

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-E- 224-2014 dtd. 22/04/2014

Mr. Jamal Abdul Gafar KhanComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri R U Ingule, Chairman

Member

1. Shri M P Thakkar, Member

On behalf of the Complainant : 1. Shri Mohd. Jamal Abdul Gafar Khan

On behalf of the Respondent : 1. Shri D.N. Pawar, DECC(E)
2. Smt. S.K. Utale AAM CC(E)
3. Shri S.G. Parab AAO(P) CC(E)

Date of Hearing : 06/06/2014

Date of Order : 13/06/2014

Judgment by Shri. R.U. Ingule, Chairman

Mr. Jamal Abdul Gafar Khan Plot no.334/336, Gr. Flr., 298 Signal Hill Avenue Road, Darukhana, Mazgaon, Mumbai - 400 010 has come before the Forum for dispute regarding recovery of arrears of old consumer pertaining to A/c no. 200-009-863 at the time of reconnection of electric supply to his premises.

Complainant has submitted in brief as under :

1.0 The complainant has approached IGR Cell on 18/12/2013 for dispute regarding recovery of arrears of old consumer pertaining to A/c no. 200-009-863 at the time of reconnection of electric supply to the premises. The complainant has approached CGRF in schedule 'A' dtd.20/03/2014 (received by CGRF on 11/04/2014) as the consumer is not satisfied with the remedy provided by the IGR Cell Distribution Licensee regarding his grievance. The complainant has requested the Forum to give him electricity bill for six months as per Regulation 10.5 of Supply Code of MERC.

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

2.0 Mr. Javed Khan applied for reconnection of electric supply to his premises under reference vide requisition no. 51401145 dtd. 28/10/2013. Electric supply to the said premises was given in the name of Mr. Mohd. Jamal Abdul Gaffar Khan for commercial purpose through meter no. P960961 (A/c no. 200-009-863). Meter no. P960961 was removed for non-payment of accumulated outstanding of Rs. 2,80,680.00 on 10/05/2010.

3.0 Mr. Javed Khan has mentioned in his complaint under Annexure 'C' dtd. 18/12/2013 that, he had purchased the premises under reference and rent receipt is transferred in his name. He further stated that he is a legal occupier of the plot. Further he has requested to handover the six months' electricity bill amount as per Regulation 10.5 of MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

4.0 BEST is generating electricity bills of the consumer of a/c no. 200-009-863 every month and forward to the consumer's premises to facilitate the payment of unpaid amount. It is therefore necessary to pay unpaid arrears amount before the connection of electric supply in the name of the complainant.

REASONS

5.0 We have heard the complainant in person and for the Respondent BEST Undertaking Shri D.N. Pawar, DECC(E) along with Smt. S.K. Utale, AAM CC(E) Shri S.G. Parab, AAO(P) CC(E). Perused documents placed before us.

6.0 The controversy raised in the present matter in our hand, moves in a very narrow compass. As submitted by the complainant Shri Javed Khan, he has allegedly purchased a gala from Smt. Shantabai Ubale, who has also issued a rent receipt in his name. In the said premises there was electric meter installed in the name of erstwhile occupier Mr. Mohd. Jamal Abdul Gafar Khan with a/c no. 200-009-863 and the same was removed for non-payment of electricity charges on 10/05/2010.

- 7.0 The applicant therefore applied for the reconnection of the electricity supply. However, the Respondent BEST Undertaking directed him to pay the arrears amount of Rs. 2,70,170.00 in respect of the erstwhile occupier. The complainant further contends that as envisaged under Regulation 10.5, of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulation 2005, (for short MERC), the Respondent BEST Undertaking cannot recover the arrears more than of six months.
- 8.0 The contention raised by the complainant has been resisted by the Respondent BEST Undertaking *inter-alia* on the ground that there has been arrears of Rs. 2,80,680.00 in the name of erstwhile occupier of the premises viz. Mr. Mohd. Jamal Abdul Gafar Khan and unless the complainant pays the same he would not be entitled for the reconnection. The old occupier as well as new tenant has not paid any payment of electricity charges from November 2007. The Respondent BEST Undertaking further contends that the electricity bills have been regularly served on the consumer and therefore before the restoration of electricity supply the complainant needs to pay the entire amount of Rs. 2,80,680.00 as per Section 56(2) of the Electricity Act (for short EA), 2003.
- 9.0 This Forum finds that as envisaged under section 43(i), it is the “*owner / occupier*” of any premises are entitled to apply for supply of electricity to its premises. At this juncture this Forum observes that the expression “*owner / occupier*”, employed by the legislature in this section, necessarily envisaged such “*owner / occupier*” being a legal one.
- 10.0 However, in the matter on the hand, we find that the document placed on file at Exhibit 7/C and 87/C by the Respondent BEST Undertaking manifests that the owner of the premises under consideration has been ***Mumbai Port Trust***. It is therefore unsustainable and illegal on the part of the complainant to contend that Smt. Shantabai Ubale has been the owner of the said premises and she has issued rent receipt to the complainant. On perusing these documents this Forum finds that Smt. Shantabai Ubale has been issued with an eviction and forfeiture notice to quit the said premises. Therefore the owner of the premise viz ***Mumbai Port Trust*** has been recovering the compensation instead of rent from Smt. Shantabai Ubale. At the foot of the said document there is a mention of litigation pending before the Supreme Court in Civil Appeal No. 555 of 2001.
- 11.0 This document on the reverse of it gives the details that the premises being wrongfully used and occupied by Smt. Shantabai Ubale. We thus find that in the settled position of law it is totally illegal on the part of Smt. Shantabai Ubale to issue a rent receipt to the complainant placed before us at exhibit 9/C, when her status as ‘tenant’ has been in dispute of the premises of which ***Mumbai Port Trust*** has been owner. This Forum thus finds that the alleged tenant Smt. Shantabai Ubale has subletted the premises to Mr. Mohd. Jamal Abdul Gafar Khan who has been in arrears, as contended by the Respondent BEST Undertaking, of the electricity charges of Rs. 2,80,680.00.

- 12.0 It is further significant to observe that this Mohd. Jamal Abdul Gafar has allegedly sold this premise to the complainant for Rs. 4.00 lacs. This so called notarized 'Sale Deed', has been placed before this Forum by the complainant at pg. 10 showing the premises being sold by Mr. Mohd. Jamal Abdul Gafar Khan to the present complainant. Needless to mention at this juncture that this alleged 'Sale Deed' does not have any existence in the eyes of law for a simple reason that Mr. Mohd. Jamal Abdul Gafar Khan has been an illegal sub-tenant and not the owner of the premises.
- 13.0 This Forum thus finds that the present complainant has been in illegal occupation of the premises. To reiterate, the litigation has been already pending between the owner Mumbai Port Trust and Smt. Shantabai Ubale. It is therefore the complainant cannot claim supply of electricity to the premises under consideration, as he has not been lawful *owner or tenant* of the premises under consideration, as contemplated under section 43(i) of E.A., 2003. The complaint is therefore liable to be dismissed and accordingly we do so.

ORDER

1. The complaint no. N-E- 224-2014 stands dismissed.
2. Copies be given to both the parties.

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman