

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 -F(N)-212-2013 dtd. 17/12/2013

M/s Reliance Jewellery Watches (P) Ltd. ....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent

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 Rajesh Shah

On behalf of the Respondent : 1. Shri M.Y. Shethwala, Supdt. CC(F/N)

Date of Hearing : 28/01/2014

Date of Order : 05/02/2014

Judgment by Shri. R.U. Ingule, Chairman

Reliance Jewellery Watches Pvt. Ltd., Room no. 1, Basement, Rajvi Bldg. (Matruchhaya Bldg.), Bldg. no. 21, K.A. Subramanium Road, Matunga, Mumbai - 400 019 has come before the Forum for dispute regarding restoration of electric supply after the part payment of vigilance claim pertaining to A/c 604-363-049\*2.

Complainant has submitted in brief as under :

1.0 The complainant has approached to IGR Cell on 03/10/2013 for grievance regarding reconnection of electric supply after part payment of vigilance claim pertaining to A/c 604-363-049\*2. The complainant has approached to CGRF in schedule 'A' dtd. 16/12/2013 (received by CGRF on 16/12/2013) as the consumer is not satisfied with the remedy provided by the IGR Cell Distribution Licensee regarding its grievance. The complainant has requested the Forum to restore electric supply to the suit premises and improvement in preparation of vigilance claim in theft cases.

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

- 2.0 Vigilance raid was conducted on 29/04/2008 and it was found that the complainant was using direct supply. Provisional initial claim amounting to Rs. 78,17,841/- and compounding charges amounting to Rs. 7,06,910/- was preferred by the Vigilance Dept. and electric supply to the complainant's premises was disconnected and police case was registered with Matunga Police Station. Electric supply was restored to the complainant's premises after making adhoc payment of Rs. 15,00,000/- by cheque on 30/04/2008.
- 3.0 The complainant met the GM and submitted request letter to review the vigilance claim. As directed by the GM, the claim is revised to Rs. 32,63,569/- by taking into consideration all the contention of the complainant and compounding charges remaining the same amounting to Rs. 7,06,910/-.
- 4.0 The electric supply was again disconnected by the Vigilance Dept. on 17/06/2008 since the complainant, despite of his assurance failed to pay balance amount of Rs. 12,63,569/- of the revised claim. Till date the consumer has made payment of Rs. 26,00,000/- and therefore, till the time he pays his remaining amount of Rs. 6,63,569/-, reconnection of his electric supply cannot be considered.
- 5.0 The entire case has been dealt by the Vigilance Dept. u/s 135 of part XIV of E.A., 2003 and the provisions u/s 56 are not applicable in this case. The grievances of the complainant are all related with the actions taken by the undertaking under the section 135 of part XIV of E.A., 2003. Therefore the complainant has to approach the appropriate authority for redressal of his grievances.
- 6.0 The complainant has made representation dated 31.12.2008 to CGRF for pre-admission hearing of various issues. However, Forum disposed off the complainant's plea without admitting it stating that "as the case falls under Section 135 of part XIV of Electricity Act 2003, it does not fall under purview of the Forum".
- 7.0 A case on the subject (Special Case No. 20/10) is subjudice in Session Court. The consumer has tried several times to bring the case under the purview of CGRF, consumer court etc; however everywhere his application has been rejected saying that since the case is u/s 135, it cannot be entertained by them and thus the

complainant has habit of misleading the authorities regarding the fact that the case is tried u/s 135.

### REASONS

- 8.0 We have heard Shri Rajesh Shah for the complainant company and for the Respondent BEST Undertaking Shri M.Y. Shethwala, Supdt. CC(F/N) at length. Perused documents placed on file before us.
- 9.0 The instant complaint on our hand has been a classic case of abuse of process of law at the hands of the complainant. At the outset this Forum finds that claiming much impunity the instant complaint has been preferred before this Forum, for re-agitating the same and identical controversy which has been earlier decided by the predecessor of this Forum about five years back in a complaint no. CGRF/155/2008 on 03/02/2009, holding the said controversy does not fall under the purview of this Forum and therefore not admitting the matter.
- 10.0 At this juncture this Forum finds it significant to advert to section 11 provided under the Code of Civil Procedure 1908. Therein a statutory provision under the caption of Res-judicata has been provided. Essentials of this doctrine of Res-judicata are as under.

1. The former order must be that of a court of competent jurisdiction.
2. It must be directly speaking upon the matter in question in the subsequent litigation.
3. It must be between the same parties.

Thus in nutshell the underlying principle has been, "no man should be vexed twice over for the same cause." This doctrine is intended not only to prevent a new decision but also to prevent a new investigation so that the same party cannot be harassed again and again in various proceedings, upon same question. We may hasten to observe that such sophisticated statutory provision of Res-judicata provided under section 11 of the Code of Civil Procedure 1908, may not be applicable as it is in the instant matter. However, the analogous basic principle stemming and emanating from the section 11 of the Code of Civil Procedure 1908 would be certainly applicable and needs to be taken in to consideration by this Forum while deciding the instant matter.

- 11.0 This Forum on assessing and analyzing the voluminous contentions raised in the instant matter, clearly finds that the controversy sought to be agitated by the complainant in the instant complaint was directly and substantially involved between the present litigating parties and after considering the same, the predecessor of this Forum, as observed above has flatly refused to admit the case before it for deciding, holding the same falls u/s 135 of the Electricity Act, 2003. A bare perusal of the said order passed by the predecessor of the Forum manifests that the complainant had agitated before this Forum about applying for reconnection of electricity vide its requisition no. 90903036 dtd. 13/10/2008. Thereafter the complainant adverted to section 135 and

135 (1A) of the Electricity Act, 2003. Thereafter also adverted to period of assessment provided under Regulation 8.6 of MERC (Electricity Supply Code & Other Conditions of Supply), Regulation 2005.

- 12.0 The Respondent BEST Undertaking therein had resisted the controversy raised by the complainant on the ground that the electric supply of the complainant company has been disconnected on the ground of theft of electricity envisaged u/s 135 of the Electricity Act, 2003. Therefore this Forum does not have jurisdiction to entertain the said complaint. This Forum finds that the complainant company now has been raising the same and identical controversy in the instant complaint.
- 13.0 This Forum observes that as per the scheme of law launched under MERC (CGRF & EO), Regulation 2006, as provided under Regulation 6.8 (b) if in the prima-facie view of the Forum the grievance referred to it falls under the provision of section 135 to 139 of the Electricity Act, 2003, then the said grievance referred to it by the complainant shall be excluded from the jurisdiction of the Forum. To reiterate predecessor of this Forum vides its order dtd. 03/02/2009 already declared its view in the complaint no. CGRF/155/2008 dtd. 31/12/2008, in the same and identical set of facts and between the same parties, that the matter in controversy falls u/s 135 of the Electricity Act, 2003. Therefore it does not fall under the purview of this Forum and proceeded to dispose off the said complaint.
- 14.0 Under such facts and circumstances, if at all the complainant consumer was aggrieved by the alleged non-redressal of his grievance by the predecessor of this Forum, then it ought to have made a representation for redressal of its grievance to the Electricity Ombudsman, that too within 60 days from the date of the order passed by the predecessor of this Forum. In the contingency of any delay it was opened for the Ombudsman to entertain representation after the expiry of the said stipulated period if he is satisfied that there was sufficient cause for not filing it within the said period. Accordingly, this Forum finds a provision having a statutory force, provided under Regulation 17 of MERC (CGRF & EO), Regulation, 2006.
- 15.0 To our shock and surprise however instead of taking such recourse to the aforesaid statutory provision, the complainant company found to have re-agitating the same and identical grievance before this Forum, that too after a lapse of about five years. This Forum further finds that a very frail and futile attempt has been made by the complainant while justifying the filing of the instant complaint, raising a ludicrous and preposterous contention that the earlier complaint was for "reconnection" of electricity supply, while the instant complaint has been asking for the "new connection" of electric supply.
- 16.0 Needless to observe at this juncture that by playing such jugglery of words, complainant cannot re-agitated the same grievance before this Forum being hit by the basic and analogous principals of Res-judicata as discussed above. Fact remains that by making such futile and abortive attempt the complainant found to have abused the process of law which needs to be denounced. This Forum does not find any warrant

and justification to advert to the rest of the contentions vociferously agitated before this Forum, as it would simply burden this order.

- 17.0 In the aforesaid observation and discussion the instant complaint is liable to be disposed off being unsustainable in law and fact. Accordingly we proceed to pass the following order.

ORDER

1. The complaint no. N-F/N-212-2013 stands disposed off being unsustainable in law and fact.
2. Copies be given to both the parties.

(Shri S M Mohite)  
Member

(Shri M P Thakkar)  
Member

(Shri R U Ingule)  
Chairman