

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)-125-2011 dt . 27-07-2011

Shri. Namdev B. ShirkeComplainant

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 Davinder Singh Sudan
2. Shri Abdul karim

On behalf of the Respondent : 1. Shri D.R.Ohol, DECC(F/N)
2. Shri V.P.Sawant, AOCC(F/N)
3. Shri S.T.Tayade, AECC(F/N)

Date of Hearing : 07-09-2011

Date of Order : 15-09-2011

Judgment by Shri. R.U. Ingule, Chairman

Shri. Namdev B. Shirke, 451, Grd flr, Sunder Kamla Nagar, Bhau Daji Road, Sion, Mumbai - 400 019 has come before the Forum for his grievances regarding outstanding arrears pertaining to of A/c no. 689-516-011.

Complainant has submitted in brief as under :

1. The complainant has approached to IGR Cell of the Respondent on 28.10.2011 for his grievances regarding outstanding arrears pertaining to of A/c no. 689-516-011.
2. Not satisfied with Respondent's IGR Cell reply dtd.23/12/2010, the complainant approached to CGRF in schedule 'A' on 25-07-2011. He has requested the Forum to waive the supplementary arrears of Rs.62225.11 & delayed payment charges if any and give direction to Respondent to refund the Rs.10,000/- which was paid by the complainant's son under the threat of disconnection electric supply.

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

3. Shri Namdeo B. Shirke, having A/c. No.689-516-011 was using supply through Meter No.D962068 at 276, Ground Floor, Sunder Kamla Nagar, Bhau Daji Road, Sion, Mumbai - 400 013. On scrutiny of outstanding index register for the year 2004-2005, Book No.689, it was observed that meter for this A/c. No. having Installation No.0958474 was removed on 16-04-2001 & outstanding arrears were amounting to Rs.64,225.11. In order to recover the outstanding amount, investigation was carried out by STO (R&D) (F/N) and as per the report dated 18-06-2010, outstanding premises was getting supply through A/c.No.689-516-004, Meter No.E052578. Consumer was asked to pay this amount vide our notice dated 17-06-2010. Consumer have paid Rs.10,000/- and also gave a letter agreeing to clear the outstanding bill. His representative submitted complaint under Annexure 'C' Form. In the complaint, it is stated that, amount of Rs.62,225.11 debited in his existing A/c. No. 689-516-004 is not correct since the notice is send on 17-06-2010 that is after 9 years. He has requested to return Rs.10,000/- in cash. Consumer was informed vide letter dated 23-12-2010 that since he did not turn up to pay the arrears, the outstanding amount was debited to their present A/c. No.689-516-004 and therefore their request to waive the outstanding claim amount was not considered. From the above facts, it is clear that, consumer had agreed to the fact that, he was aware about his outstanding arrears and out of which he had paid Rs.10,000/- and requested to give time as his financial position was critical. Subsequently Shri Shirke approached to CGRF under schedule 'A' on 25-07-2011. He requested the forum to waive the supplementary outstanding arrears of Rs.62,225.11 and delay payment charges & refund Rs.10,000/- which was paid by his son. He has raised 11 points in this respect.
4. Consumer is using electric supply through Meter No.F052578, A/c. No.689/516/004*2 previous A/c. No.689-540-009 for Room No.451, Sunder Kamla Nagar, Bhau Daji Road, Sion, since 27-01-2006 is true. However, Consumer was also getting supply through Meter No.D843215,

A/c. No.689-516-011 from 04-05-1984 for R.No.276, Sunder Kamla Nagar, Bhau Daji Road, Sion, Mumbai - 22. Meter was removed on 16-04-2001 for amendment of Rs.61,816.98.

5. In our letter dt.17-06-2010 send to consumer it is stated that he was requested to pay O/S amount or register his grievances if any with documentary evidence within 15 days from the receipt of this letter failing which O/S amount Rs.62,225.11 will be debited to existing A/c. No. 689-516-004. Since he did not approach within this period amount was debited to his new A/c. No.689-516-004.
6. As per Site Inspection Report of STO, R&D, dt.18-06-2010. He had inspected site and met Namdeo Shirke, O/S premises was getting supply through Meter No.E052578 against A/c. No.689-516-004 and hence notice dt.17-06-2010 was given to consumer. It is true that no additional papers were given alongwith notice. As per our record this is a defective meter claim amount.
7. Consumer's Son Shri Vilas N. Shirke approached in the office & given letter on 01-07-2011. As per letter he had agreed that meter was existing to their premises. It was removed for non-payment of bill. He wishes to clear the outstanding bill. At present his financial condition is very bad. He requested to waive Delayed Payment Charges & interest & give final bill.
8. Consumer have paid Rs.10,000/- on 13-09-2010 as on A/c. against this A/c. No.689-516-004*2. It is not true that the consumers supply was disconnected.
9. Considering defective meter claim amount of Rs.61,816 = 98 & Rs.538/- arrears less Rs.130/- deposit = Total O/S amount Rs.62,225/- are the arrears of payment. Outstanding Register shows this amount of Rs.62,225 = 11 to be recovered from Namdeo B. Shirke having A/c. No. 689-516-011. Installation Card bearing No.958474 is also showing amendment of Rs.61,816=98. CIS of A/c. No.689-516-011 also shows pro bill outstanding Rs.61,816.98.
10. Last bill amount of Rs.538/- is dt.Nov.2001 & not 01-11-2003, meter was removed on 16-04-2001 however A/c. was not deleted from file. O/S. ledger shows the arrears amount of Rs.62,225.11
11. Inspection was carried out prior to 18-06-2010. The report is submitted on 18-06-2010.
12. Consumer applied for electric supply on 23-11-2005 for reconnection to premises having Room No.276 at same address & observed to have subsequently made changes in this application such as (a) he has changed the room No. to 451, (b) A/c. No. which was written as 689-516-011 is changed to 689-540-009 (bill enclosed with application shows

this A/c. No.) & (c) Installation No.958474 is also changed to 987046 which is having A/c. No.689-540-009.

13. Above referred changes were made on the application No.90660475, dt.23-11-2005 by the consumer & he got reconnection to the premises under R.No.451 where outstanding arrears in Installation No.987046 A/c. No. 689-540-009 was Nil & after giving reconnection New A/c. No. was given to him i.e. 689-516-004 for same Installation No. i.e. 987046.
14. Due to the changes made in application O/S amount on R.No.276, A/c.No.689-516-011 remained un-noticed. Consumer's intention therefore was to keep the undertaking in dark and avoid the payment of arrears. Moreover at the time of application for reconnection of electric supply No.90660475, dt.23-11-2005. Consumer has given the undertaking dt. 06-01-2006 that any arrears will be paid by him immediately on receipt of demand from the undertaking. Further this consumer has put thumb impression on this application. However, now his applications in Annexure 'C' & 'A' bears signature.
15. Under the circumstances we are now of the opinion that, consumer must pay the arrears outstanding amount of Rs.62,225/-.
16. As per the remark on installation card for A/c. No.689-516-011, Meter No.D009632 was removed (under MRA 2875 dt.12-04-2001) on 16-04-2001. As amended claim of Rs.61,816.98 was not paid by the consumer Shri Namdeo B. Shirke. O/S was created in June 2004. After creating the O/S bills are not generated. After removing meter consumer have not approached the undertaking for any enquiry or reconnection.
17. In our reply dt.17-06-2010 Ref. No.CC(N/E)/R&D/F-N/03/2010 it was inadvertently written that meter was removed for non-payment of arrears of bills. However, same is subsequently clarified in the reply to Annexure 'C' vide letter under Ref. DECC(F/N)/Annex.'C'-47/38669/2010, dt.23-12-2010 that, this amount of Rs.62,225.11 is an arrears for the period 11-07-1995 to 21-12-1999.
18. This amount of Rs.62,225.11 is shown in Shri N.B. Shirke's bill having A/c.No.689-516-004 in the month of Aug.2010 therefore it is payable by the consumer.
19. Consumer has got the electricity by hiding the facts of having another account and by showing different Room No. on the application.
20. It is not true to say that consumer's recovery was forcible.
21. As per Administrative Order 349-A, dt.06-01-2011. A Defective meter claim was prepared & original claim of Rs.61,816.98 was revised duly audited for Rs.6,855.86 & consumer's representative was asked to pay

this amount. However, he has refused to pay the same as per notings of minutes dt.05-08-2011.

22. In view of the above the Hon'ble Forum is requested to direct Shri Namdeo B. Shirke to pay the outstanding arrears of Rs.62,225/- & pass the order in favour of BEST Undertaking.

REASONS :

23. We have heard the representatives Shri. Davinder Singh Sudan & Shri. Abdul karim for the complainant and representatives Shri D.R.Ohol, Shri V.P.Sawant & Shri S.T.Tayade for the Respondent. Perused papers.
24. At the outset we observe that the claim of Rs.62,225/- made against the complainant by BEST Undertaking as an arrears of electricity charges has been entirely shoddy, absurd & highly unsustainable in law. We further observe that in the written statement submitted before this Forum by the BEST Undertaking, in para 4.8, it has been submitted that in the implementation of the Administrative Order 349-A dtd. 6-1-2011, in case of "Defective Meter" claim, the said amount of Rs.61,816.98 has been revised and duly audited for Rs.6,855.86. The complainant was asked to pay the said amount of Rs.6,855.86. On this back drop we failed to understand for what reasons, now the BEST Undertaking before this Forum has been insisting for directing the complainant to pay the entire electricity arrears amount of Rs.62,225/- and to pass the order accordingly.
25. We observe that respondent BEST Undertaking in the written statement submitted before this Forum and during their oral arguments, has candidly admitted that the claim of electricity charges made against the complainant has been in respect of "Defective Meter". A bare perusal of a document placed before this Forum at page no 43 on the subject of Revision of Defective Meter claim as per A.O 349-A dtd. 6-1-2011, blatantly manifest that the claim period has been 11th July, 1995 to 21st Dec, 1999.
26. We therefore observe that for ascertaining the electricity arrears on account of "Defective Meter" the respondent BEST Undertaking was under statutory obligation to take a recourse to the elaborate procedure provided u/s 26(6) of the Indian Electricity Act, 1910 i.e. the respondent ought to have submitted an application before the Electrical Inspector. However, we do not find such statutory compliance being made by the respondent BEST Undertaking. On this ground therefore, we find the arrears of electricity charges claimed by the respondent BEST Undertaking being unsustainable in law.
27. We further observe that in the aforesaid document at page no 43, on the subject of Revision of Defective Meter claim as per A.O 349-A dtd.

6-1-2011, to reiterate the claim period has been 11th July, 1995 to 21st Dec, 1999. The electricity claim amount worked out by the respondent has been shown being Rs.61,816.98. The revised claim amount has been subsequently worked out to be Rs.6,855.86. In regard to calculation of the revised claim, we find that the respondent BEST Undertaking has taken into consideration total number of days 1623, during a period from 11th July, 1995 to 21st Dec, 1999.

28. In this context we may refer to page no. 49 placed before this Forum. It shows an amount of Rs.61,816.98 being divided by total number of days viz.1623 and multiplied by 180 days (i.e. a period of 6 months). As such the revised claim amount of Rs.6,855.86 has been worked out by the respondent BEST Undertaking for claiming the same against the complainant.
29. In this context we observe that the copy of A.O 349-A dtd. 6-1-2011 which has been relied on by the respondent BEST Undertaking, placed before this Forum at page no. 47, manifest that in case of "Defective Meter", amendment period shall be upto 6 months based on previous one year average. We thus find that the period considered to work out a revised claim amount of Rs.6,855.86 taken into consideration by the respondent, has not been inconsonance & compliance with this A.O 349-A, as the same has not been for previous one year. We thus find that on this ground also the revised claim worked out and claimed against the complainant has been in violation & breach of the A.O 349-A.
30. We further observe that the installation card no. 958474 placed before this Forum at page no. 89 in respect of the complainant manifest that during the claim period 11th July, 1995 to 21st Dec, 1999 a meter no D843215 was in operation till 21-12-1999. An endorsement passed on this installment card manifest that the Meter Removal Advice dated 12-4-2001 has been for amended Rs.61,816.98. To reiterate it has been a consistent stand taken by the respondent BEST Undertaking that the claim amount has been on account of the Defective Meter.
31. Now we may refer to ledger papers placed before this Forum by the respondent BEST Undertaking at page no 120 onwards. A bare perusal of the same manifest the same has been in regard to the complainant bearing A/c no. 689-516-011. During the claim period i.e. 11th July, 1995 to 21st Dec 1999, we find the readings recorded on ledger in respect of meter no D843215 has been in a progressive manner. We do not find the said meter either burnt or stopped one during the said claim period. We further observe that in the ledger at page no 137 in respect of meter no E052578 on A/c no 689-516-004 of the complainant, in the month of August, 2010 total adjustment amount has shown as Rs.62,225.11. Thus, we find that the respondent has utterly failed to justify its claim amount of Rs.61,816.98 and thereafter revising the same for Rs.6,855.86, by placing before this Forum any co-gent documentary evidence supported by the concerned statutory provisions.

32. We further observe that much hue and cry has been made by the representative of respondent Undertaking before this Forum, by submitting that the complainant with an ulterior motive has made an over writing on a Form dated 23rd Nov 2005, placed before this Forum at page no 71 and thereby manage to get a reconnection in his premises in the room no 451, obtaining a new account number. Thereby the complainant's intention was to keep the respondent in dark for avoiding payment of arrears.
33. In this regard we observe that a bare perusal of this application dtd. 23rd Nov, 2005 manifest some over writing in regard to room number, electricity bill number and the meter number. We failed to understand that the said application submitted by the complainant was for consideration and perusal of respondent BEST Undertaking and acting on it the Respondent BEST Undertaking has provided an electric connection. It is therefore if at all there is any lapse, then it would be on the part of the respondent in not noticing, for taking a necessary action the complainant for the same.
34. We further observe that the respondent BEST Undertaking has been in exclusive possession of the record in regard to the arrears of the electricity charges, if at all to be paid by the complainant. Therefore it is highly unsustainable on the part of the respondent to contend that by doing such over writing in the application dated 23rd Nov 2005, the complainant could have avoided the payment of the electricity charges in arrears. The respondent BEST Undertaking is expected to be vigilant and diligent enough to keep a track on arrears of electricity charges to be paid by its consumer like the complainant. We therefore find it highly unsustainable and totally unjustifiable on part of respondent BEST Undertaking to claim the so called entire amount of arrears of electricity charges of Rs.62,225/- from the complainant on this ground of alleged intentional over writing being made by the complainant on the said Form to deceive the respondent.
35. An attempt has been made by respondent BEST Undertaking to contend that the complainant has given an undertaking to pay all the arrears of electricity charges. In this regard the respondent has referred to the undertaking given by complainant at page no 69. In this context we observe that the complainant has undertaken to remit the arrears of electricity charges if any in respect of the meter, the number of which is required to be mentioned in the said undertaking. But we find no meter number has been mentioned in this undertaking. To conclude on this aspect of the matter, we observe that merely on the basis of this ill founded contention of such undertaking the respondent cannot claim any electricity charges which has been inherently illegal and unsustainable in law.

36. We further observe that the complainant has contended before this Forum about a remittance of Rs.10,000/- made to the respondent on his behalf as a part payment against the electricity charges in arrears. As this Forum has observed that the complainant being not liable to pay any outstanding electricity charges, therefore such part payment of Rs.10,000/- remitted by the complainant needs to be refunded to him. We may observe at this juncture that the respondent has also candidly admitted receiving such amount of Rs.10,000/- on behalf of the complainant.
37. In the aforesaid observations and discussion the complaint is liable to be allowed. Accordingly we do so.

ORDER

1. Complaint no. N-F(N)-125-2011 dtd. 27-07-2011 stands allowed.
2. The respondent BEST Undertaking is directed to refund an amount of Rs.10,000/- to the complainant within a period of one month from the date of passing this order and to report the compliance thereof, to this Forum within a period of fortnight there from.
3. Copies be given to both the parties.

(Smt Varsha V Raut)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman