

**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-73-09 dt . 08/06/2009**

Rizwan Ahmed .....Complainant

V/S

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

**Present**

Quorum  
1. Shri. S. P. Goswami, Chairman  
2. Smt. Varsha V. Raut, Member

On behalf of the Complainant Shri. Rizwan Ahmed

On behalf of the Respondent  
1. Shri. S.S. Jadhav, DECC (E-Ward)  
2. Shri. V.K. Raul, Asst. Legal Advisor  
3. Shri. Mohan Parthasarthy, OACC (E-Ward)

Date of Hearing: 27/08/2009

Date of Order : 16/10/2009

**Judgment by Shri. S.P.Goswami, Chairman**

Shri. Rizwan Ahmed, Grd floor, Room No 211, 244 Maulana Azad Road, Mumbai – 400 008 has come before this Forum for his grievance regarding reconnection of power supply after withdrawing the old arrears of Rs.4,99,216.41/- of Mr. Mohd. S. Abbasi.

### **Brief history of the case**

- 1.0 Shri. Rizwan Ahmed had applied for reconnection of electric supply to the premises at Ground Floor, Room No.211, Bldg No.244, Maulana Azad Road, Mumbai – 400 008 vide requisition no. 50842876 dated 4/3/2008. The electric supply to the said premises was previously given in the name of Shri. Mohd. S. Abbasi for Commercial purpose under Consumer A/c No. 535-393-037 and the electric supply was disconnected and meter no. 0455077 was removed on 21/11/2002 for non-payment of outstanding dues of Rs.4,37,250.97 in November 2002.
  
- 2.0 Subsequently, respondent received letter from Shri. Mohd. S. Abbasi on 13/02/2008 to review the outstanding bill so that he can settle the arrears. Later on, Shri. Rizwan Ahmed (complainant) had applied for reconnection of electric supply for Commercial purpose to the premises of Consumer A/c No. 535-393-037 on 4/3/2008. Respondent issued the ESL-4 letter dated 11/4/2008 informing the complainant for the payment of outstanding of Rs.4,99,217/- on the premises and produce the proof of occupancy alongwith other compliances.
  
- 3.0 Then, complainant had filed a grievance under Annexure 'C' dated 12/5/2008 which was received by respondent on 2/6/2008 for reconnection of electric supply & stating that he had purchased the above premises in August 2007 & was not responsible for payment of outstanding arrears of Shri. Mohd. S. Abbasi. Also, he had submitted a copy of affidavit dtd. 10/8/2007 signed by widow of Shri. Mohd. S. Abbasi for transfer/sale of premises. Due to discrepancy in letter dated 11/2/2008 received from Shri. Mohd. S. Abbasi & affidavit dated 10/8/2007 submitted by the complainant, respondent vide letter dated 29/7/2008 requested the complainant to produce the original death certificate of Shri. Mohd. S. Abbasi, original documents of proof of ownership (such as Registered Purchase agreement) of the premises of Consumer A/c No. 535-393-037 along with the certified true copies of the same.

- 4.0 Complainant did not respond to respondent's letter dated 29/7/2008 & directly approached Hon'ble CGRF stating that he had not received any reply from respondent and lodged his complaint vide ref No. F(S)-57-08 dated 17/10/2008. Subsequently, the complaint was withdrawn by him vide letter dated 3/12/2008. Again the complainant approached to honourable forum on 4/6/2009 for withdrawal of old arrears of Shri. Mohd. S. Abbasi & to get electricity connection.

**Complainant in his written application and during Hearing stated the following**

1. To connect the power supply to his premises and withdraw the old arrears of Rs.4,99,216.41/- of Mr. Mohd. S. Abbasi.
  
2. As he has not received any reply from respondent against his complaint, he approached Hon'ble Forum & Forum accepted his complaint under ref no. N-F(S)-57-2008 dated 17/10/2008. But while replying to this complaint respondent has confused him by producing one letter from Shri. Mohd. S. Abbasi dated 11/2/2008.
  
3. He had withdrawn the complaint to get some time to find out actual facts about the letter from Shri. Mohd. S. Abbasi and the arrears bill of Rs.4,99,216.41 of Shri. Mohd. S. Abbasi with the help of RTI Act.
  
4. He had applied for electric connection to his premises vide requisition no. 50842876 dated 4/3/2008. The respondent has asked him to pay the old arrears Rs.4,99,216.41 of Shri. Mohd. S. Abbasi.

5. He is not responsible to pay the old arrears of Rs.4,99,216.41 of Shri. Mohd. S. Abbasi, as he had purchased the premises in Aug.07 and he is not responsible for this arrears.
  
6. In his previous application he had asked few questions as:
  - 6.1 How the arrears of Rs.4,99,216.41 was accumulated.
  - 6.2 Why respondent has not disconnected the electric supply of Shri. Mohd. S. Abbasi when arrears were less.
  - 6.3 Whether the arrears amount of Rs.4,99,216 is correct.
  - 6.4 Why respondent has not recovered the arrears amount from Shri. Mohd. S. Abbasi.
  - 6.5 Whether it is legal to recover the old arrears from new consumer as per Electricity Act, 2003 & rules and Regulation given by MERC.

Towards his earlier complaint dtd. 17/10/2008, Hon'ble Forum has forwarded the certified copy reply submitted by respondent to Forum on 12/11/2008.

- 7.0 In response to the demand of the respondent to produce the original death certificate of Shri. Mohd. Sayed Abbasi, he has stated that he is not relative of Mohammed Sayed Abbasi, but he had purchased the premises from Mrs. Banobi widow of Mohammed Sayed Abbasi and he was not aware where she stays nowadays, as such it is not possible for him to get the original death certificate of Mohammed Sayed Abbasi.

- 7.1 After reading letter from Shri. Mohd. S. Abbasi dated 11/2/2008, It was surprising to him that how a man who must be dead before Aug.07 can write a letter to respondent in Feb.08, therefore he had tried to get some information such as action taken on letter and signature of Shri. Mohd. S. Abbasi on installation papers, which can be checked with the signature of the letter dtd. 11/2/2008. As he had presumed he had received negative reply from respondent, i.e. no action has been taken on Shri. Mohd. S. Abbasi's letter & installation papers.
- 7.2 In reply respondent has stated that the outstanding arrears of Rs.5,50,707.26 are the legitimate dues, he had therefore under Right To Information asked respondent for following information of Electricity bill no. 535-393-037.

Reading position,  
Billing position,  
History of Meter with size,  
Payment Position,  
Disconnection Details,  
Details of Inspection of Meter.

And for all above information respondent has given him only Ledger position

While going through Ledger position following was observed by him:

- 7.3 Shri. Mohd. S. Abbasi was regular in payment of his bill, but in April'02 the bill of Rs.3,87,480.70 for 46165 units was preferred seems to be wrong. The premises for which 46165 units was given merely 150 sq.ft. The previous reading is 8531 and the reading of April'02 is 4696, as such the electricity units consumed are 6165. But the units charged are 46165, which clearly indicates that 40,000 units are overcharged and even though respondent has stated that the outstanding arrears of Rs.5,50,707.26 are the legitimate dues.

- 7.4 From all above it seems that respondent was misguiding Hon'ble Forum by the way of giving wrong information regarding outstanding dues and by producing a letter of dead man.
- 7.5 Complainant therefore pray before the Hon'ble Forum to give him justice by the way of asking respondent to withdraw the old arrears of Shri. Mohd. S. Abbasi and connect the electric supply.
- 8.0 During the hearing complainant states that as there is no electricity he could give /sell his premises / gala to anybody or run his own business. He told the forum that it was his mistake that he did not verify that there was any dues on that premises / gala. Complainant stated that he believed on the old lady as she told that there is no problem regarding the purchase of the premises and informed him that only one or two months electricity bills are to be paid. He admitted that at the time of purchase of the premises there was no electricity connected to the premises.
- 9.0 During the hearing complainant stated that since last 2 years his gala / premises is closed. He further stated that he cannot run his business without electricity. He prayed to the forum to install meter at his premises / gala. He said to the forum that when he had not used the electricity he is not responsible to pay the old arrears. He told that the earlier occupant of the premises has used the electricity.
- 10.0 During the hearing complainant stated that the forum that he could not understand the ledger readings forwarded by the respondent.



- 11.0 During the hearing complainant stated that the letter signed as Mr. Mohd. S. Abbasi informing willingness to settle the dues was not written by him.
  
12. During the hearing complainant was unable to produce NOC of previous occupant or rent receipt of that premises & registered sales deed.
  
13. During the hearing complainant shown willingness to pay Rs.5000 to Rs.10,000/- for meter connection & refused to pay the old arrears of Rs.4,99,216.41/- of Mr. Mohd. S. Abbasi. Complainant further stated that he is paying interest for the amount he took loan for purchasing the premises & presently going through critical financial position.

**Respondent in his written statement and during  
Hearing stated the following:**

1. The meter No. 0455077 was having 4 Digit, therefore meter was intialised 5 times during the period from Dec.2000 to April 2002, due to high monthly consumption. However, the consumer was billed for only 5633 units, during this period considering that meter might have over read on earlier occasion. Hence, we have preferred a bill of Rs.3,87,480.70/- for accumulated consumption of 46165 units in the month of April 2002. The outstanding arrears of Consumer of A/c No. 535-393-037 upto 1/5/2009 is Rs.5,91,701.48 (Outstanding arrears = 5,91,701.48, D.P. Charges = 74,286.83, Interest on arrears from Sept.07 to Feb.2009 = 95,127.37, unpaid energy charges = 4,22,287.28/-).

2. Since, the consumer had complaint regarding high bill, we had installed check meter no. M021656 on 27/4/2002 and reading of both meters are as follows:

	Original Meter (0455077)	Check Meter (M021856)
7/5/2002	7628	1172
Upto 21/11/02	<u>7062</u>	<u>10705</u>
	9434	9533

During the period from 7/5/2002 to 21/11/2002 it was observed that the units consumed by the meter no. 0455077 is 9434 and that by check meter M021856 is 9533. Since the accuracy is 1% it is within the permissible limit of accuracy. From above it is evident that unit billed to the consumer as per actual readings of meter No. 0455077 are correct. We had disconnected the electric supply of the premises of Shri. Mohd. S. Abbasi, consumer A/c No. 535-393-037 on 21/11/2002 for non-payment of the outstanding arrears of Rs.4,37,250.97 in November 2002, also removed both the meters viz. 0455077 and M021856.

3. The outstanding arrears of Rs.5,91,701.48 upto May 2009 are the legitimate dues of the premises of Shri. Mohd. S. Abbasi, consumer A/c no. 535-393-037 and it is charged on actual consumption of consumer.
4. As Shri. Mohd. S. Abbasi did not make the payment of the outstanding arrears of A/c no. 535-393-037; the electric supply to his premises was disconnected on 21/11/2002.
5. As per the provisions of the Electricity Act, 2003 and MERC Regulations (Electric Supply Code 10.5), a Licensee is allowed to recover electricity bill of old consumer from new consumer, which is restricted to maximum period of six months except in case of transfer

of connection to legal heir. Since the applicant had not submitted the registered copy of sale deed, his claim that he is a bonafide purchaser of premises cannot be accepted. Moreover electricity bills of the consumer A/c no. 535-393-037 indicating outstanding arrears amount are being delivered to the consumer's premises regularly till today and therefore outstanding amount of Electric bill is required to be paid by legal heir/ occupant of premises. Hence, the undertaking is entitled to recover the entire arrears of Rs.5,91,701.48 of A/c no. 535-393-037.

6. The copy of death certificate of Shri. Mohd. S. Abbasi was given by Rizwan Ahmed while investigating the premises on 31/10/2008.
  
- 6.1 We have received a letter dated 11/2/2008 from Shri. Mohd. S. Abbasi to settle the old arrears. Since we received application dated 4/3/2008 for reconnection of supply from Rizwan Ahmed, the action on the said letter was not taken.
  
- 6.2 the detailed information such as Reading position, Billing position etc. sought by Shri. Rizwan Ahmed under Right to Information Act, 2005 was covered in the Ledger Position of A/c no. 535-393-037 submitted by us.

Meter No.0455077 was installed at Room no. 211, Grd floor in the name of Shri. Mohd. S. Abbasi on 10/12/1999. The said meter was having only 4 digits. Since the meter was having only 4 digits and consumption was high, therefore meter has become zerowise 5 times. The details of reading and billing for the period from December 2000 to April 2002 of meter no. 0455077 along with the unit charged and unit chargeable. Since the consumer has complaint regarding high bill check meter no. M021856 was installed on 27/4/2002 in parallel to the existing meter no. 0455077 to confirm the accuracy of existing meter. Consumption recorded by both the meters are almost similar (Difference is only 1% as mentioned in para 2.0) hence, it proves that the working of meter No. 0455077 is accurate and the bill of Rs.3,87,480.70 for 46165 units charged to the consumer in April-2002 was on actual reading. Both the meters were removed on 21/11/2002 for non-payment of bill.

7. The Hon'ble forum may scrutinize this case of outstanding arrears in purview of the provisions of the Electricity Act, 2003 and MERC Regulations (Electric Supply Code 10.5) and also the Section 56 (2) of the electricity Act, 2003 as the consumer has not submitted any registered sale deed to prove that he is bonafide purchaser of the said flat and our registered consumer was being issued electricity bills regularly indicating the outstanding arrears of A/c no. 535-393-037.
  
8. During the hearing respondent states that premises of A/c no. 535-393-037 was given electric supply first time in Dec-1999. Due to non-payment of OS amount of nearly about Rs.5 lacs the respondent removed the meter of the premises in Nov-2002.
  
9. During the hearing respondent produced inspection report dtd. 4/1/2008 wherein it is stated as follows:  
"found the place. Tea vendor Shri. Salim found at the site. He informed that the place is hired by him from Shri. Anees Ahmed who owns adjacent gala from where power supply to tea tupperry is given. Shri. Anees informed that he has bought the place from Shri. Mohd. S. Abbassi & he is ready to settle soon".
  
10. During the hearing respondent stated that complainant applied for re-connection. He could not be given electricity connection as he has not settled the arrears & could not produce the proof that he is a legal owner of the premises. Hence, no relief could be given to the complainant as per MERC Regulations. Respondent further stated that the complainant's claim that he is a bonafide owner of the premises cannot be relied upon based on the documents submitted by the complainant & emphasized that they are correct in their stand to collect the entire arrears. However, shown willingness to waive the D.P Charges as per the prevailing management office order.

11. During the hearing respondent stated that the earlier consumer was served the disconnection notice however, at present no official records of the same are available.
  
12. During the hearing respondent stated that they are ready to give electricity connection to the complainant if he settles the outstanding amount & submit the proper rent receipt of the premises in his name.
  
13. During the hearing respondent produced the Judgments given by different judicial bodies. Respondent produced the Judgment given by Orissa State Consumer disputes Redressal Commission, Cuttack in the matter of Executive Engineer, Electrical South Co., Nabarangpur Electrical Division and Others. V/s. P. Motyalu & Judgment given by High Court of Delhi in the matter of Saurashtra Color tone Pvt. Ltd., V/s. BSES Rajdhani Power Ltd. These cases were similar with the present case. The judgments mentioned above went in favour of distribution utilities.

### **Observations**

#### **Differing opinion of Member, CGRF (CPO) Smt. Varsha Raut**

- 1.0 The Complainant approached this forum against the Respondent's refusal to connect the power supply to his premises unless the Complainant pays old arrears of Rs 4, 99,216/41 pertaining to the old consumer Mr. Abbasi.
  
- 2.0 It is a settled position in law that any consumer acquiring premises is liable to settle old outstanding dues of the old consumer and the electricity company is also justified in not connecting the power supply till such arrears are paid by the new consumer. However, while insisting on payment of the old arrears by the present Complainant - Mr. Rizwan Ahmed - the Respondent has to satisfy this Forum that the said arrears amount was first of all due and payable by the old consumer Mr. Abbasi.

- 3.0 As per the Respondent this amount of Rs 4,99,216/41 has a origin in their bill of Rs.3,87,480/70 for the accumulated consumption of 46,165 units in the month of Apr 2002 and the outstanding arrears of the complainant up to 1-5-2009 has now reached Rs 5,91,701/48 including DP charges and interest.
- 4.0 It is pertinent to note that the Respondent has admitted that the consumer (old) had complaint regarding high bill, thereby questioning the correctness of the meter. The Respondent has also admitted having installed check meter on 27-4-02. It is the Respondent's case that the reading position produced by them at Ex. 'E' shows that the meter was correct. The Respondent has also further admitted that the meter was initialized for 5 times during the period from Dec 2000 to Apr 2002 but has failed to show that they had duly informed the (old) consumer about the same. The Respondent in Para 1 has stated that the consumer was billed only for 5633 units during this period considering that meter might have over read on earlier occasions hence, they preferred a bill of Rs 3,87,480/70 for accumulated consumption of 46165 units in the month of Apr 2002. All these statements of Respondent only show that the meter was not reflecting correct consumption for the said period. Under such circumstances Respondent was under legal obligation to refer the matter to the Electrical Inspector as per Section 26(6) of Indian Electricity Act 1910 and even the consumption for such period has to be assessed by the electrical Inspector and not by the Respondent as stipulated under said provision. Supreme Court, in "*Belwal Spinning Mills Vs U.P. State Electricity Board And Anr*" has observed that after the amendment of sub-section (6) of Section 26, the Electrical Inspector is the only statutory authority to decide the dispute about the correctness of the meter, if such dispute about the correctness of the meter, is raised by either of the parties". Therefore, the procedure adopted by the Respondent of installing a check meter and also of initializing the meter reading and raising the bill for 46,165 units is clearly arbitrary and illegal as the same is not as determined by the Electrical Inspector as per Sec. 26 (6).
- 5.0 After the above discussions, I respectfully submit that I differ with the views expressed by my Ld. Colleague and therefore give following Order.
- 5.0 The claim of the Respondent arising from the so-called outstanding dues from the old consumer Mr. Abbasi cannot be legally sustained in view of gross violation of Sec 26(6) of Indian Electricity Act 1910 by Respondent and the same is hereby set aside. Since original claim of the Respondent itself is held illegal vis-a-vis the old consumer, the same can not also be legally passed on to the present Complainant.

- 7.0 It is, however, true that as per Sec 26 (6), the Respondent can claim and recover from the (old) consumer bills for a period not exceeding six months, provided such amount is worked out by the electrical Inspector. But the Respondent, in this case, has failed/neglected to refer the dispute to Electrical Inspector thereby pre-empting the possibility of getting the bill amount duly worked out by the Electrical Inspector. Considering the fact that the old consumer has already paid Rs 50,000/- and Rs 46,000/- (totaling Rs 96,000/-) to the Respondent against this claim, the Respondent cannot be allowed to take any further advantage of its own wrong by insisting on any more payment from the Complainant.
- 8.0 Respondent is therefore directed to supply power to the Complainant without insisting on any payment of aforesaid dues and on the Complainant complying with the other lawful requirements for obtaining connection as prescribed in Section 43 of Indian Electricity Act 2003.

### **Opinion of Chairman, CGRF Shri. S.P Goswami**

1. The complainant has approached this Forum requesting withdrawal of arrears and for reconnection of electric supply.
2. The electric supply to the premises was given in the name of Mr. Mohd. S. Abbassi (old consumer) in Dec-1999 for commercial purpose. His meter was removed on 21/11/2002 for non-payment of outstanding amount. The complainant Mr. Rizwan Ahmed applied for re-connection for the said premises on 4/3/2008. Complainant could neither produce the document showing that he is the bonafide purchaser of the premises nor could produce the rent receipt to prove that he is legal occupier of the premises. Also, the documentary evidence of whether widow of Shri. Abbassi is legally authroised to transfer the premises in the name of complainant is not produced. The affidavit between the complainant & the widow of earlier

consumer cannot be considered as legal transfer of property in the absence of duly registered sale or transfer deed.

3. The units billed by the respondent is based on the actual consumption. The accuracy of the meter of the previous consumer is ascertained by installing a check meter.
4. Check meter was installed by the respondent & as per the data submitted by the respondent both the meters recorded almost equal consumption. Thus, it is concluded that the meter was recording correctly and the units billed to the earlier consumer are based on the actual readings recorded by the meter.
4. Complainant was well aware that there was no electric supply to the premises at the time of so called purchase of the premises in Aug-2007. Respondent is regularly sending the electricity bill to the above premises.
5. Complainant has admitted his mistake of not confirming about the outstanding bills before so called purchase of the premises. Complainant vide his letter dtd. 29/8/2009 has shown willingness to pay Rs.25,000/- to get reconnection of electric supply.
7. As the previous consumer has actually used the electrical energy, it will be appropriate to recover the energy charges from the outstanding dues, waiving the D.P and interest charges.
8. As per section 26(6) of the Indian Electricity Act, 1910, in case of differences or dispute arises as to whether any meter is or is not correct shall be decided upon the application of either party, by an Electrical Inspector. In this case if at all the earlier consumer had any dispute pertaining to the accuracy of meter then he should have approached to Electrical Inspector. Since the earlier consumer has



not gone to electrical inspector it may be concluded that the old consumer was satisfied with the accuracy of meter. As the check meter was at the installation of the old consumer over a period of 6 months, he had enough time & opportunity to approach the Electrical Inspector. Further the complainant has also not questioned about the accuracy of the meter of the old consumer. From the above it may be concluded that the respondent has not violated section 26(6) of the Indian Electricity Act, 1910.

9. The differing opinion of the Member CGRF (CPO) Smt. Varsha V. Raut that the case be dealt under section 26(6) of IE Act, 1910 is not acceptable as the old consumer has not approached to electrical inspector & the complainant has not questioned about accuracy of the meter of the old consumer.
  
10. In view of the above observations following order is issued by the undersigned as a Chairperson of the Forum, using second & casting vote as per the provisions of section 8.1 of MERC (CGRF & EO) Regulations, 2006 amended upto date.

### **ORDER**

1. Complainant is directed to pay Rs.25,000/- to the respondent to get reconnection of electric supply.
  
2. Respondent is directed to give electricity connection to the complainant after receipt of an initial payment of Rs.25,000/- & other compliances as per the MERC (Electric supply code & other conditions of supply) Regulations, 2005.
  
3. Respondent is directed to re-work the outstanding arrears excluding the DP charges, interest & Rs.25,000/-.

4. Respondent is directed to recover the amount calculated as per serial no.3 above & grant six equal monthly installments for payment & waive the last installment if the complainant pays all the other installments in time.
  
5. Copies be given to both the parties.

(Shri. S. P.Goswami)  
Chairman

(Smt.Varsha V. Raut)  
Member