

BEFORE THE COMPLAINANT 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(S)-147-2012 dtd. 23/04/2012

M/s Satellite Developers Ltd.Complainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum :
1. Shri R U Ingule, Chairman
2. Shri S P Goswami, Member
3. Smt Varsha V Raut, Member

On behalf of the Complainant : Shri. Vivek Naik

On behalf of the Respondent : 1. Shri. N.H.S. Husain, Asst. Adm. Mngr. (ES)
2. Shri. P.S. Amberkar, AAO (R&D)
3. Shri. S.C. Gawand, Supervisor (P)

Date of Hearing : 05/06/2012

Date of Order :

Judgment by Shri. R.U. Ingule, Chairman

M/s Satellite Developers Ltd., Solitare Corporate Park, Bldg. No. 12, 7th floor, Andheri Ghatkopar Link Rd., Chakala, Andheri (E), Mumbai - 400 093 has come before the Forum for his grievance regarding outstanding bill amount of temporary A/c no. TIN/535/993.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 05/01/2012 regarding his grievance for outstanding bill amount of temporary A/c no. TIN/535/993. The complainant has approached to CGRF in schedule 'A' dtd. 29/03/2012 (received by CGRF on 19/04/2012) as no remedy is provided by the Distribution Licensee regarding his grievance. The complainant has requested the Forum to cancel wrong outstanding bill.

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

- 2.0 The temporary electric supply was released against Requisition No.35035 dated 6.8.1993 for M/s.Satellite Developers Ltd. through meter No.900952 under temporary A/c.No.TIN/535/993 for construction activity at Sarjan Plaza, Dr. A.B. Road, Worli, Mumbai-18 on 12.10.1993. This Meter 900952 was replaced by Meter no.N910108 on 1.8.1998 for the reason 'damage & burnt' and again Meter no. N910108 was replaced by Meter no. Q961049 on 16.8.1998 for the reason 'damage & burnt'. Due to replacement of meters twice in a month the Meter No.Q961049 was not updated on Reading Folio. From our record it is observed that in June'99 Meter Reader has recorded the reading of Meter no. Q961049 registered as 87681. The initial reading of the meter no.Q961049 at the time of installation on 16.8.1998 was 27. The bill was preferred for 87654 units (i.e. 87681 - 27) amounting to Rs.7,10,054.07 and issued to the complainant. The bill preferred to the consumer was based on actual consumption recorded on meter No.Q961049 which is correct and payable by consumer.
- 3.0 The average monthly consumption prior to replacement of meter in August,1998 was 3,300 units. We would like to bring to the notice that the meter installed to the said premises was found burnt twice and required to be replaced. The old meter of size 25/50Amps. was replaced by 30/60Amp. meter. It appears that due to sudden increase in consumption the previous two meters were burnt. Hence there is increase in units registered by the meter newly installed at the premises, moreover the bill preferred to the consumer is on the basis of actual units registered by the meter during the period from August,1998 to June,1999. The average monthly consumption recorded by the meter during this period was 8000 units per month. Even after June,1999 the average monthly consumption of the meter was in the range of 8500 units per month. Hence, consumption recorded by the meter during the period August,1998 to June,1999 is in order.
- 4.0 The bill for the month of March'98 was Rs.20,505.16 and the outstanding amount was Rs.1,91,712.94. The billing for temporary electric supply meters are being done manually by our Temporary Section. At the end of financial year

i.e. end of March, we carry out total of billing amount and payments received against the same from complainant and if any difference is noticed, the same is carried forward to the next year ledger. In this case the difference was of Rs.1,91,712.94 which was duly audited at that time and same is correct.

- 5.0 The total monthly bill amount from March,1998 to June,1999 was Rs.1,45,714.04, whereas during this period the amount paid by the consumer was Rs.1,70,505.00 which is excess of monthly bill amount during the period. Which itself indicates that complainant was agreed for the outstanding brought forwarded for the month of March,1998. It can be seen that complainant was not consistent in paying monthly electricity bills, the electricity bills were paid once in 4-5 months.
- 6.0 From the documents on record it can be seen that the consumer had paid Rs.63,443.00 on 25.8.1999. The consumer has not paid amount of Rs.78,708.24 as receipt number and date of receipt is not appearing in the said bill, even we also confirmed from our database wherein the said entry was not found in our record.
- 7.0 The attempts were made on number of occasions by the Undertaking to remove the meter from the site, however, the consumer then not allowing us to remove the meter and further informed us that the extension for the said construction will be taken in 2 to 3 days (please refer some of the remarks mentioned by our staff who visited for removal of said meter on site.
- 8.0 As per the records available with us and remarks thereon, it is clear that complainant was very irregular in paying the electricity bills and was not allowing our staff for removal of meter for non-payment of outstanding bill. Finally the Meter no. Q961049 was removed on 21.3.2000 for the non payment of Rs.13,01,070.34. It is observed that vide our note No.753 dated 13.12.2005 the consumer was informed for the payment of outstanding amount.
- 9.0 Normally the Undertaking after the recovery of old outstanding amount the permanent electric supply to newly constructed building was released. However, it seems that in the instant case even though the electric supply released the amount of Rs.13,01,070.34 was remained unpaid. There was outstanding amount towards the consumption recorded by the meter installed to the complainant's premises. Hence, Hon'ble CGRF is requested to consider our request for recovery of Rs. 13,01,070.34 against the said temporary meter.

REASONS :

- 10.0 We have heard Shri Vivek Naik for the complainant viz. M/s Satellite Developers and for Respondent BEST Undertaking Shri N.H.S. Husain, Asst. Adm. Mngr. (ES), Shri. P.S. Amberkar, AAO (R&D) & Shri. S.C. Gawand, Supervisor (P), at length. Perused documents placed before us.
- 11.0 The complainant viz. M/s Stellite Developers has expressed its shock and surprise by contending before this Forum that Respondent BEST Undertaking by serving a letter dtd. 15/11/2012, has demanded a huge temporary account outstanding bill of Rs. 13,01,070.34 in respect of a meter which has also been removed in the month of March 2000 i.e. about 12 years back. The complainant further submitted that the Respondent BEST Undertaking contends that the electricity charges for a period from June, 1998 to June, 1999 was worked out to Rs. 7,10,054.07 and thereafter the said outstanding was created in September, 2005 to the tune of Rs. 13,10,070.34.
- 12.0 Thus the complainant contends that by serving a letter dtd. 15/12/2011, the Respondent BEST Undertaking has awoken from its deep sleep, to claim such a huge electricity charges of Rs. 13,01,070.34 after a lapse of 11 years and 9 months.
- 13.0 As such the same has been basically wrong worked out and secondly a time barred one.
- 14.0 At the outset we find a merit in the contention raised on behalf of the complainant, M/s Satellite Developers. On perusing a letter dtd, 15/02/2012 addressed to the complainant by the Respondent BEST Undertaking and the written statement submitted before this Forum, we find that taking a recourse to section 56 of the Electricity Act, 2003, the Respondent BEST Undertaking has been making an attempt to justify a claim of Rs. 13,01,070.34 made against the complainant, being legal and sustainable under the provisions provided by Electricity Act, 2003.
- 15.0 In considered view of this Forum a bare perusal of letter dtd. 27/02/2012 addressed to the complainant by the IGR Cell of the Respondent BEST Undertaking in the matter of complaint dtd. 09/01/2012 under Annexure 'C', it has been candidly submitted therein that in the month of June 1999 a Meter Reader brought the corrected reading of Meter no. 04961049 and the bill for the consumption of electricity of Rs. 7,10,054.07 was preferred to the complainant. The Respondent BEST Undertaking further submits that for non payment of the said amount the meter was removed in the month of March 2000. Accordingly, this Forum also finds a reading of the Meter being recorded and the amount of Rs. 7,10,054.07 being shown as payable by the complainant in a ledger maintained for the temporary electric supply and placed before us.

- 16.0 This Forum thus finds that the said letter dtd. 27/02/2012 and the entries made in the ledger for temporary connection blatantly manifest that it is in the month of June 1999 the electricity charges were **due and payable** by the complainant and were quantified as Rs. 7,10,054.07 and accordingly a bill was served on him. At this juncture it is significant to observe that admittedly for non payment of this amount the meter was thereafter removed in the month of March 2000.
- 17.0 In the light of the aforesaid set of facts and circumstances, now it would be gainful to advert to the provisions provided u/s 56 of the Electricity Act, 2003 which has been relied on by the Respondent BEST Undertaking and the same runs as under :

S/56. Disconnection of supply in default of payment.

- (1) *Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer :*

Provided that the

xxx	xxx	xxx
xxx	xxx	xxx
xxx	xxx	xxx

- (2) *Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."*

- 18.0 This Forum at this juncture observes that the Electricity Act, 2003 has come into force from the June 2003. Explicitly therefore in the first instant, the provisions provided therein, cannot be made applicable to a matter in which cause of action has been arisen in the month of June 1999. Assuming without admitting that the provisions provided u/s 56 are applicable to the matter under consideration as contended by the Respondent BEST Undertaking, in that case also the contention raised on behalf of the Respondent BEST Undertaking are not sustainable in law.

- 19.0 Forum further observes that a bare perusal of section 56 *inter alia* provides that as contemplated therein neglect to pay electricity charges, can form the basis for disconnection of supply of electricity under section 56 that too after giving a notice of 15 clear days to the consumer. Admittedly, it has not been the contention of the Respondent BEST Undertaking about serving such prior notice on the complainant, while removing the meter in the month of March 2000.
- 20.0 Now in context to subsection (2) of section 56, a recovery of electricity arrears due from the consumer has been restricted to period of 2 years, from the date when such charges ***first became due***. A judgment handed down in Brihan Mumbai Municipal Corporation v/s Yatish Sharma (2007(3) Bom.IR.659), the expression ***first become due*** means the date on which quantifying the electricity charges payable by the consumer, a bill has been preferred on him.
- 21.0 As observed above as submitted by the Respondent BEST Undertaking in its letter dtd. 27/02/2012 the electricity charges were quantified to Rs. 7,10,054.07 and was preferred to the complainant on obtaining a reading in the month of June 1999. Therefore, even on taking a full liberty with reality, as envisaged u/s 56(2) the amount needs to be termed as ***due and payable*** in the year 1999 and after lapse of 2 years there from the rest of the charges become time barred. To reiterate the said provision provided under subsection (2) of section 56 thus can not be applied to the present matter under consideration by any stretch of imagination, as the cause of action was arisen in the year 1999 when the Electricity Act, 2003 was not in operation, and section 56(2) can not be applied with retrospective effect. Therefore the contention raised by Respondent BEST Undertaking that the amount of Rs. 7,10,054.07 which was subsequently created to Rs. 13,01,070.34 in the month of September 2005, has been highly unsustainable in law.
- 22.0 A frail and fragile attempt has been made on behalf of the Respondent BEST Undertaking that the details of the outstanding of the arrears payable by the complainant were communicated vide letter dtd. 13/12/2005 by hand delivery, and in the same breath the Respondent BEST Undertaking thereafter admits that the copy of the same is not available now.
- 23.0 This Forum observes that such highly unsustainable contention raised on behalf of the Respondent BEST Undertaking cannot provide a cause of action to the Respondent BEST Undertaking, to bring the instance matter under the umbrella and ambit of Electricity Act, 2003. In this context we observe that as contended by the Respondent BEST Undertaking, the letter dtd. 13/12/2005 has been served on the complainant by way of hand delivery. Obviously therefore the Respondent BEST Undertaking must have obtained an acknowledgment of the complainant in regard to serving such letter on him. Besides it a subsequent correspondence dtd. 15/12/2011 addressed to the

complainant refers to an earlier letter dtd. 17/08/2011. In our consider view had there been such letter dtd. 13/12/2005 being served on the complainant, then it ought to have been mentioned in the reminder letter dtd. 15/12/2011 along with the earlier letter dtd. 17/08/2011.

- 24.0 We therefore do not find any iota of merit in a contention raised by the Respondent BEST Undertaking that such letter dtd. 13/12/2005 was served on complainant, informing him the payment of outstanding amount of Rs. 13,01,070.34.
- 25.0 In the aforesaid observation and discussion we uphold the contention raised by the complainant that the alleged arrears of Rs. 7,10,054.07 as per the contention of the Respondent BEST Undertaking was quantified in the year 1999 and for the same a notice of disconnection of electricity supply toward the recovery of the said charges, was served on the complainant on 15/12/2011 i.e. after lapse of more than 11 years and therefore the same has been exorbitantly stale and time barred claim.
- 26.0 Before we part with this order, we may advert to other lapses on the part of the Respondent BEST Undertaking brought to our notice by the complainant.
- 27.0 In this context by adverting to a copy of ledger placed on file by the Respondent BEST Undertaking, the complainant has pointed out that the Respondent BEST Undertaking has brought over an arrears of Rs. 1,91,712.94 and thereafter raised various bills against the complainant and the complainant has made a several payments. However, in no any bill this alleged arrears of Rs. 1,91,712.94 was included by the Respondent BEST Undertaking and the same has been simply brought over till the month of June 1999 on its record. We observe at the juncture that the Respondent BEST Undertaking has expressed its inability to give any details of the said arrears amount of Rs. 1,91,712.94 which was brought over till the month of June 1999.
- 28.0 We further observe that the Respondent BEST Undertaking pointed out that the document dtd. 24/11/1999 placed on file by the Respondent BEST Undertaking, manifest that a payment of Rs. 78,708.24 was made by the complainant and to that effect there is a remark has been passed there upon by the official of the Respondent BEST Undertaking. Despite it, no such payment has been shown in the ledger placed on file at pg. 29 by the Respondent BEST Undertaking.
- 29.0 To conclude we find several lapses and abysmal lethargy on the part of the Respondent BEST Undertaking in maintaining its record. In our consider view the Respondent BEST Undertaking has been proceeding in foisting a huge liability of paying alleged electricity charges in arrears of Rs. 13,01,070.34 on the complainant, without having any shred of cogent evidence and provision of any law in support of it.

30.0 In the aforesaid observation and discussion in the net result we find the electricity charges claim against the complainant being unsustainable and untenable under the provision of Electricity Act, 2003 and the same has been exorbitantly stale one and ill founded. The complainant therefore liable to be allowed, accordingly we do so.

ORDER

1. Complaint no. N-G(S)-147-2012 dtd. 23/04/2012 stands allowed.
2. The Respondent BEST Undertaking has been restrained from taking an action against the complainant as stated in its letter dtd. 15/12/2011 as the claim made therein has been unsustainable and illegal in law.
3. Copies be given to both the parties.

(Smt Varsha V Raut)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman