum, we observe that as admitted by the Respondent BEST Undertaking in the information provided to the complainant dtd. 16/02/2012 under the RTI Act, 2005, it has been clearly stated therein that the said arrears amount has been worked out on the basis of average bi-monthly bill of Rs. 300/- for a period from August, 1998 to July, 2001. Admittedly, both these meters provided to ex-consumer Shri Y.M. Vagal have been disconnected on 13/08/2001 by the Respondent BEST Undertaking for non-payment of electricity charges.
- 13.0 In this context it would be significant to advert to the Ledger Folio placed on file by the Respondent BEST Undertaking for a period from February, 2000 till November, 2010. A bare perusal of this Ledger Folio placed before this Forum at Exhibit 15/C blatantly manifest that from February, 2000 till November, 2010 both the meters have been showing consistent reading as 3698 in respect of meter no. D817030 and 2642 in respect of meter no. D818099. It is therefore evident that there has not been any record available with the Respondent BEST Undertaking manifesting any consumption

of electricity unit by its ex-consumer Shri Y.M. Vagal from June 1994 till November, 2010, which covers the period under consideration viz. from August, 1998 to July, 2001.

- 14.0 In the aforesaid blatantly manifest facts and circumstances this Forum finds that the Respondent BEST Undertaking does not have *any iota of evidence* with it showing any consumption of electricity by its ex-consumer Shri Y.M. Vagal for a period from August, 1998 to July, 2001. This Forum further observes that it is highly unsustainable on the part of Respondent BEST Undertaking to proceed to work out the alleged electricity charges in arrears from its ex-consumer Shri Vagal by considering average bi-monthly bill of Rs. 300/-. This Forum does not find any supporting evidence placed before us showing as to what is the basis for considering the average bi-monthly bill of its ex-consumer Shri Y.M. Vagal being Rs. 300/-.
- 15.0 To conclude on this aspect, this Forum holds that the alleged energy charges in arrears of Rs. 8,145/- in respect of ex-consumer Shri Y.M. Vagal and now sought to be recovered from the present complainant, Enterprises being highly arbitrary, absurd and ill-founded one. There is no foundation at all to build such an edifice thereon.
- 16.0 This Forum therefore refrains from considering the merits into the contention whether the Respondent BEST Undertaking can recover such arrears which as hold by this Forum has been *non-est* & unlawful, from the present complainant Enterprises u/s of E.A., 2003 and / or MERC Regulation 10(5), as it would be a sheer futile and abortive exercised which would merely burden this order.

II. CONTROVERSY IN REGARD TO CLAIM OF RS. 56,034/-.

- 17.0 Now we proceed to consider the second controversy raised by the complainant in respect of claim of Rs. 56,034/- made u/s 126 of the E.A., 2003. In this context the complainant has heavily assailed the issuance of notice by the Respondent BEST Undertaking u/s 126 of the E.A., 2003 demanding Rs. 56,034/-, by contending that the complainant has been using electricity provided to it by the Respondent BEST Undertaking through its meter sanctioned in its name for the area approved by the Respondent BEST Undertaking itself. Therefore, in no manner such use of electricity can be called as unauthorized one to attract the provision provided u/s 126 of the E.A., 2003.
- 18.0 In counter, the Respondent has raised contention that the demand for Rs. 56,034/- has been raised u/s 126 of the E.A., 2003, for unauthorized extension of supply, to the area earlier occupied by ex-consumer Shri Y.M. Vagal through the meter installed to record the consumption of electricity for shop no. 4 having a/c no. 354-127-034. The area of shop no. 4 occupied by ex-consumer Shri. Y.M. Vagal was at the rear end of the said shop. The said area was separated from the area that occupied by the complainant Enterprises. It is therefore ex-consumer Shri Y.M. Vagal was provided with two meters viz. D 817130 and D 818099 which were later on removed on 13/08/2001.
- 19.0 The Respondent BEST Undertaking by placing on file an inspection report dtd. 10/03/2011 at Exhibit 35/C, pointed out that the separate part of the shop occupied by the ex-consumer Shri Y.M. Vagal was supplied with the electricity through the meter provided to the complainant Enterprises.

- 20.0 The Respondent BEST Undertaking in order to establish that the ex-consumer Shri Y.M. Vagal was occupying a separate area of shop no. 4, placed a reliance on letter of the complainant dtd. 14/03/2011 (Exhibit 41/C) and brought to the notice of this Forum that in this letter the complainant has candidly admitted that the area of shop no. 4 was *exclusively used by Shri Y.M. Vagal* and the *same was unlocked* and found no sign of any electricity connection, no meter and no switch board provided therein. The premises used by Shri Y.M. Vagal was part of the shop no. 4 rented out to the complainant. The said *closed and unused portion* has created nuisance because of the rats and the termite and when nobody was representing Shri Y.M. Vagal to claim the said area, his sister had *provided the keys* to the complainant. The complainant therefore got the said area cleaned, disinfected and recovered.
- 21.0 The Respondent BEST Undertaking also placed a reliance on a letter dtd. 09/03/2010 addressed to the Chief Engineer, Shri S.G. Hirlekar (Exhibit 47/C) under the signature of partner of the complainant Enterprises, wherein it has been candidly admitted that the premises was exclusively in the possession of Shri Y.M. Vagal and the complainant, Enterprises had no interest in his business. Thereafter the complainant has further candidly admitted that it has *extended its area* at much later stage when it took over the said area used by Shri Y.M. Vagal from a lady believed to be sister of Shri Y.M. Vagal.
- 22.0 On the backdrop of the aforesaid facts that reveals from the letters addressed by the complainant Enterprises to the Respondent BEST Undertaking , it would be significant to advert to the contentions raised by the complainant before this Forum. Therein it has been *inter-alia* contended that, it has been ridiculous to say that the complainant has enlarged or extended its own area which was already part of shop no. 4 and from past several decades, the same has been exclusively in possession of complainant. Shri Y.M. Vagal had came and gone at the pleasure of the complainant during a short interim period. Shri Y.M. Vagal shared a small area of shop no. 4 with the complainant. Shri Y.M. Vagal never occupied any enclosed independent area within shop no. 4. Right from the beginning till this date without break the complainant, Enterprises has been authorized to use electricity through its own meter in entire shop no. 4, ground floor including a small area which the complainant had shared with Shri Y.M. Vagal.
- 23.0 This Forum thus finds that by filing the instant complaint a totally contradictory contentions have been raised by the complainant. At this juncture this Forum finds it expediting to advert to regulation no. 6.8 provided under MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation, 2006. Therein it has been provided that if the Forum is *prima-facia* view that the grievance referred to it falls within the purview of any of the following provision of the act, the same shall be excluded from the jurisdiction of the Forum. Thereafter under clause (a) of said regulation 6.8 "unauthorized use of electricity", as provided u/s 126 of the E.A., 2003, has been excluded from the jurisdiction of this Forum.
- 24.0 In the aforesaid observation and discussion therefore this Forum is of a *prima-facia* view that the Respondent BEST Undertaking has succeeded by placing before this Forum a plethora documentary evidence that there has been an "unauthorized use of electricity" in the area in the past occupied by its ex-consumer Shri Y.M. Vagal by the complainant Enterprises, attracting provision provided u/s 126 of the E.A., 2003. Therefore this Forum refrained from entertaining the grievance raised in the instant

complaint by the complainant Enterprises in regard to amount of Rs. 56,034/- claimed by the Respondent BEST Undertaking u/s 126 of the E.A., 2003 for want of jurisdiction.

- 25.0 In the aforesaid observations and discussion the complaint should partly succeed and accordingly we proceed to pass the following order.

ORDER

1. Complaint no. S-C-164-2012 dtd. 09/08/2012 stands partly allowed.
2. It is hereby declared that the amount of Rs. 8,145/- claimed by the Respondent BEST Undertaking from the complaint has been illegal and unsustainable in law. In such contingency the said amount paid by the complaint to the Respondent BEST Undertaking be refunded within a period of one month commencing from the date of receipt of this order.
3. It is further declared that this Forum does not have jurisdiction to entertain the dispute in regard to energy charges of Rs. 56,034/-, the same being in *prima-facia* of the Forum covered u/s 126 of the E.A., 2003.
4. The compliance of this order be informed to this Forum within a period of one month there from.
5. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman