

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-GS-290-2016 dtd. 29/02/2016.

Shri Sharad R. Jadhav & OthersComplainant

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 Ramakant R. Jadhav
2. Shri Sharad R. Jadhav
3. Shri Shyam Samant

On behalf of the Respondent :
1. Shri Shivanand B. Doddannavar, DECC(G/S)
2. Shri Narayan L. Watt, AAM CC(G/N)
3. Shri Kusumakar Loke, Dy.E R&D

Date of Hearing : 21/04/2016

Date of Order : 25/04/2016

Judgment by Shri. Vinayak G. Indrale, Chairman

Shri Sharad R. Jadhav, Flat no. 703, 7th floor, Network CHS, Murari Ghag Marg, Prabhadevi, Mumbai - 400 025 has come before the Forum regarding interconnection of flat no. 102 & 202, 302 & 402 & 603 & 703 - Notice for removal of meters thereon.

Complainant has submitted in brief as under :

The complainant has approached to IGR Cell on 30/11/2015 for complaint regarding interconnection of flat no. 102 & 202, 302 & 402 & 603 & 703 - Notice for removal of meters thereon. The complainant has approached to CGRF in schedule 'A' dtd. 25/02/2016 (received by CGRF on 25/02/2016) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee regarding his grievance.

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

- 2.0 The complainant Shri. Sharad R Jadhav & others came before the Forum regarding their grievance about removal of one meter pertaining to flat number 102 & 202 , 302 & 402, 601 & 701 and 603 & 703 as each pair of flats is interconnected by internal stair case .
- 3.0 The Undertaking has received letter from Shri Kamalakar R Shenoy dated 14/09/2015 and 29/10/2015 stating that flat number 102 & 202 , 302 & 402, 601 & 701 and 603 & 703 are internally connected by single stair case. i.e these eight flats are not separate but duplex flats. There is considerable revenue loss due to slab benefit.
- 4.0 Site inspection was carried out on 04/11/2015, it was observed that Flat Nos 102 & 202, 302 & 402 and 603 & 703 are interconnected by providing a stair case. However Flat Nos 601 & 701 could not be inspected because these flats found locked during inspection on 04/11/2015, 11/11/2015 and 18/11/2015.
- 5.0 Two flats or premises having interconnection by any means are not eligible for providing two separate meters. Therefore, separate notices were served on 10/11/2015 to all concerned consumers informing them that to surrender one of the two meters and transferring the load on other meters.

REASONS

- 8.0 We have heard arguments of the representative Shri Jadhav on behalf of four complainants and for the Respondent BEST Undertaking Shri Shivanand B. Doddannavar, DECC(G/S), Shri Narayan L. Watti, AAM CC(G/N) and Shri Kusumakar Loke, Dy.E R&D. Perused plethora of documents placed on record by either party of the proceeding. Perused written submission filed by the Respondent BEST Undertaking annexed with documents marked as Exhibit 'A' to 'H'. Also perused written argument filed by the complainant. After going through the documents placed on record by both the parties, it appears that a dispute is pending in between Shri Kamalakar Shenoy one of the member of Network CHS Ltd. and complainants who are also the members of the said society in respect of allotment as well as irregularities in the construction. We are least concerned about the dispute regarding allotment of flats that the concerned parties have approached Co-operative Court as well as Honorable High Court by filing proper proceedings. The only dispute we have to see is as to whether there is contravention of Cl. 1.14 of BEST's Terms & Conditions of Supply approved by Maharashtra Electricity Regulatory Commission (MERC). It further reveals that the said Shri Kamalakar Shenoy had earlier filed a complaint in the year 2010 before the

Respondent BEST Undertaking contending that the complainants by misrepresenting have got two electricity connections and two electricity meters for their four duplex flats. It further reveals that Shri Kamlakar Shenoy had filed private complaint before the Metropolitan Court against the complainant for the offence punishable u/s 420, 465, 468 & 471 read with 34 of IPC. The copy of the complaint has been placed on record with written submission. After perusal of the contents of the said complaint, it appears that Shri Kamlakar Shenoy had made allegations of cheating and unauthorisedly obtained two electric connections in their duplex flats. The said complaint is still pending and the record goes to show that it has been stayed in view of pendency of civil dispute before the Honorable Court.

9.0 The representative of the complainant has vehemently submitted that since year 1997-98, the Respondent BEST Undertaking had provided two electric connection and installed two separate meters to four pairs of duplex flats in building of Network CHS Ltd., Prabhadevi, Dadar and therefore in the year 2015 they have no right to issue Impugned Notice dtd. 10/11/2015 directing the complainant to shift the outgoing wires of one of the meter within seven days failing which one of the meters will be removed. Thus according to the representative of the complainant the said Impugned Notice is illegal arbitrarily. The representative of the Respondent BEST Undertaking has submitted that the said four pairs of duplex flats 102-202, 302-402, 601-701 & 603-703 have been interconnected by creating staircase and thereby contravention of Cl. 1.14 of BEST's Terms & Conditions of Supply approved by MERC as the object of the said clause is not to provide two separate connections / two meters to one set of premises and thereby BEST Undertaking would suffer loss by giving slab benefits while charging the units on the basis of units consumed by two meters.

10.0 Before discussing and giving reasons we think it just and proper to narrate some admitted facts as it will become very easy to understand nature of dispute and real controversy between the parties. It is admitted fact that Network CHS Ltd. has been formed in the year 1997-98. There are in all twenty members including complainants in the said society and each member is paying separate monthly maintenance to the society. It is also admitted fact that there is separate entrance to the above said four pairs of duplex flats i.e. eight flats. The said flats have been constructed as per sanctioned plan by MCGM. It is also admitted fact that the said four duplex flats have been interconnected by staircase since beginning as per sanctioned plan. It is admitted fact that one Shri Kamlakar Shenoy who is one of the members in the said society had filed a complaint before the Respondent BEST Undertaking in the year 2010. It reveals that on the basis of said complaint enquiry was made by the Respondent BEST Undertaking and in the said enquiry Asst. Engineer of the Respondent BEST Undertaking had given letter to the Police Inspector of Dadar_Police Station that there is not irregularity in sanctioning separate meters to the individual flats. This has been specifically mentioned in written submission at para 7.6 filed by the Respondent BEST Undertaking. In said written submission under the title as Our Comments, it has been mentioned that "it does not reveal that the said officer has given the above statement though the interconnection of the premises was observed by him." We have also confirmed from ID papers that there is no mention about the interconnection of

the premises at the time of first installation of meters in the year 1997-98. If this would be the case and submission of the Respondent BEST Undertaking then it is not expected from BEST Undertaking that again on the complaint of Shri Kamlakar Shenoy filed in 2015 they would start enquiry and made inspection of the flats and issue the Impugned Notice. We are saying so because the BEST Undertaking is not expected to appropriate and reprobate at the same time. This amounts to estoppels by conduct as per evidence act.

- 11.0 The dispute revolves on the definition of the Installation as contemplated under Cl. 1.14 of BEST's Terms & Conditions of Supply approved by MERC, so we think it just and proper to reproduce the said definition.

Cl. 1.14 - Installation means "the whole of electric wires, fittings, motors and apparatus erected and wired by or on behalf of the consumer on one and the same set of premises."

The representative of the Respondent BEST Undertaking has submitted that the complainants have interconnected the duplex flats by opening staircase, so the said duplex flats can be termed as same set of premises. He has further submitted that this conduct on the part of the complainant certainly causes loss to the BEST Undertaking as BEST was required to give slab benefit on units consumed by both the meters. Against this the representative of the complainant has submitted that in the year 1997-98 each of the owner or occupier of the said eight flats filed application for connection as per procedure and after verifying the same, the officers have given the connection and the said staircase has been made only for their use or to have access to the two flats as they are closely related to each other. It appears that while giving the electricity connection for duplex flats the concerned officer must have visited the premises, and after his satisfaction that the said two flats having distinct entities, therefore had given two separate connections and allotted two meters. If this would be the conduct of the officers of the BEST Undertaking then in any case it cannot be held that the complainant had misrepresented and obtained two electric connections to take the slab benefits.

- 12.0 The very meaning of duplex flat is that two flats are interconnected with each other by staircase. The complainant has submitted that in the plan sanctioned by MCGM the staircase has been shown in respect of four pairs of duplex flats and they have not made any changes and therefore the Respondent BEST Undertaking has no right to issue the Impugned Notice. It appears that when the connection was given in the year 1997-98 the Cl. 1.14 of Terms & Conditions of Supply was in force and having knowledge of the said clause if connection was given then it can be held that the concerned officer must have satisfied and given two separate connections to two flats having distinct entity and two separate entrance.

- 13.0 If four consumers would have obtained two electric connections in their four duplex flats in their own name showing the same name for two flats in that case it can be held that there would be contravention of Cl. 1.14 of BEST's Terms & Conditions of

Supply approved by MERC. In the instant case, it appears that in one pair of duplex flat there are two consumers who are real brothers and so can be held as distinct entity. In respect of other two duplex flats, they are standing in the name of wife and husband. Considering the relationship of husband and wife, one may say that they are one entity and therefore it contravenes the Cl. 1.14 of BEST's Terms & Condition Supply. We are now in 2016 and merely because husband and wife have obtained duplex flats in their respective name it cannot be held as same set of premises. We are saying so because wife can acquire the flat out of her own earning and choose to reside separate from husband as per her wish and for their convenience they may install staircase to have access to both the flats. In our opinion it would not contravene Cl. 1.14 of BEST's Terms & Conditions of Supply. As regards, fourth pair of duplex flats one is standing in the name of mother and son, so it can be held as distinct entity and cannot be termed as same set of premises.

- 14.0 We have cautiously gone through definition of Installation in which a word "Consumer" is used in singular form. We have to interpret the definition broadly with a view to see the object of the enactment of the Regulation. The object of the enactment of the Regulation is that there cannot be two electricity connections for one set of premises and thereby causing loss to the BEST Undertaking. In the instant case before us the four pairs of duplex flats are standing in the name of eight consumers who are having distinct entity and so merely there is staircase to have access to each other being close relative it cannot be inferred that their intention was to cause loss to the BEST Undertaking to get the slab benefit. The definition of Installation in Supply Code is to be interpreted broadly considering the objective satisfaction and not subjective satisfaction of Distribution Licensee. It is pertinent to note that definition of Installation does not find place in MERC (Electricity Supply Code & Other Conditions of Supply), Regulation, 2005.
- 15.0 Here we wish to observe that if there is one flat having two entrances, one is occupied by the owner and another separated part is occupied by tenant, in that case also logically the BEST Undertaking is supposed to give two electric connections, one to the owner and other to the tenant. In such type of cases the BEST cannot refuse to give electric connection as Section 43 of Electricity Act, 2003 fastens liability on the Distribution Licensee to give electric connection if the application is filed with all formalities within stipulated time. Section 2(51) of EA, 2003 defines "Premises" includes any land, building or structure. It does not give restriction of premises as single entity. Likewise, if we go through the definition of "Consumer" as defined u/s 2(15) of E.A., 2003. The consumer means any person who is supplied with electricity for his own use by a Licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. In MERC (Electric Supply Code and Other Conditions of Supply) Regulation, 2005 Section 2(s) defines "Occupier" as under :

“Occupier means the person in occupation of the premises where energy is used or is proposed to be used.”

Considering the provisions of Electricity Act coupled with MREC (Electric Supply Code & Other Conditions of Supply) Regulation, 2005, it appears that when there are two separate occupiers in the premises having two separate entrance, they have right to take two different electric connections for their own use and occupation and in that case there cannot be any contravention of Cl. 1.14 BEST’s Terms & Conditions of Supply. Having regard to the above said discussion coupled with relevant provisions we do not find any contravention of Cl. 1.14 of BEST’s Terms & Conditions of Supply for giving two separate electric meters to each duplex flats as they are having distinct entities as well as distinct occupiers and connections were already given in the name of eight distinct consumers.

16.0 Thus we do not find any substance in the contention of the Respondent BEST Undertaking that there is contravention of Cl. 1.14 of BEST’s Terms & Conditions of Supply. Before parting to pass the final order we wish to observe that this case is the best example, how the Respondent BEST Undertaking has changed its stand from time to time that to on the application filed by one Shri Kamlakar Shenoy who had grudge against the complainant. We are compelled to observe this because record goes to show that in 2010 complaint was filed by Shri Kamlakar Shenoy and after making enquiry i.e. after giving the statement by Asst. Engineer that there is no irregularity in giving two electric connections and two meters, the Respondent BEST Undertaking dropped the said enquiry. It is pertinent to note that again in November 2015 Shri Kamlakar Shenoy filed the complaint before the Respondent BEST Undertaking and the concerned officers of the Respondent BEST Undertaking has taken action against the complainant by issuing Impugned Notice dtd. 10/11/2015.

17.0 We wish to observe that before taking any action it was incumbent upon the BEST Undertaking to verify all the documents and to go through relevant provisions of E.A. and Regulations and take proper action, if warranted and not merely third person files the complaint of irregularities against the consumers with whom he had grudge in his mind. If the Cl. 1.14 of BEST’s Terms & Conditions of Supply is to be applied as per submission of Respondent BEST Undertaking then it will create restlessness in the mind of owners of the house properties who gives the part of premises on rent. Considering the above said aspects of the case, we find substance in the complaint filed by the complainant as there would not be any contravention of Cl. 1.14 of BEST’s Terms & Conditions of Supply. Hence we pass the following order.

ORDER

1. The complaint no. N-GS-290-2016 dtd. 29/02/2016 stands allowed.
2. The notices dtd. 10/11/2015 issued to Shri Ramesh Juvekar occupier of flat no. 302, Shri Sharad Jadhav occupier of flat no. 703, Shri Kantilal Gandhi occupier of flat no. 102 and Shri Alok Gandhi occupier of flat no. 601 are hereby struck off and set aside.

3. The Respondent BEST Undertaking is directed to comply the order within one month from the receipt of the copy of the order.
4. 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