

**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

**Registration No. N-E-44-07 dtd. 28-11-2007**

Shri. Sohail Khan ..... Complainant  
V/S  
B.E.S.& T. Undertaking ..... Respondent

**Present**

Quorum  
1. Shri. M.P. Bhave, Chairman  
2. Smt. Vanmala Manjure, Member  
3. Shri. S. P. Goswami, Member

On behalf of the Complainant 1. Shri. Sayyed - Complainant's representative

On behalf of the Respondent 1. Shri N. H. S. Hussain – A.O. (G/S)  
2. Shri. S. V. Chhabria – O. A. (G/S)  
3. Shri R. Y. Harkulakar – Asst. Legal Advisor  
4. Mrs. P. S. Kirtikar – O. A. legal

Date of hearing: 22.01.2008

**Judgment by Shri. M.P. Bhave, Chairman**

Shri. Sohail Khan, the complainant has come before this Forum for his grievance regarding reconnection of 3-phase meter and waiver of total outstanding amount of Rs. 8,03,898.55 pertaining to the previous old consumer and was represented by Shri. Sayyed (Mohd. Electricals) as his authorized consumer representative.

**Brief history of the case**

1. The meter no. P021998, A/c. No. 200-022-771 stand in the name of M/s. Dockmaster Bar & Café Restaurant from 31-12-2002.
2. Dockmaster Bar & Café Restaurant is BEST registered consumer. The consumer was irregular in payment of electricity bills. The electric supply of consumer was disconnected and meter No. P011998 was removed on 7-7-2004 vide MRA No. 2385 for non-payment of electricity bills of Electronic A/c. No. 200-022-771 amounting to Rs. 6,25,889/-.
3. Shri Baba Khan the Proprietor of Dockmaster approached BEST and requested to reconnect the electric supply with the initial payment of Rs. 2.85 lacs vide his letter dated 15-3-2005. Accordingly supply was reconnected to meter No. P021998 on 31-3-2005 with initial payment of Rs. 2.85 lacs as the consumer gave an undertaking for payment of balance amount in four installments vide letter dated 20-4-2005. However, the consumer did not make the payment after granting of reconnection. Therefore, electric supply was once again disconnected on 5-5-2005 and meter was removed on 21-6-2005 vide MRA No. 36486.
4. The consumer's premises was inspected by BEST on 25-11-2005 when premises was found locked and service cable was pot-headed temporarily on the instructions of BEST Vigilance Department to avoid theft of electricity.
5. From records of the consumer, it is revealed that in the past the electric supply to the above premises of Dockmaster Bar & Café Restaurant was fed through four different meters under conventional accounts with four different names by acquiring the adjoining premises of different installations and having done the renovation. The said Bar & Restaurant was started functioning under one title. The conventional meters were replaced by a single electronic meter No. P011998 under A/c. No. 200-022-771 on 31-12-2002 in the name of Dock Master Bar & Café Restaurant.
6. Shri Sohail Khan vide his letter dated 6-6-2007 again requested BEST to reconnect electric supply by accepting Rs. 3 lacs as initial payment and grant installments for clearing the balance outstanding amount. The request of Shri Sohail Khan was accepted and same was informed to him vide BEST letter dated 16-6-2007.
7. Shri Sohail Khan vide his letter dated 7-6-2007 again requested to reconnect the electric supply by accepting Rs. 3 lacs 'under protest' and waive the balance amount. However, Shri Sohail Khan was informed by BEST vide letter dt. 3-7-2007 that, his request cannot be considered and as he has purchased the said premises and hence liable for payment of electricity bill arrears alongwith arrears of Electronic A/c. No. 200-022-771. The outstanding amount is being shown in the bill continuously and hence it is payable.
8. The complainant again approached IGR Cell of BEST on 21/5/2007 in Annexure 'C' format. Not satisfied with the reply the complainant i.e. Shri Sohail Khan has approached the Forum in Schedule "A" on 26/11/2006.

Before starting argument the consumer representative submitted zerox copy of MOU between previous consumer and the complainant to the Forum.

**Consumer in his application and during hearing stated the following**

1. Consumer has made application on 16/3/2007 for re-connection of Electric supply. After sanction on 4/5/2007, neither re-connection nor supply provided by the BEST. He also stated that, after applying for new connection, they have raised all the outstanding bills of Dock master, which he is not ready to pay.
2. Outstanding amount of Rs. 8,03,989.55/- pertains to old consumer and not payable by me.
3. As per Elect.Act.Sec.56(2) the amount is time barred.
4. BEST has asked me to pay the wrong amount and not given electric supply till date.
5. The consumer while seeking relief from the Forum stated that outstanding amount of Rs. 8,03,989.55/- pertains to old consumer and not payable by him as per Elect.Act.Sec.56(2) and asked to give electric connection at the earliest.
6. Shri Sayyed representative of the consumer stated that, Shri Sohail Khan had applied for new electric supply connection and ready to pay sum of Rs. 3,90,000/- as full and final settlement. He is not ready to pay bills which were raised by BEST against four conventional accounts of Rs. 5,31,171.16/-.

**BEST in its written statement and during hearing stated the following:**

1. The complainant Shri Sohail Khan has applied for new 3 phase meter by requisition No. 50143316 dt. 16/3/2007 under Section 43 of Electricity Act, 2003 reading Section 43(1) & explanation it is clear that unless applicant shows lawful occupancy of the premises furnishing documentary evidence, he is not entitled for electric connection and therefore he is not the consumer of BEST.
2. The Complainant has entirely relied upon Memorandum of Understanding (MOU) document, as proof of occupancy. The copy of MOU was handed over to the Forum. Legally MOU cannot be considered as lawful occupancy proof unless there is registered sale deed of property and by merely acquiring the title by virtue of sale by the applicant cannot be considered as lawful occupier of the premises.
3. The following are the observations on the M.O.U. submitted by Shri Sohail Khan:
  - 3.1 It is not mentioned on which date of August month MOU is prepared.
  - 3.2 Party of 1<sup>st</sup> part i.e. (1) Harrunnisa Gulam Mohammed Aasi, (2) Anwar Gulam Mohammed Aasi, (3) Aslam Gulam Mohammed Aasi (4) Akbar Gulam Mohammed Aasi (5) Ahis Mohammed Shaikh and (6) Efat Salim Khan. Party of 2<sup>nd</sup> part i.e. Shri Sohail Shafi Khan are staying in same premises therefore it proves that they are relatives.
  - 3.3 Page no. 4, Clause no.3, both parties agree that second part of the party Shri Sohail Shafi Khan is already in use and occupation and possession of

the said premises. Also Shri Sohail Shafi Khan is in possession of the said premises.

3.3.1 Which can be proved by letter dt. 17/11/2003 wrote to the Undertaking by Shri Sohail Khan and signed by his uncle Shri Sayyed Yunus. This letter was for accepting liability of all old accounts and for waived of delayed payment charges.

3.3.2 Same Shri Yunus had acknowledged letter which is written to prop. Of Dock Master Bar & Café Smt. Fatima Aasi by undertaking dt. 3.5.2005.

4. Page No. 5 of MOU clause 8, Shri Sohail Khan has agreed to pay and clear all the outstanding dues of BPT, BMC, electricity, etc.
5. In view of above it is clear that complainant has applied for new connection to avoid payment of the outstanding dues lying against original consumer i.e. Dock Master Bar & Café.
6. Reading together section 50 of Electricity Act, 2003, Supply Code and other conditions of supply regulation clause 19 & 10.5 and BEST's Conditions of Supply, Clause 13.4 the occupier being legal representative, outstanding charges on the premises transmitted on him and entire outstanding shall be recovered by the Undertaking as due from him.
7. The copy of citation of Orissa State Consumer Disputes Redressal Commission, Cuttack between Executive Engineer, Electrical South Co., Nabarangpur Electrical Division and others (Appellant) and P.Motyalu (Respondent) regarding revised petition No. 6 of 2006 was submitted to Forum which has relevance since it has dealt with similar type of case as the present one is.
8. The complainant has cited the Section 56(2) of Electricity Act 2003 which says that, Under Section 56(2) of the Electricity Act, 2003, no sum dues from any consumer under this Section shall be recovered after the period of 2 years from the date when such become first due. This Section is not applicable for the following reasons.
9. The definition of Consumer in Electricity Act, 2003 2(15) is "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 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 the present case the complainant is an applicant and section 56(2) does not apply in the present case.
10. The definition of applicant as given in Supply Code is "Applicant means a person who makes an application for supply of electricity, increase or reduction in contract demand / sanctioned load, change of name, disconnection or restoration of supply or termination of agreement, as the case may be in accordance with the provisions of the Act and the rules and regulations made there under", and therefore, the complainant Shri Sohail Khan is an Applicant.
11. The meter no. P021998, A/c no. 200-022-771 is in the name of M/s Dock Master Bar & Café Restaurant from 31/12/2002. The complainant Shri Sohail Shafir Khan is not BEST's consumer and is merely an applicant who has made an application

for reconnection of electric supply and waiver of outstanding and delayed payment charges under Amnesty Scheme.

12. As stated earlier M/s Dock Master Bar & Café Restaurant is our registered consumer. The consumer was irregular in payment of electricity bills. The electric supply of consumer was disconnected and meter No. P011998 was removed on 7-7-2004 vide MRA No. 2385 for non-payment of electricity bills of Electronic A/c. No. 200-022-771 amounting to Rs. 6,25,889/-.
13. The consumer Shri Baba Khan (Proprietor) approached BEST and requested to reconnect the electric supply with the initial payment of Rs. 2.85 lacs vide his letter dated 15-3-2005. Accordingly supply was reconnected to meter No. P021998 on 31-3-2005 with initial payment of Rs. 2.85 lacs as the consumer gave an undertaking for payment of balance amount in four installments vide letter dated 20-4-2005. However, the consumer did not make the payment after granting of reconnection. Therefore, electric supply was once again disconnected on 5-5-2005 and meter was removed on 21-6-2005 vide MRA No. 36486.
14. The consumer's premises was inspected by BEST on 25-11-2005 when premises was found locked and service cable was pot-headed temporarily on the instructions of BEST Vigilance Department to avoid theft of electricity.
15. From records of the consumer, it is revealed that in the past the electric supply to the above premises of Dock Master Bar & Café Restaurant was fed through four different meters under conventional accounts with four different names (by acquiring the adjoining premises of different installations and having done the renovation the said Bar & Restaurant was started functioning under one title. The conventional meters were replaced by a single electronic meter No. P011998 under A/c. No. 200-022-771 on 31-12-2002 in the name of Dock Master Bar & Café Restaurant. The details of conventional accounts are as given below:

A/c. No.	Name	Meter removal date	Outstanding Upto	Outstanding amount (Rs.)
512-128-001	Gulam Mohd. Esq.	16-02-1998	16-02-1998	12,747.37
512-128-001	Gulam M. A. Esq.	31-12-2002	31-12-2002	1,96,576.65
512-128-001	Dock Master Bar	31-12-2002	31-12-2002	2,55,821.94
512-128-001	Akbar Mohd. Aasai	31-12-2002	31-12-2002	66,025.20
Total				5,31,171.16

15.1 The details of the existing electronic account are given below:

A/c. No.	Name	Meter removal date	Outstanding upto	Outstanding amount (Rs.)
200-022-771	Dock Master Bar & Café Restaurant	21-06-2005	Till date	3,90,152.00

16. According to the contention of Shri Sohail Khan, he had purchased the said premises on 30-8-2006. Shri Sohail Khan vide his letters dated 2-4-2007 approached BEST under Annexure-'C', as well as approached Chairman, BEST Committee requesting to waive the delayed payment charges under amnesty Scheme and reconnect the electric supply by accepting the balance outstanding amount in installments respectively.

17. As per policy of the BEST Undertaking for waiver of delayed payment charges under Amnesty Scheme, the eligible consumer has to pay the balance outstanding energy charges in one stroke. As the consumer was ready to pay the outstanding energy charges in installments, he was informed vide letter dated 11-5-2007 to pay the arrears amount in one stroke in order to avail the benefit of waiver of delayed payment charges under Amnesty Scheme which amounts to Rs. 1,17,333,61/-.
18. Shri Sohail Khan vide his letter dated 6-6-2007 again requested BEST to reconnect electric supply by accepting Rs. 3 lacs as initial payment and grant installments for clearing the balance outstanding amount. The request of Shri Sohail Khan was accepted and same was informed to him vide BEST letter dated 16-6-2007.
19. Shri Sohail Khan vide his letter dated 7-6-2007 again requested to reconnect the electric supply by accepting Rs. 3 lacs 'under protest' and waive the balance amount. However, Shri Sohail Khan was informed by BEST vide letter dt. 3-7-2007 that, his request cannot be considered and as he has purchased the said premises and hence liable for payment of electricity bill arrears alongwith arrears of Electronic A/c. No. 200-022-771. The outstanding amount is being shown in the bill continuously and hence it is payable.
20. There is outstanding amount of Rs. 5,31,171.16 against the previous four conventional accounts and Rs. 3,90,152.00 against the existing electronic A/c. No. 200-022-771 as on today for the said premises. Shri Sohail Khan in his letter dt. 2-4-2007 agreed to make the entire payment provided he is given the benefit of waiver of delayed payment charges. BEST is ready to give the said benefit if he is ready to pay balance amount in one attempt.
21. BEST prays that, applicant is liable for making the entire payment of outstanding amount created against Dock Master Bar & Restaurant.

#### **Observations**

- A) The complainant had applied for the new connection. The basis of application is the MOU between the previous consumer and the applicant at the said premises. It may be noted, that the said document is an unregistered document.
- B) As per the MOU the second party i.e. The complainant, is required to pay all the dues of BPT, BMC, Electricity etc. whatever it may be with regards to the said premises. This makes the applicant liable to pay the dues of the previous consumer.
- C) It is also noted that the applicant initially agreed to pay the sum demanded. Applicant subsequently changed the stand and formed grievance.
- D) The applicant has agreed to pay certain amount as full and final settlement of the issue. Let us for the sake of argument, assume this request is accepted. This will still keep the arrears on the name of previous consumer. If this amount is demanded from the previous consumer, as per MOU. it will again to be paid by the applicant only.
- E) Applicant has requested the maximum relief as per the rules. It can be granted only if the applicant is totally different entity altogether. The MOU says that the applicant is already in possession of the premises. Noting that the said premises is owned by BPT, it can be only concluded that the applicant is the new proprietor of the

business. It means that he is not a fresh consumer. Under the circumstances applicant is bound to pay the arrears as demanded.

- F) The arrears consists of two parts. The applicant has agreed to pay only one part and not the other. It is noted that the previous consumer has once by a letter disagreed with the claim amount. However there are no papers on record to show that he has effectively challenged the claim. The previous consumer has not utilized any remedy available to him including the present Forum, which existed at that time. Under this circumstances it is not prudent on the part of the Forum to go into correctness of the claim.
- G) BEST has offered the connection with Rs 3 lacs as initial payment and remaining by monthly installment. Forum does not find any fault with the offer.

### **ORDER**

1. The complainant is directed to pay Rs. 3 lacs immediately to the BEST for his demand of supply of energy.
2. The BEST is directed to give the supply as per the procedure in vogue and conditions of supply and supply code.
3. The complainant is directed to pay remaining Rs. 6,21,323.10/- in six equal monthly installments.
4. The BEST is directed to waive the last installment if the complainant pays first 5 installments at regular monthly intervals.
5. Copies be given to both the parties.

(Shri M. P. Bhave)  
Chairman

(Smt. Vanmala Manjure)  
Member

(Shri S .P.Goswmai)  
Member