

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-G(N)-174-2012 dtd. 29/11/2012

Mr. RamshankarComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum : Chairman
Shri R U Ingule, Chairman

Member
1. Shri M P Thakkar, Member
2. Shri S M Mohite, Member

On behalf of the Complainant : 1. Shri Girdharkumar L. Manghani

On behalf of the Respondent : 1. Shri S.M. Sakpal, DECC(G/N)
2. Shri S.B. Pawar, AAM(G/N)
3. Shri Suresh N. Bhosle, Ag. CLA
4. Mrs. P.S. Kirtikar, Ag. ALA

Date of Hearing : 17/01/2013 & 27/02/2013

Date of Order : 18/04/2013

Judgment by Shri. R.U. Ingule, Chairman

Electric supply to Mr. Ramshankar's premises at DET/14/16, Poonawala Chawl, Dharavi Main Road, Dharavi, Mumbai - 400 093 was reconnected on 30/01/2012 vide requisition no. 71200356 dtd. 26/04/2011 (KLG no. V41927). The first bill was served to the complainant in the month of August-2012. In this bill the outstanding amount of Rs. Rs. 41,11,196.00 pertaining to A/c no. 781-399-041 & A/c no. 781-399-079 was debited. The consumer was charged the consumption on the basis of consumption recorded from the date of installation of the meter. The

complainant had come before the Forum to seek the relief by withdrawing the outstanding amount which was debited in his first bill and to give slab benefit on accumulated units.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 25/09/2012 for grievance regarding wrongly debited amount of Rs. 41,11,196.00 pertaining to A/c no. 781-399-041 & 781-399-079 to consumer's A/c no. 781-389-002. The complainant has approached to CGRF in schedule 'A' dtd. 26/09/2012 (received by CGRF on 27/11/2012) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to correct the bills as per provision of Electricity Act, 2003.

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

- 2.0 Electricity supply was reconnected in the name of Shri Ramshankar for his premises at DET/14/16, Poonawala Chawl, Dharavi Main Road, Dharavi, Mumbai- 400 017 on 30/01/2012 vide requisition no. 41927 dtd. 26/04/2011 under A/c No. 781-389-002.
- 3.0 As per available record of the Undertaking, electric supply to the above premises was earlier given under A/c Nos. i) 781-399-041 & ii) 781-399-079 in the name of Shri. Satya Prakash Narayan and S. Anand Leathers Works respectively. It has been observed that there is outstanding arrears of Rs.32,74,595/- against A/c No.781-399-041 and Rs.8,26,501/- against A/c No.781-399-079 as on June 2012. Inadvertently, these amounts were not recovered at the time of sanctioning the new meter against the above referred requisition.
- 4.0 Shri. Ramshankar had given an Undertaking at the time of reconnection stating that in future, if there is any arrears or outstanding bill of any type of claim of the above said premises, he will pay the same.
- 5.0 Shri. Ramshankar was informed vide our letter dated 20/07/2012 that, "*The premises for which the new meter was sanctioned and the premises of A/C No. 781-399-041 & ii) 781-399-079 having arrears are the same, you are hereby requested to pay the arrears amount of Rs. 32,74,595/- against A/C No. 781-399-041 and Rs 8,26,501/- against A/C No. 781-399-079 in June 2012. (Total Rs. 41,11,196/-) within 15 days from the from the date of receipt of this letter, failing which the above amount will be debited in your account number 781-389-002*". Since the complainant had not paid outstanding the same has been debited in the bill for the month of August 2012 of A/c No.781-389-002.
- 6.0 The complainant had disputed the same vide application dated 25/09/2012 under Annexure 'C' & reply to Annexure 'C' was given by letter dated 01/11/2012. Now he had approached to CGRF under Annexure 'A' dated 29/11/2012. Vide said complaint he had also disputed regarding accumulated bill sent to him for the month of August 2012 after installation of Meter no.N103422 on 30/01/2012. The said meter was tested with accucheck on 12/12/2012 by our Inspector and found working properly within the limits of accuracy and registering correct reading. The accumulated units were charged on average monthly consumption and credit of Rs. 51,590.33 has been worked out in the month of September 2012. The same was reflected in ensuing bill.
- 7.0 In view of above, the consumer may be directed to pay the legitimate amount payable to the Undertaking up to Electric bill for the month of Oct-2012 i.e. Rs.45,32,245/- subject to the credit applicable as stated above.

REASONS :

- 8.0 We have heard Shri Girdharkumar L. Manghani for the complainant and for the Respondent BEST Undertaking Shri S.M. Sakpal, DECC(G/N), Shri S.B. Pawar, AAM(G/N), Shri Suresh N. Bhosle, Ag. CLA along with Mrs. P.S. Kirtikar, Ag. ALA. Perused documents placed before the Forum.
- 9.0 The intricacy and the complexity has been a salient feature of the present matter on the hands of this Forum. To aggrieve the same, this Forum finds that the instant complainant does not have any regards for the truth. As such we found him being involved in various artifice and contrivances.
- 10.0 Now we turn to the controversy raised before this Forum for redressal. Therein we find that the complainant has approached this Forum with a prayer that in a response to his requisition dtd. 26/04/2011, the Respondent BEST Undertaking has installed a meter in his premises on 30/01/2012. Thereafter the complainant for the first time received his electricity bill in the month of September 2012, showing huge outstanding amount of Rs. 41,11,196.00 debited towards *transfer of arrears from other account*.
- 11.0 The complainant contends that the BEST has granted him a fresh connection without any demur and now claiming such a huge alleged outstanding arrears. The complainant further contends that the Respondent BEST Undertaking has served the first electricity bill after a lapse of about 8 months without giving him necessary slab benefits. The complainant therefore prayed to restrain the Respondent BEST Undertaking from claiming the alleged huge outstanding of Rs. 41,11,196.00 of the other accounts from him and to give him slab benefit.
- 12.0 This Forum at the inception observes that as alleged by the complainant he has been indeed served with the electricity bill after a lapse of about 8 months and therefore he was entitled to get the 'slab benefits'. Accordingly, we find that the Respondent BEST Undertaking has already worked out such a 'slab benefit' of Rs. 51,590.33 and assured to adjust the same amount in the ensuing electricity bill, which would be served on the complainant. In support of this contention, this Forum finds that the Respondent BEST Undertaking has placed on file the details of the *slab benefits* worked out by it by placing the same before this Forum at Exhibit 31/C. Thus this Forum finds that the grievance of the complainant in regard to depriving him the 'slabwise benefit' has been already redressed with, by the Respondent BEST Undertaking.
- 13.0 Now we turn to assess the merit in the contention raised by the complainant in regard to alleged illegal claiming huge arrears of Rs. 41,11,196.00 from other accounts from him in the electricity bill served on him in the month of September 2012. In this connexion, we find that as pleaded by the Respondent BEST Undertaking in the same premises of the complainant, in the past Shri Satyaprakash Narayan was provided with electric connection with an a/c no. 781-399-041. For non-payment of the arrears, his meter was removed on 14/06/2007.
- 14.0 The Respondent BEST Undertaking contends that thereafter in the same premises M/s S. Anand Leather Works was provided with an electric connection with a/c no. 781-399-079. The meter provided to said consumer M/s S. Anand Leather Works was also removed by the Respondent BEST Undertaking on 22/02/2010 for non-payment of electricity charges.
- 15.0 This Forum thus finds that the Respondent BEST Undertaking has resisted the contention raised by the complainant *inter-alia* on the ground that in the premises of the

complainant Shri Satyaprakash Narayan was provided with the electricity with a/c no. 781-399-041 and as on June 2012 he was in arrears of Rs. 32,74,595.00. Later on in the same premises M/s S. Anand Leather Works was provided with the electricity whose electricity arrears has been of Rs. 8,26,501.00 as on June 2012. The complainant has been provided with electricity in the same premises. Besides it the complainant has given an undertaking on a stamp paper, placed on file before this Forum at Exhibit 148/C therein the present complainant has undertaken to pay claim of vigilance case in respect of Shri Satyaprakash Narayan and M/s S. Anand Leather Works after receiving final assessment from Review Committee, failing which agreed to removal of meter provided to him.

- 16.0 The Respondent BEST Undertaking has contended that it is the complainant who was running the business in the name and style of Satyaprakash Narayan as well as M/s S. Anand Leather Works. Therefore the complainant is liable to pay the arrears of Rs. 41,11,196.00 of both these accounts. The Respondent BEST Undertaking has further placed a reliance on a cheque signed by the complainant dtd. 17/09/2006 of Rs. 2,28,292.00 for clearing the arrears of Shri Satyaprakash Narayan. The Respondent BEST Undertaking has further placed a reliance on a letter dtd. 03/10/2011 addressed to the Review Committee of the Respondent BEST Undertaking under the signature of the complainant wherein he has mentioned Shri Satyaprakash Narayan as well as S. Anand Leather Works being the persons who were living on rent in his premises and ran away. The owner of the premises has been Shri Ramshankar Gupta i.e. himself and requested to review his case sympathetically.
- 17.0 This Forum on perusing the documents relied on by the Respondent BEST Undertaking finds that as far as Shri Satyaprakash Narayan is concerned having a/c no. 781-399-041, can not be held as a 'proxy' of the complainant in order to foist his liability on the complainant, for a simple reason that all these documents referred to above are merely sufficient to raise a suspicion that Shri Satyaprakash Narayan could be running a business on behalf of the complainant. Therefore complainant has remitted a cheque of Rs. 2,28,292.00 to clear the arrears of Shri Satyaprakash Narayan which has been bounced. Further it is significant to observe that albeit the complainant has given the undertaking on a stamp paper still the Respondent BEST Undertaking would be entitled to claim the arrears from the complainant which can be legitimately claimed and recovered from him. Such undertaking therefore cannot give a blanket and plenary authority to the Respondent BEST Undertaking to claim the arrears worked out by it in respect of Shri Satyaprakash Narayan.
- 18.0 To conclude, this Forum holds that the suspicion howsoever it may be strong, cannot take place of an evidence to any extent. We therefore proceed to hold that Shri Satyaprakash Narayan has been a distinct and different entity and as such the arrears of Rs. 32,74,595.00 as claimed by the Respondent BEST Undertaking cannot be termed as legitimate arrears recoverable under the provision of law. It is for the Respondent BEST Undertaking to recover the said amount of arrears from Shri Satyaprakash Narayan only and not from the present complainant.
- 19.0 Now we turn to the claim made by the Respondent BEST Undertaking in respect of M/s S. Anand Leather Works having an a/c no. 781-399-079 of Rs. 8,26,501.00 from the complainant. In this regard, we find that in order to establish that the said firm viz. M/s S. Anand Leather Works has been owned by the present complainant, the Respondent BEST Undertaking has placed on file a Registration Certificate of the said establishment issued under the Bombay Shops and Establishment Act, 1948, placed before this Forum at Exhibit 97/C. In a bare perusal of the same this Forum finds that the name of the

establishment has been shown therein as M/s S. Anand Leather Works and the name of the employer has been shown as Shri Ramshankar Gupta i.e. present complainant. While resisting the said contention raised by the Respondent BEST Undertaking, the representative of the complainant Shri Girdharkumar L. Manghani has vociferously urged before this Forum that the Respondent BEST Undertaking has brought on file this fabricated document in order to foist the liability of M/s S. Anand Leather Works on the present complainant Shri Ramshankar Gupta by hook or crook. To buttress his contention, said representative has pointed out that there has been an overwriting in the column provided for the name of the employer.

- 20.0 In this context, this Forum observes that the complainant has raised said totally false contention claiming much impunity. This Forum finds that in the past, present complainant Shri Ramshankar Gupta had filed a representation no. CGRF/157/2009 dtd. 05/11/2009 wherein he had raised a grievance against the Respondent BEST Undertaking alleging a negligence in services and breach of duty and misuse of power on its part by filing two cases against M/s S. Anand Leather Works of which he was a proprietor u/s 135, 138, 152 & 126 of the Electricity Act, 2003. The complainant therein requested this Forum to direct the Respondent BEST Undertaking not to disconnect his meter and to restore his electric supply.
- 21.0 In this representation, this Forum has already passed an order dtd. 07/01/2010 holding that the said grievance was out of jurisdiction of this Forum. It is therefore blatantly manifest that in the past, the present complainant has already approached this Forum on behalf of M/s S. Anand Leather Works in a capacity of proprietor of the said firm. However, to the shock and surprise of this Forum in the instant complaint, the complainant has shown a temerity to deny any connection with this M/s S. Anand Leather Works in order to avoid the electricity arrears of Rs. 8,26,501.00 claimed by the Respondent BEST Undertaking.
- 22.0 We therefore hold that the Registration Certificate of the establishment issued under the Bombay Shops and Establishment Act, 1948 in respect of M/s S. Anand Leather Works placed on file before this Forum by the Respondent BEST Undertaking has been a cogent piece of evidence which candidly shows the present complainant Shri Rakshankar Gupta being the employer of the said establishment, is therefore liable to pay the arrears of electricity of the a/c no. 781-399-079. To reiterate the complainant knowing full-well having no balance in his account issued cheque in order to pay charges of Shri Satyaprakash Narayan, the Respondent BEST Undertaking has placed on file said bounced cheque. The complainant has submitted two letters of same date viz. 03/10/2011, similarly worded to the Review Committee of Respondent BEST Undertaking mentioning Shri S. Anand and Shri Satyaprakash Narayan, were living on rent and ran away. The Respondent BEST Undertaking has also shown this Forum many requisition applications of the present complainant mentioning the name of complainant with a little variation however with the same photographs of the complainant. This Forum therefore finds an improper and devious *modus operandi* on the part of complainant.
- 23.0 Now this Forum proceed to advert to the documentary evidence placed on file by the Respondent BEST Undertaking in support of the amount of the arrears claimed from the complainant in respect of M/s S. Anand Leather Works having a/c no. 781-399-079 of Rs. 8,26,501.00 as on June 2012. In this connexion we find that the complaint himself has placed on file the copies of the Ledger Folio maintained by the Respondent BEST Undertaking in respect of M/s S. Anand Leather Works wherein we find that M/s S. Anand Leather Works was provided with various meters. The first meter no. L931675 was

installed on 20/07/2007 and the same was removed immediately on 17/08/2007 for the reason of replacing the same with higher side capacity meter. Accordingly, a meter no. Q980311 was provided on 17/08/2007 and the same was removed on 10/04/2008. Thereafter M/s S. Anand Leather Works was provided with another meter No. 66356 installed on 10/04/2008 and the same was removed on 30/12/2009 for the reason that the same was found, to be tampered with by the Vigilance Dept. of the Respondent BEST Undertaking. Thereafter M/s S. Anand Leather Works was provided with a meter no. M094541 on 30/12/2009 and the same was removed on 22/02/2010 for non-payment of the arrears. Accordingly we find the entries in the records maintained by the Respondent BEST Undertaking viz. Consumer Information System report placed before this Forum and also the same being reflected in the Ledger Folio.

- 24.0 This Forum further observes that in regard to meter no. N066356, we find that the said meter has recorded the proper consumption of electricity till the month of March 2009, however, thereafter till the month of February 2010 the Ledger Folio is mentioning the average consumption of 5000 units as no periodical actual reading was available till the date of removal of this meter viz. 30/12/2009. To reiterate, the said meter was removed as the same was found to be tampered with by the consumer and it was replaced with another meter no. M094541 which was subsequently removed on 22/02/2010 for non-payment of arrears.
- 25.0 At this juncture, the representative of the complainant Shri Girdharkumar L. Manghani has vehemently argued that the consumption of unit recorded by meter no. N066356 itself shows that the said meter was running in a erratic way therefore the complainant was required to record the average consumption of electricity of 5000 units per month and as such the claim of arrears made by the Respondent BEST Undertaking has not been appropriate and legitimate one.
- 26.0 In this connexion, this Forum finds a merit in the contention raised by the Respondent BEST Undertaking that till the month of March 2009 the actual meter reading was available, however, the same was not available till the date of removal of the said meter. Therefore considering the earlier consumption the Respondent BEST Undertaking has recorded average of 5000 units consumption per month. However, later on the actual consumption of units recorded by the said meter was available in Consumer Information System report, showing the same being 42888. Accordingly, taking into consideration the said actual reading recorded by the meter no. N066356, the Respondent BEST Undertaking has credited the account of M/s S. Anand Leather Works viz. 781-399-079 by Rs. 3,82,014.24 under the code no. 43. The Respondent BEST Undertaking further worked out the actual energy charges on the basis of the last reading recorded by the said meter no. N066356 of Rs. 27,713.54 under the code no. 3 and accordingly debited the said account.
- 27.0 This Forum thus find that the Respondent BEST Undertaking in this manner has properly worked out the arrears of Rs. 9,08,550.40 payable by the said consumer i.e. M/s S. Anand Leather Works till the month of November 2010. This Forum further finds that from this arrears amount in all fairness the Respondent BEST Undertaking further gave the credit of Rs. 2,04,073.29 towards the DP charges under code no. 46 and interest amount of Rs. 11,583.34 under the code no. 49 in the month of May 2011. As such the legitimate electricity arrears recoverable from this consumer has worked out of Rs. 7,41,748.82 as on month of May 2011 and the same has been raised to Rs. 8,26,521.00 as on June 2012 on account of levy of interest thereupon from time to time.

- 28.0 This Forum therefore holds that the Respondent BEST Undertaking has properly worked out the arrears of Rs. 8,26,501.00 in respect of M/s S. Anand Leather Works having a/c no. 781-399-079 which the present complainant is liable to pay being the employer and proprietor of the said firm as observed above.
- 29.0 We thus find that the complainant is not only liable to pay his own electricity bill in arrears but he is also liable to pay the arrears claimed by the Respondent in respect of M/s S. Anand Leather Works having a/c no. 781-399-079.
- 30.0 However, in view of this Forum, it does not put an end to the controversy raised before this Forum. To reiterate, this Forum has already observed that the present complainant Shri Ramshankar Gupta was availing the electric supply from the Respondent BEST Undertaking under the name and style of M/s S. Anand Leather Works in the same premises and he did not pay the legitimate electricity arrears of Rs. 8,26,501.00 till June 2012 in respect of this firm. This Forum thus finds that the premises wherein the complainant has obtained the electric supply for the first time in the name and style of M/s S. Anand Leather Works was previously occupied by Shri Satyaprakash Narayan with a/c no. 781-399-041 whose unpaid electricity charges has been of Rs. 32,74,595.00 as claimed by the Respondent BEST Undertaking.
- 31.0 It is therefore obvious and clear that in the month of July 2007, the present complainant Shri Ramshankar Gupta has not applied for a fresh connection in the same premises in the name and style of M/s S. Anand Leather Works but the same was reconnection of the electric supply. This Forum therefore observes that under such peculiar facts and circumstances, the provision provided under Regulation 10.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005, would come into play, as held by the Hon'ble Division Bench of Bombay High Court in a case of *M/s Namco Industries Pvt. Ltd. v/s the State of Maharashtra and Others (WP no. 9906/2010) order dtd. 16/10/2011*.
- 32.0 In consider view of this Forum the Hon'ble Division Bench of Bombay High Court in a case of *M/s Namco (supra)* has *inter-alia* observed in para 13 that the deficiency in law which was noticed 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 the unpaid electricity dues would be charged on the property and can be recovered by the Distribution Licensee from the new owner subject to the qualification in regard to the period mentioned in the proviso provided therein. This Forum finds it appropriate to reproduce the Regulation 10.5 at this juncture for ready reference and it runs as under.

Regulation No. 10.5 :

Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on 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.

- 33.0 This Forum observes that to reiterate, no new connection was sought by the complainant to the premises in the name and style of M/s S. Anand Leather Works but it was the case of reconnection. Therefore, the charges of electricity unpaid by the erstwhile occupier i.e. Shri Satyaprakash Narayan was *charge on the premises* as envisaged under Regulation 10.5. In respect of the complainant as provided under the proviso, the same has been restricted to maximum period of 6 months of unpaid charges for electricity supplied to such premises.
- 34.0 Now it falls for consideration of this Forum to ascertain the period of 6 months of the unpaid charges of electricity supplied to the said premises to the erstwhile occupier i.e. Shri Satyaprakash Narayan, which now needs to be paid by the present complainant as observed above. In this context we may refer to Ledger Folio placed on file by the complainant himself in respect of the erstwhile occupier Shri Satyaprakash Narayan. To reiterate, his meter was removed in the month of July 2007. Obviously therefore the period of 6 months of unpaid charges should be a period prior to the month of June 2007, the month in which his meter was removed.
- 35.0 At this juncture in this regard this Forum observes a very peculiar circumstance confronted by this Forum. The Respondent BEST Undertaking prior to the month of April 2007 were recording the electricity consumption on bi-monthly basis. It is from the month of May 2007 onward, it has started recording the meter consumption on monthly basis instead of bi-monthly. Under such peculiar circumstances, this Forum finds it fit in a given set of facts and circumstances to take into consideration bi-monthly unit consumption recorded on the Ledger Folio against the month of December 2006 viz. 52908 units, against the month of February 2007 viz. 45227 units and that against the April 2007 viz. 55791 units. As such total consumption of units for 6 months would be 1,53,926 units for which no payment has been made by the erstwhile occupier viz. Shri Satyaprakash Narayan. It is therefore evident that as envisaged under Regulation 10.5 the complainant has been liable to pay the electricity charges for the said total units of 1,53,926 consumption for 6 months of period.
- 36.0 Before we part with this order, we may place on record that there has been delay in passing order, as both the parties sought an adjournments during the course of hearing of this matter. This Forum granted the same being justified, considering the volume and complexity of the instant matter.
- 37.0 In the aforesaid observation and discussion we proceed to pass the following order.

ORDER

1. The complaint no. N-G(N)-174-2012 stands partly allowed.
2. The complainant is liable to pay the electricity bill of his present account as worked out by the Respondent BEST Undertaking giving slabwise benefit therein, along with the unpaid electricity charges in respect of M/s S. Anand Leather Works.
3. The complainant is further liable to pay for consumption of 1,53,926 units for a period from November 2006 to April 2007 by the erstwhile occupier Shri Satyaprakash Narayan.

4. The Respondent BEST Undertaking directed to issue an electric bill accordingly to the complainant within a period of one month from the date of passing this order.
5. The complainant has been further directed to pay the aforesaid total electricity charges in 6 equal monthly installments. The first installment to be paid within a period of one month from the date of receiving aforesaid bill.
7. The Respondent BEST Undertaking has been directed to report the compliances of this order within a period of 2 months, therefrom.
8. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman