

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-D-274-2015 dtd. 13/11/2015.

M/s Godrej Consumer Products LtdComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.Y. Gaikwad, Member
2. Shri S.M. Mohite, Member CPO

On behalf of the Complainant : 1. Shri Amit Murjani
2. Shri Pankaj Phadnis

On behalf of the Respondent : 1. Shri H.V. Vagal, DECC(D)
2. Smt S.S. Redkar, AAM CC(D)

Date of Hearing : 23/12/2015

Date of Order : 04/02/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

Constituted Attorney, M/s Godrej Consumer Products Ltd., A 67-H, Ground floor, Aashraya, Walkeshwar Road, Mumbai - 400 006 has come before the Forum for grievance of Recovery of outstanding amount Rs. 29,81,900.00 pertaining to earlier occupier Shri Farook S. Mulla, A/c no. 460-720-001.by respondent BEST.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 10/08/2015 for Recovery grievance of outstanding amount Rs. 29,81,000.00 pertaining to earlier occupier Shri Farrok S. Mulla, A/c no. 460-720-001. The complainant has approached to CGRF in schedule 'A' dtd. 10/11/2015 (received by CGRF on 10/11/2015) which consists of total pages 1 to 42 alongwith Annexure, as they were not satisfied by the remedy provided by the IGR Cell Distribution Licensee regarding their grievance.

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

- 2.0 The complainant, the Constituted Attorney, of M/S Godrej Consumer Products Ltd has come before the Forum regarding dispute/grievance of recovery of Rs 29,81,900.00/- towards outstanding which is purportedly not paid by the previous owner Shri Farook Mulla having A/C No. 460-720-001. The complainant further stated that the said claim is wrongful and illegal and requested to quash by setting aside of the impugned order date 13/11/2015 of the Distribution Licensee.
- 3.0 The electric supply was given to the premises under reference to Shri Farook Mulla a/c no. 460-720-001. The electricity charges amounting to Rs. 42,517.55 towards electricity consumed upto July 1994 was not paid by him. The a/c no. 460-720-001 is still live and timely updated as per billing cycle. The electricity bill for the same has been issued timely to the occupier of the premises upto March 2008.
- 4.0 In April 2008, the Supervisor, bill distribution vide his DL dtd. 23/04/2008 has informed that the existing consumer (owner / occupier) is not accepting the electricity bill in the name of Shri Farook Mulla. Existing consumer M/S Godrej Consumer Products Ltd. stated further that the said electricity bill is not in the firm's name, Shri Farook Mulla has vacated the premises few years back. Then the bills of Shri Farook Mulla be issued through post.
- 5.0 The complainant has never approached to the Undertaking for clarification on receiving two electricity bills having different a/c nos. and names for the said premises. The complainant suitably remained silent on the same subject and neglected the payment of electricity bills in arrears of erstwhile owner i.e. Shri Farook Mulla. The arrears have arose to Rs. 29,81,900.00 by imposing Delayed Payment charges / penalty interest as applicable from time to time.
- 6.0 The complainant had purchased the premises from Shri Farook Mulla in the year 1991. Then they demolished the old structure and reconstruction was in progress from 1994 to 1997. As per records on ledger statement, there was a constant meter reading as 73613 recorded by meter no. 0924582 and billed for '0' unit consumption from April 1994. The meter no. 0924582 might have been lost during the said period because of construction activity. During 2013, *suo-moto* action was taken by the Undertaking for deleting meter no. 0924582 from the bill record under special drive. Therefore the Undertaking was not in position to disconnect electric supply for the reason of non-payment. Thus the respondent submitted that there is no merit in the grievance of complainant ,so requested to direct complainant to pay total accumulated arrears of Shri Farukh Mulla,a/c NO-460-720-001 from whom complainant purchased property in the year 1991.

REASONS

- 7.0 We have heard the arguments of Shri Amit Murjani, Shri Pankaj Phadnis representative of the complainant and for the Respondent BEST Undertaking Shri H.V. Vagal, DECC(D) and Smt S.S. Redkar, AAM CC(D). We have cautiously perused the documents annexed by the complainant along with Annexure which consists of pg. 1 to 42 as well as written submission filed by the Respondent BEST Undertaking along with documents marked at Exhibit 'A' to 'J'. We have carefully gone through the grievance and documents filed by both the parties. It appears from the rival contentions that the complainant has raised grievance in respect of consumption electricity in the year 1991 to 1994.
- 8.0 The complainant in support of its grievance has submitted written submission on 08/01/2013 which runs on pg. 1 to 93 and same consists of ruling relied by them. Before discussion on the merits of the dispute, we have to see admitted facts on record. It is admitted by the complainant that in the year 1991 they purchased the property bearing no-67- at Walkeshwar for which electricity connection was provided to one Shri Farukh Mulla family. M/S Godrej Consumer Products Ltd. purchased the said property in the year 1991 from legal heirs of Mulla. It is also admitted fact from the written submission filed by the Respondent BEST Undertaking that in the year 1997 only the complainant has got new electricity connection by showing the property no. as 67 H. It is also admitted fact that after purchasing the said property the complainant has demolished the whole property and constructed the guest house.
- 9.0 The complainant's representative has submitted that the complainant has obtained Commencement Certificate on 15/04/1991 and Occupancy Certificate on 22/01/1997, in respect of construction carried on in purchased property. It is not the case of the complainant that since 15/04/1991 till 22/01/1997 or till new electricity connection has been obtained, they have sought for temporary electricity connection. We have directed the Respondent BEST Undertaking to place on record any document available in respect of supply given to the complainant. The Respondent BEST Undertaking has submitted file no. MLB-199 and after perusal of the same file it appears that by application no. 58972 dtd. 09/10/1992, the complainant has asked for additional supply 32.85 kw and again by application no. 7807 dtd. 09/10/1993 they asked for additional demand of 47.85 kw. It appears that the said applications have been processed and inspection was done to have a suitable place to install distribution substation. Lastly, by letter dtd. 26/12/2011 load was supplied through single transformer outdoor Rupa DSS. In view of this aspect of the case one thing is clear that the complainant during the period from 1991 till new connection obtained in 1997 has consumed electricity supplied through the electricity connection given in the name of earlier occupier Shri Mulla. It appears that the complainant has suppressed the electricity supply given to the earlier occupier and succeeded in getting new electricity connection in the year 1997. This might be tempted the complainant to

submit letter dtd. 02/08/2010 to the Respondent BEST Undertaking by which he has shown readiness to make onetime payment of Rs. 3,71,913.00 equivalent to 25% amount demanded from Shri Mulla as full and final settlement of the action without prejudice to right in the matter.

10.0 Considering the above said admitted facts and the record which the complainant and respondent both have filed one thing is clear that the complainant having knowledge of the electricity connection in the name of Shri Mulla and having consumed the said electricity as well as having succeeded in getting new electricity connection in the year 1997 has raised this grievance of consumption of electricity in the year 1991-94, in the year 2015. Under such circumstances it is incumbent upon the Forum to see when the cause of action has arisen for the complainant to raise the dispute. The E.A., 2003 is a special Act. In view of provision of section 42(5) of E.A., 2003, CGRF is formed. In view of provisions or powers conferred u/s 181 of E.A., 2003 MERC has authority to frame the regulations. For the first time these regulations are framed in the year 2003, thereafter amended regulation has been framed in 2006. The Regulation 2006 came into force on 20/04/2006. So regulation has statutory force and considering the date on which the dispute raised by the complainant, it is to be governed by MERC Regulation, 2006. By this regulation the procedures for making grievance authorities before whom grievance is to be made, limitation for rising grievance have been enacted with a view to have uniform system and not to raise stale claim.

11.0 We think it just and proper to refer Regulation 6 which lays down procedure for grievance redressal. Regulation 6.1 is in respect of forming Internal Grievance Redressal Cell by Distribution Licensee. Regulation 6.2 is pertaining to the grievance required to be made by the consumer before IGR. As per Regulation 6.4 IGR is expected to dispose off grievance within two months and if not resolved the dispute within that period, consumer has every right to seek redress before CGRF. As per Regulation 6.5, CGRF may entertain the grievance before the expiry of period of two months as in Regulation 6.4, provided consumer satisfies the Forum that there is threat of disconnection of electricity. The Regulation 6.6 runs as under :

6.6 The Forum "shall" not admit any Grievance unless it is filed within two (2) years from the date on which cause of action has arisen.

In view of Regulation 6.6 we have to see as to when cause of action arose for the complainant to file the complaint. The law of limitation prohibits the party to raise claim beyond certain period as specified in the Act. The fundamental principle of law is that the rules of limitation are intended to induce claimant to be prompt in claiming relief and unexplained delay and latches. Object of fixing time limit not meant to destroy the rights but founded on public policy, fixing a life span for legal remedy for general welfare. In legal sense any proceedings filed beyond period of limitation is liable to be dismissed even though limitation may not be set up as a defense. It is for the Court / Forum to determine the question as to whether grievance is barred by limitation or it has been raised beyond two years from the cause of action arose,

irrespective of the fact that as to whether such plea has been raised by the party. Such a jurisdictional facts need not thus be pleaded.

- 12.0 The law of limitation prohibits the party to raise any claim beyond certain period as mentioned in the act. Limitation bars / extinguish the rights of the party to raise dispute beyond cause of action, if no period of limitation is mentioned in any act then there is no end to the litigation. Law of limitation prohibits to raise stale claim as in equity the person who slept over his right cannot raise the dispute after the period of limitation.
- 13.0 Having regard to the above said provisions of MERC (CGRF & EO) Regulation 2006, more particularly 6.6, we have to see as to when cause of action arose for the complainant to raise the dispute. In this case admittedly the complainant itself has filed a letter dtd. 16/07/2010 at pg. 26 and reply dtd. 02/08/2010 at pg. 27, we reproduce both the letters. The letter dtd. 16/07/2010 Exhibit 'B' runs as under.

To,
Farook S. Mulla
Ground floor, Marine View,
67 G, walkeshwar,
Malabar Hill, Mumbai - 400 006.

Sub : Outstanding recoveries of Rs. 14,87,653.00

Ref : A/c 460-720-001, Installation no. 156787

Dear Sir / Madam,

As per BEST's record above a/c shows recovery of Rs. 14,87,653.00 to be paid to the BEST Undertaking to avoid further disconnection and legal procedures etc.

For any billing disputes you are requested to see following officers immediately between Monday to Friday excluding public holidays (Time 9.30 am to 16.30 pm) -----

If the above recovery is not paid within 15 days then we will debit the said recovery amount in your existing account.

For information and action, please.

STO-Recovery CC'D' Ward

Name _____
Signature _____
Mobile no. _____
Resi no. _____

The letter dtd. 02/08/2010 Exhibit 'C' runs as under.

The Brihanmumbai Electric Supply & Transport Undertaking
3rd floor, Administrative Building,
Tardeo Complex, Near Navjeevan Society,
R.S. Nimkar Marg, Mumbai - 400 008.

Attn : Mr. Sanjay S. Bansode, (Divisional Engineer Customer Care)

Dear Sir,

Ref Account : 460-720-001, Installation no. 156787.

This has reference to the above Account Number / Installation Number, we are in receipt of your letter dtd. 16/07/2010 to Mr. Farook Mulla of 67 G Walkeshwar Road, and the subsequent meeting our officers Mr. Rathnakar Salian and Mr. B.M. Shelke has with you during when we explained our position with regard to the above Account No. / Installation No. stating that we have been paying the electricity charges regulatory every month from our Account No. 460-716-011*3 since we have purchased the premises no. 67-H from its erstwhile owner Mr. Farrok Mulla and have never defaulted in payment and therefore no amount is due and payable from the above account.

However, as discussed in the meeting, with a view to avoid any future inconvenience / complications in the matter and as suggested by you, we are agreeable to make the onetime payment of Rs. 3,71,913.00 equivalent to 25% of the amount demanded from the said Mr. Mulla as full and final settlement of the above Account without prejudice to our rights in the matter.

Thanking you.

Yours sincerely,
For Godrej Consumer Products Ltd.

Authorized Signatory

Seal of Godrej

Recd. On 04/08/2010

Seal

- 14.0 If we peruse the reply dtd. 02/08/2010, it reveals that the complainant himself has approached the Respondent BEST Undertaking and offered to accept 25% of total amount due. The complainant in complaint dtd. 10/08/2015 made before Forum for consumer complaint at para no. 5.6 at pg. 18 has given the reference in that regard. We think it just and proper to reproduce the same para "On July 16, 2010 BEST issued a demand notice in the name of Mr. Farook Mulla at the address of said premises claiming recovery of Rs. 14,87,653.00 . The said notice was delivered to GCPL at the said premises. Hereto annexed and marked as Exhibit 'A' is the copy of BEST letter dtd. July 16, 2010 to GCPL." Likewise in Facts giving rise to appeal and the grounds thereof on pg. 3, para no. 1.6, the complainant has given the reference of said letter dtd. 02/08/2010. Considering this aspect, it is crystal clear from the above said letter issued to Shri Mulla as well as reply given by the complainant to the Respondent BEST

Undertaking, it is crystal clear that the cause of action arose for the complainant to raise the dispute on 16/07/2010 or at the most on 02/08/2010. The complainant in letter dtd. 02/08/2010 has specifically mentioned that they were in receipt of letter dtd. 16/07/2010, so it was expected from the complainant to raise dispute in that regard within two years from 02/08/2010. From letter dtd. 02/08/2010 it cannot be concluded that he has raised dispute before IGRC. In E.A., 2003, the specific provisions have been made to form CGRF and Ombudsman to entertain the grievance of the complainant consumer. So in any case the complainant filed a letter dtd. 02/08/2010 to the Respondent BEST Undertaking and finally the Respondent BEST Undertaking by letter dtd. 14/02/2014 turned down the request for accepting 25% amount could not extend the period for cause of action. It appears that the complainant ought to have approached the CGRF within two years from 02/08/2010 and after order passed by IGRC, he ought to have approached the CGRF. That has not been done by the complainant, on the contrary since 02/08/2010 till 2014, the complainant did not make any correspondence in that regard, it means the complainant slept over his right for about four years and now came to the Forum saying that claim is barred by limitation. In written submission, it has been mentioned that the electricity consumption period is 1994 and therefore this case cannot be governed by Regulation 2006. This submission is made as if the complainant has raised the dispute in the year 1997. The complainant has raised the dispute after 2006 i.e. in the year 2014-15 and therefore it is to be governed by MERC Regulation 2006.

- 15.0 Now we have to go through the Regulation pertaining to the procedure for grievance redressal. As per the Regulation 6.6 the Forum shall not attempt any grievance unless it is filed within two years from the date of which the cause of action has arisen. The word "**shall**" has been used in the said Regulation indicates that it is mandatory. In the instant case the complainant has raised the dispute before IGRC for the first time on 10/08/2015 and then approached the Forum and therefore it could be safely held that it is barred by limitation or the Forum is precluded from entertaining the complaint. From mere fact that the complainant has filed a letter dtd. 02/08/2010 pg. 27, it could not be held that they have approached IGRC, because in any case the said letter could not be held as grievance. Considering this legal aspect, it could be very well held that the complaint cannot be entertained by the Forum. The Forum is duty bound to take note of the Regulation 6.6 and to give effect to it. If the complaint / grievance is time barred, yet Forum decides on merit, Forum would be committing illegality as question of limitation goes to very route of the matter render the order illegal.
- 16.0 The instant complaint on our hand has been a classic case to raise a stale claim for which cause of action arose on 16/07/2010 or 02/08/2010 and not on the date of a letter dtd. 14/10/2014 issued by the IGRC. As the complaint cannot be entertained or CGRF has no jurisdiction to entertain the complaint in view of Regulation 6.6, we do not think it just and proper to discuss about the other aspect of the case. The Forum does not find any warrant and justification to advert to rest of the contentions vociferously agitated before the Forum as it would simply burden this order or it will be a futile effort on the part of the Forum to express on other aspect of the case.

- 17.0 In the above said observation and discussion, the instant complaint is liable to be disposed off being filed after four to five years of cause of action arose and same is not tenable in view of Regulation 6.6. Accordingly we proceed to pass the following order.
- 18.0 As the complainant has filed written submission late and considering fact that the complainant has approached the Forum regarding consumption of electricity in the year 1991-94, delay is being caused to dispose off the matter.

ORDER

1. The complaint No. S-D-274-2015 dtd. 13/11/2015 stands disposed off in view of provisions of Regulation 6.6 of MERC Regulation, 2006.
2. Copies of this order be given to both the parties.

(Shri S.Y. Gaikwad)
Member

(Shri S.M. Mohite)
Member

(Shri V.G. Indrale)
Chairman