

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-302-2016 dtd. 18/07/2016.

Shri Rizwan Nisar Ahmed KhanComplainant

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 Rizwan Khan
2. Shri Saquib Khan

On behalf of the Respondent :
1. Shri A.V. Naik, DECC(E)
2. Smt. P.V. Sutar, AAM, CC(E)
3. Shri S.S. Parab, Dy. Engr. CC(E)

Date of Hearing : 20/09/2016

Date of Order : 04/10/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

Shri Rizwan Nisar Ahmed Khan, 2A, Juma Mashid of Bombay Trust 97, Morland Road, Mumbai - 400 008 has come before the Forum for dispute regarding reconnection of electric supply pertaining to A/c no. 546-152-049.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 23/05/2016 for dispute regarding reconnection of electric supply pertaining to A/c no. 546-152-049. The complainant has approached to CGRF in schedule 'A' dtd. 12/07/2016 (received by CGRF on 14/07/2016) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee on his grievance.

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

- 2.0 The complainant Shri Rizwan N.A. Khan came before the Forum regarding his dispute about recovery of arrears / outstanding of the old premises at the time of reconnection of electricity.
- 3.0 The complainant has applied for new electricity connection for commercial purpose vide requisition no. 239462 dtd. 21/01/2016. This requisition was sanctioned on 18/02/2016 with condition of recovery of old arrears / outstanding of the old premises.
- 4.0 After investigation, it was observed that there were total seven premises having different account nos. which were converted into one shop. Only details of three account nos. are available with arrears amount. The Details are as given below.

Sr. No.	Name & A/c no.	Dt. Of installation	Dt. Of removal	Outstanding / due Amt. in Rs.
1	Sayed Ali Hyder Ali 546-152-025	24/01/1994	26/06/1997	36,823.00
2	Mahapura Rashid 546-152-037	18/07/2001	27/04/2004	51,980.00 (as on May 2016)
3	Sayed Sadat Husain 546-152-049	22/12/2006	28/05/2010	24,780.00 (as on May 2016)

- 5.0 The complainant is liable to pay dues for all three accounts.

REASONS

- 6.0 We have heard argument of the complainant's representative Shri Saquib Khan and for the Respondent BEST Undertaking Shri A.V. Naik, DECC(E), Smt. P.V. Sutar, AAM, CC(E) and Shri S.S. Parab, Dy. Engr. CC(E). Perused documents along with Schedule 'A' and written statement filed by the Respondent BEST Undertaking along with documents marked at Exhibit 'A' to 'D'.
- 7.0 The representative of the complainant has vehemently submitted that the complainant has taken the premises on rent and applied for installation of electric

supply to premises which numberized '2A' of which landlord is Jumma Masjid of Bombay Trust. He has further submitted that he has applied for new electricity connection for previous a/c no. 456-152-049 only and the Respondent BEST Undertaking directed him to pay the outstanding amount of other two a/c nos. i.e. 546-152-025 and 546-152-037. Thus according to the representative of the complainant the action of the Respondent BEST Undertaking claiming outstanding bill for the above said three a/cs is illegal as he has taken only one premises no. as '2A' on rent from the above said trust. Against this, the Respondent BEST Undertaking's officer has submitted that the complainant has clubbed all these premises for which electricity connection was given and therefore he is liable to pay outstanding amount for three a/cs as he applied for fresh reconnection.

- 8.0 While arguing the matter, we asked the officers of the Respondent BEST Undertaking as to whether they have any record to show that the above said a/c nos. were given to such premises having any demarcation or area. They have fairly concealed that there is no such procedure and they have not maintained such procedure while inspecting the premises for awarding fresh electricity connection. On this point we wish to observe that considering the value of premises in Bombay and number of businesses are being carried out in small premises and every consumer use to ask for electricity connection, the Respondent BEST Undertaking is supposed to atleast maintain the record showing the demarcation and area of the premises for the electricity connection to a/c no. is given.
- 9.0 The representative of the complainant has diverted our attention to the requisition form and accumulated arrears shown by the Respondent BEST Undertaking in the said requisition form. It appears that initially they have shown in all 8 a/cs for which they demanded accumulated arrears of these premises. However, later on the Respondent BEST Undertaking has fixed the liability in respect of payment of arrears of electricity bill for a/c nos. 546-152-025, 546-152-037 and 546-152-049. It is pertinent to note that cleverly the complainant has also not mentioned area of premises for which he filled up requisition for electricity connection. We have perused the written submission as well as documents filed at Exhibit 'A' along with Schedule 'A' and it appears that meter of a/c no. 546-152-025 was installed in the month of January 1994 in the name of Sayyed Ali Haider Ali and removed in June 1997. It appears that meter for a/c no. 546-152-037 was installed in July 2001 in the name of Mahapura Rashid and removed in April 2004. Likewise meter for a/c no. 546-152-049 was installed in December 2006 in the name of Sayyed Sajid Husain and removed in May 2010. Considering the dates of removal of meters, it appears that previous tenant ought to have consumed the electricity and without payment of bill he left the premises. Likewise the case in respect of other two a/cs. It appears that it is the *modus-operendi* of the consumers that they take the premises on rent, take electricity connection and after consumption of electricity without payment of arrears leave the premises.
- 10.0 Considering the *modus-operendi* of the consumers that they used to take connection and after accumulation of arrears leave the premises without payment of electricity

dues, in such circumstances the employees of the Respondent BEST Undertaking must be careful while giving the reconnection to such premises for which the electricity is due. In the instant case we do not understand as to how the employees of the Respondent BEST Undertaking have given three connections one after the other without recovery from previous consumer. We wish to further observe that it is necessary on the part of the higher authority of the Respondent BEST Undertaking to issue necessary guidelines to the employees for recovery of electricity charges with a view to safe guard the interest of the BEST Undertaking.

11.0 Considering this aspect of the case coupled with the fact that the complainant has only taken the liability of payment of arrears of Rs. 24,260.00 pertaining to the a/c no. 546-152-049 as in electricity bill premises is shown as '2A'. There was no hitch for the complainant to state who was this Sayyed Sajid Hussain whose responsibility of payment of accumulated arrears that too as per Regulation 10.5 is taken by him. Likewise the complainant has not brought on record any evidence to show that the separate premises for which a/c nos. 546-152-025 and 546-152-037 were given were possessed by the consumer. Considering this conduct of the complainant submission of the Respondent BEST Undertaking that the complainant got clubbed 3 to 4 premises together and applied for new electricity connection appears to be probable and justifiable. We are saying so because the complainant himself has filed the application in Annexure 'C' before IGRC on 06/05/2016 in which he has mentioned three a/c nos. and accumulated arrears of all three a/c nos. and his prayer is only to correct the bills as per provision 10.5 of MERC Regulation, 2005. This shows that the complainant also accept his responsibility of payment of accumulated arrears of three a/cs and his grievance is only to calculate the arrears as per 10.5 of MERC Regulation, 2005.

12.0 Now the question before the Forum arises as to whether the Respondent BEST Undertaking can claim all the arrears of three a/cs from the complainant or to claim the arrears as per 10.5 of MERC Regulation, 2005. On this point, the Respondent BEST Undertaking has submitted that as per clause 23.4 of Supply Code the complainant is liable to pay whole amount of electricity dues. We think it just and proper to reproduce clause 23.4 of Terms and Conditions of Supply. Clause 23 deals with payment of bills. Clause 23.4 runs as under :

23.4 In the event of disconnection, the supply will be reconnected only after the payment of all dues and the reconnection fees. In case of payment of dues after six months the request for reconnection shall be construed as new application in regards with the Regulations.

Thus as per clause 23.4 if the same consumer whose electricity connection is disconnected approaches for reconnection then he will be liable to pay whole electricity dues. Admittedly in this case the complainant consumer did not have any electricity connection and he has applied for new connection on the basis of tenancy rights in premises '2A'. It means even if he applied for reconnection to the premise

for which previous electricity dues were not paid, he will be liable only to pay accumulated charges as per 10.5 of MERC Regulation, 2005. Identical provisions finds place in clause 13 of Supply Code title as “Change of name”. We think it just and proper to reproduce clause 10.5 as under :

Any charge for electricity or any sum other than charge for electricity due to the Distribution Licensee which remains unpaid by deceased consumer or erstwhile owner / occupier of the premises as the case may be shall be charged on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.

- 13.0 In view of this provision of clause 10 in which the word “transfer of ownership or occupancy of premises” has been used and therefore this case is squarely covered by clause 10.5 as it is not the case of the Respondent BEST Undertaking that the consumer is legal heir of any of the previous consumer whose electricity dues were remained unpaid. On this point we observe that under such peculiar facts and circumstances the provisions provide under 10.5 of MERC Regulation 2005 would come into play as held by the Hon’ble Division Bench of Bombay High Court in case of ***M/s NAMCO Industries v/s State of Maharashtra & Othrs (w.p. 9909/2010) order dtd. 16/10/2011.***
- 14.0 In consider view of this Forum the Hon’ble Division Bench of Bombay High Court in case of M/s NAMCO has *inter-alia* observed in para 13 that the deficiency in law which was introduced by the Supreme Court in its decision in M/s Isha Marble case has been evidently rectified by providing the Regulation 10.5 expressly recognizes that unpaid electricity dues would be charged on the property and can be recovered by Distribution Licensee from the new owner subject to the qualification in regard to the period mentioned in the proviso provided therein. In view of this legal position we hold that the complainant is liable to pay the arrears of dues for three accounts as per cl. 10.5 of MERC Regulation, 2005.
- 15.0 For the above said reasons there is need to issue directions to the Respondent BEST Undertaking to carve out the liability of above said three a/cs as per cl. 10.5 of MERC Regulation, 2005 and to issue demand notice of that amount to the complainant and after depositing the said amount by the complainant the Respondent BEST Undertaking is under obligation to supply electricity to the premises asked for.

- 16.0 Before parting to pass the final order we wish to observe that due to some administrative difficulties there is some delay in passing the order.
- 17.0 In the above said observations and discussion we proceed to pass the following order.

ORDER

1. The complaint no. N-E-302-2016 dtd. 18/07/2016 stands partly allowed.
2. The complainant is liable to pay electricity bill for a/c nos. 564-152-025, 546-152-037 & 546-152-049 as per 10.5 of MERC Regulation, 2005.
3. The Respondent BEST Undertaking is directed to carve out the arrears of the above said accounts as per 10.5 of MERC 2005 and demand the said amount from the complainant.
4. The complainant is directed to deposit the amount as carved out by the Respondent BEST Undertaking as per cl. 10.5 of MERC Regulation, 2005 within five days from the date of receipt of notice. In that case the Respondent BEST Undertaking is directed to give electricity connection to the premises immediately.
5. The Respondent BEST Undertaking is directed to comply the order within one month from the date of receipt of the order and report the compliance thereafter 15 days.
6. 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