

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-285-2016 dtd. 27/01/2016.

Smt. Mandakini M. PatelComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.Y. Gaikwad, Member

On behalf of the Complainant : 1. Shri Toshak Patel
2. Shri Manmathbhai Patel

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

On behalf of the Respondent (2) : 1. Smt. Bhartiben Patel
(Smt. Bhartiben Patel) 2. Smt. Mona Patel

Date of Hearing : 22/03/2016

Date of Order : 28/03/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

The complainant Smt. Mandakini M. Patel has come before the Forum raising dispute about transferring of electric meter at flat no. 4, 2nd floor, 82, Perina Bldg., L.J. Road, Malabar Hill, Mumbai - 400 006 in the name of Smt. Bhartiben Patel by deleting the name of Manoo C.Patel. She has further stated that, the deceased Shri Manoo C. Patel, who was her late husband was tenant of above said flat. Smt. Bharatiben Patel has applied for change of name for electric meter and submitted false documents/ evidence for change of name. The

complainant has requested that original name of Shri Manoo C. Patel is to be retained or electric meter may be transferred in her name and her son Shri Toshak Patel.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 17/07/2014 for raising objection for Change of name pertaining to A/c no. 888-099-009*2 having electric supply at 4, 2nd floor, 82, Perina Bldg., L.J. Road, Malabar Hill, Mumbai - 400 006. The complainant has approached to CGRF in schedule 'A' dtd. 07/12/2015 (received by CGRF on 12/01/2016) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee regarding her grievance.

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

- 2.0 The complainant Smt. Mandakini M. Patel has come before the Forum raising dispute about transferring of electric meter in the name of Smt. Bhartiben Patel. She has further stated that, Shri Manoo C. Patel, who was her late husband was the tenant of the premises under reference. Smt. Bharatiben Patel has applied for change of name for electric meter and submitted false document of rent receipt as evidence for the change of name. The complainant has requested that original name of Shri Manoo C. Patel is to be retained or electric supply/meter may be transferred in her name and her son Shri Toshak Patel.
- 3.0 On 27/08/2013, Smt. Bhartiben Patel had registered application for transferring electric connection to premises under reference pertains to Shri Manoo C. Patel, A/c no. 888-099-009*2 in her name. She had submitted rent receipt for the period April 2013 to March 2014, Ration Card, Death Certificate and Aadhar Card. She had also given standard Undertaking Letter for change of name.
- 4.0 Accordingly, site investigation was carried out by Enquiry Inspector and it was confirmed that Smt. Bhartiben Patel is a occupant of the premises. Hence electric connection has been transferred in her name from October 2013 and new a/c no. 888-099-007 was given. Thus change of name was effected on the basis of documents submitted by Smt. Bhartiben Patel and confirmation of her occupancy. As regard to fraudulent documents submitted at the time of change of name, the complainant may approach to appropriate authority.

**Respondent No. (2), Smt. Bhartiben Patel in her written statement
submitted as under :**

- 5.0 Late Shri Chunibhai Patel had acquired the premises under reference as a tenant long back. Shri Chunibhai Patel has two sons namely, Jayanti Patel and Manubhai Patel and one daughter namely Vimla Patel. The complainant Smt. Mandakini Patel is a wife of Shri Manubhai Patel.
- 6.0 Smt. Bhartiben Patel is a daughter-in-law of Smt. Vimla Patel. Except Smt. Vimla Patel, the entire family of Late Shri Chunibhai Patel lived in Africa. Initially, Smt. Vimla Patel used to stay with her husband Shri Nagin Patel at Anand, Gujrat. Later on Smt. Vimla Patel shifted from Anand, Gujrat to Mumbai at premises under reference.

- 7.0 Shri Manubhai Patel expired in the year 1966. At the time of death of Manoo C. Patel only Smt. Vimla Patel was residing in premises under reference. Shri Chunibhai Patel along with his wife was residing at Baroda, Gujrat whereas the complainant and her son were residing in Africa .
- 8.0 Only to create false claim over the above mentioned premises at Nepeansea Road, Mumbai, the complainant along with her son filed L.E. Suite no. 13/16 of 2014 in the court of Small Cause at Bombay and they have also filed RAD suite no. 437 of 2014 against landlord and same is pending before small cause court Mumbai. Similarly, I have also filed RAD Suit No. 1978/2015 for declaration of tenancy.
- 9.0 Since , beginning, rent of the flat was being paid by me and necessary receipts were issued by the then landlord in the name of heirs and executors of Shri Manubhai Patel, new landlord have introduced her name in rent receipt. The Municipal Property Tax, Society Maintenance Charges are paid by me. The complainant Smt. Mandakini Patel and her son never stayed in the premises and raised timely objection for my occupancy.

REASONS

- 10.0 We have heard representative of the complainant and Shri H.V.Vagal, DECC(D), Smt. S.S. Redkar, AAM, CC(D), Shri H.V. Patankar, AAO as well as representative of Smt. Bhartiben Patel in whose name change of name was effected by deleting name of Shri Manoo C. Patel from a/c no. 888-099-009*2. We have perused the plethora of documents placed before this Forum by either party to the proceedings as well as say filed by Smt. Bhartiben Patel.
- 11.0 The representative of the complainant has vehemently submitted that electricity connection was in the name of Shri Manoo C. Patel who died in the year 1966 and Respondent no. 2 Smt. Bhartiben Patel without obtaining NOC of legal heirs of Manno C Patel has got falsely changed her name in place of Manoo C. Patel and therefore it is liable to be struck off. The representative of the Respondent BEST Undertaking no. 1 has submitted that after going through the documents filed by Respondent No. 2 Smt. Bhartiben Patel alongwith prescribed proforma of change of name they have rightly effected the change of name and if the complainant had any grievance about the rent receipts passed in the name of Smt. Bhartiben Patel then she has remedy to approach before the appropriate court as per Supply Code clause 2.9. The representative of the Respondent No. 2 Smt. Bhartiben Patel has submitted that said Shri Manno C. Patel died in the year 1966 and Smt. Bhartiben Patel is residing alongwith said Shri Manoo C. Patel and therefore after the death of Shri Manoo Patel, landlord issued rent receipt incorporating her name in the rent receipt and therefore the Respondent BEST Undertaking has rightly effected change of name.
- 12.0 We have perused the documents filed by the complainant as well as Smt. Bhartiben Patel pertaining to premises under reference pending suits before Small Cause Court Bombay. It reveals that Smt. Mandakini Patel and her son Shri Toshak Patel filed L.E. suit no. 13/16 of 2014 against Smt. Bhartiben Patel and M/s Roshan Developers praying for possession of the suit flat no. 4, 2nd floor, 82, Perina Bldg., L.J. Road, Malabar Hill,

Mumbai - 400 006. Smt. Mandakini Patel has also filed another suite RAD suit no. 437/14 against M/s Roshan Developers and Smt. Bhartiben Patel. Smt. Bhartiben Patel has also filed suit bearing no. RAD 1978 of 2015 against M/s Roshan Developers, for declaration that she is a tenant of defendant no. 1 & 2 in respect of suit premises. After going through all these documents one thing is clear that there is dispute between Smt. Mandakini Patel and Smt. Bhartiben Patel in respect of tenancy rights in the said premises for which electricity connection is provided and still same is not finally decided by the court. So, in view of this aspect we have to see as to whether there is bar of Regulation 6.7 of MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman), Regulation 2006.

- 13.0 The relevant provision in respect of change of name finds place in Supply Code clause no. 13 of best terms and conditions approved by MERC. This clause is in consonance with the Regulation 10 of change of name, MERC (Supply Code and Other Conditions of Supply), Regulation 2005. After going through the said provisions, it appears that word *used* in Regulation 10.1 for change of name, as connection may be transferred in the name of another person upon death of the consumer or in case of transfer of ownership or occupancy of the premises, upon application for change of name by the new owner or occupier. Regulation 10.1 is in respect of application for change of name and Schedule of charges, Regulation 10.3 is in respect of documents required along with application for change of name to be submitted to the Distribution Licensee, (i) consent letter of the transferor for transfer of connection in the name of transferee; (ii) in the absence of a consent letter, any one of the following documents in respect of the premises (a) proof of ownership of premises (b) in case of partition, the partition deed or (c) registered deed or (d) succession certificate; (iii) photocopy of license / permission with respect to the purpose for which electricity is being supplied to the premises, if required by statute; (iv) processing fee or receipt thereof. If we peruse the Regulation 10.1 word "*transfer of ownership*" or "*occupancy of the premises*" has been used. However, in Regulation 10.3 proof of ownership of premises has been used when there is no consent letter. In the instant case, it appears that the name of Smt. Bhartiben Patel appears in the rent receipt as well as in the Ration Card and Aadhar Card. It appears that the Respondent BEST Undertaking has satisfied with these documents and effected change of name of Smt. Bhartiben Patel., after considering report of site visit.
- 14.0 Here we wish to observe that Shri Manoobhai Patel died in the year 1966 and the change of name of Smt. Bhartiben Patel was effected in the month of October 2013. If this would be the case, then it was expected from Smt. Mandakini Patel to approach Customer Care Department and to file the objection in that regard at earlier stage. So delay in filing the application by Smt. Mandakini Patel before Customer Care Department as well as no steps have been taken to effect change of name soon after the death of Shri Manoobhai Patel is fatal to her case.
- 15.0 The representative of the complainant has vehemently submitted that there was Memorandum of Understanding (MoU) between Smt. Mandakini Patel and Smt. Bhartiben Patel by which Smt. Bhartiben Patel is residing in the said flat as gratuitous licensee

and therefore she cannot be termed as tenant of the said flat. The complainant has placed on record the said MoU which is at pg. 7. It appears that it is executed on 30/04/2004. The MoU is only in between Smt. Mandakini Patel and Smt. Bhartiben Patel in respect of possession of the said flat and the said document itself proves that Smt. Bharatiben is in possession of said premises since death of Shri Manoobhai C.Patel. Thus con MOU is not helpful to complainant to raise the dispute for change of name.

16.0 It is pertinent to note that the complainant has prayed relief that the name of Smt. Mandakini Patel and Shri Toshak Patel be effected on electric meter or in the alternative name of Shri Manoo C. Patel be retained in the record. We wish to observe that dispute between the parties in respect of tenancy right is pending before Small Cause Court Bombay. The complainant by filing the suit has prayed possession of the said premises from Smt. Bhartiben Patel. In view of this aspect couple with the contentions of the complainant in any case we do not find any imperfection in the change of name effected by Respondent BEST Undertaking in the name of Smt. Bhartiben Patel.

17.0 According to the complainant rent receipt issued by landlord in the name of Smt. Bhartiben Patel is not legal or bogus .If this would be the case , they have remedy to take appropriate action against Smt. Bhartiben Patel in court of Law. We think it just and proper to reproduce clause 2.9 of terms and Conditions of Supply, 2006.

“The undertaking shall neither be responsible nor liable to ascertain the legality or adequacy of any No object Certificates / Way leave permissions / Permission or Consents of Statutory Authorities which might have been submitted by the Applicant / consumer along with his application and shall believe that such certificates / permissions to be sufficient and valid, unless proved to be contrary. In such cases, if documents are found to be fraudulent at later stage, consequences shall be borne by the consumer.”

18.0 Considering the provisions of clause 2.9 of Supply Code we do not find any grievance in the contentions of the complainant as complainant has remedy to take appropriate action against Smt. Bharatiben if rent receipt is bogus or not legal. Considering the grievance of the complainant it is for the Forum to see whether the complainant can be termed as consumer within section 2(15) of E.A., 2003 as well as whether the dispute raised by the complainant really comes within a purview of definition of grievance as contemplated in Regulation 2.1(c) MERC (CGRF & EO), Regulation 2006.Considering definition of Consumer, in strict sense Smt. Mandakini Patel could not be termed as Consumer as although her husband Shri Manoobhai C. Patel died in the year 1966, she did not take any step to effect change of name and allowed to remain account in the name her husband till Oct. 2013 i.e. the month in which change of name of Smt. Bharatiben has been effected. Likewise there appears no imperfection in the act of respondent No-1 effecting change of name of Smt. Bharatiben, so grievance as alleged by complainant does not come under definition of Grievance as contemplated in above said regulation 2.1(c).

19.0 We have already discussed above that there is no imperfection in the action of the Respondent BEST Undertaking carrying out change of name of Smt. Bhartiben Patel so we do not find that the said grievance comes under the definition of grievance as contemplated in the Regulation 2006. We think it just and proper to refer the Regulation 6.7 MERC (CGRF & EO), Regulation 2006 of MERC .

6.7- The forum shall not entertain a grievance:

(a)-----

(b)-----

(c)-----

(d) Where a representation by consumer, in respect of the same grievance, is pending in any proceeding before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or Authority.

Considering above said clause (d) of Regulation 6.7 it appears that there is bar to entertain the grievance raised by the complainant. We are observing this because admittedly main dispute in respect of tenancy is pending between the parties before the Small Cause Court and it has not reached to the finality. If the complainant succeeds in the suit she has every right to approach the Customer Care Department of BEST and apply for change of name as per procedure laid down in the Regulation.

20.0 Before parting to pass final order, we wish to observe that there is specific endorsement on electricity bill which we think to reproduce "This electric bill is issued for electricity use and may not be treated as a proof for other purpose." In spite of this remark on the bill there appears dispute between the parties regarding change of name. It is more particular when the property to which connection is provided is under development either by SRA or by private developer. The parties are tempted to raise dispute in change of name only with a view to assert their possession as they think that proof of electricity bill is a proof of possession.

21.0 Having regard to the above said reasons we do not find any substance in the complaint filed by the complainant consumer. The complaint therefore needs to be dismissed. In result we pass the following order.

ORDER

1. The complaint no. S-D-285-2016 dtd. 27/01/2016 stands dismissed.
2. Copies of this order be given to both the parties.

(Shri S.Y. Gaikwad)
Member

(Shri V.G. Indrale)
Chairman