

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. S-(D)-159-2012 dtd. 16/07/2012

Mrs. Sonal H. JhaveriComplainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum :
1. Shri R U Ingule, Chairman
2. Shri S P Goswami, Member
3. Shri S M Mohite, Member

On behalf of the Complainant : 1. Smt. Sonal H. Jhaveri

On behalf of the Respondent (1) : 1. Shri. S.S. Bansode, DECC(D)
2. Shri. J.B. Jadhav, AECC(D)
3. Shri. G.D. Ubalkar, AAM(CC)-D

Respondent (2) : 1. Shri Sanjay M. Jhaveri

Date of Hearing : 28/08/2012

Date of Order : 11/09/2012

Judgment by Shri. R.U. Ingule, Chairman

Mrs. Sonal H. Jhaveri, C/205, Swati Co-op. Hsg. Soc. Ltd., Juhu Lane, C.D. Barfiwala Marg, Andheri (W), Mumbai - 400 058 has come before the Forum for her grievance regarding change of name pertaining to A/c no. 896-259-105*9

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 20/04/2012 for dispute against change in name pertaining to a/c no. 896-259-105*9. The complainant has approached to CGRF in schedule 'A' dtd. 10/07/2012 (received by CGRF on 12/07/2012) as no remedy is provided by the Distribution Licensee regarding her grievance. The complainant has requested the Forum to either revert back the meter to the original consumer's name or it should be in the name of three legal heirs or status quo should be maintained prior to 08/02/2005.

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

- 2.0 We had received an RTI application from Sonal H Jhaveri dated. 19/01/2011 on 20/01/2011 seeking information under RTI Act, 2005. The available information was provided to her vide our letter dated. 14/02/2011 for which she was given call to collect her RTI answer. After awaiting for a long period and she didn't approach to collect the RTI reply in person therefore, the reply was sent through post. She was informed vide the said letter that, the information required by her was old pertains to year 2005, we had made all efforts to search for the documents however the same were not traceable. The information sought by applicant is available in the electronic form i.e. in our billing system which was made available. Also during the 1st appeal the same things were explained to the applicant and same was brought to the notice of 1st Appellate Authority.
- 3.0 During the 1st appeal it was learnt that, there is a dispute between the siblings regarding ownership of property, hence to resolve the grievances made by applicant, 1st Appellate Officer instructed to take opinion from our legal department vide their order Ref No. DCECC(S) / RTI Act / 185 / 20802/11 dated 04/05/2011. Therefore matter was referred to legal department vide our letter dated. 02/06/2011. On 24/06/2011, legal department informed us that, " Smt. Sonal H Jhaveri and Sapana D Jhaveri both are the nominees in the said flat and now these both persons have become member on the death of the original member. But they have not filled any requisition for change in name. If they want the electric meter to be transfer on their name then, they have to submit a requisition with supporting documents."
- 4.0 Smt Sonal H Jhaveri filled application for change in name on 13/07/2011 with copy of Death Certificate of Magalchand Ratanchand Jhaveri, copy of nomination form submitted to society, copy of will, copy of affidavit cum No objection of Mrs Sapna D Jhaveri, also applicant has submitted Xerox copy of ration card which stands in the name of Kumudini S Jhaveri. As per our procedure, after receipt of change in name application, vide letter dated. 05/08/2011 existing consumer Shri Sanjay M Jhaveri, was asked to produce ownership documents of subjected premises. In response, to our letter, Shri Sanjay M Jhaveri vide his letter dated 17/08/2011 informed that, subject premises dispute is pending in court, he enclosed copies of court order dated 30/12/2004 and 13/10/2005. Also as per our investigation report Mr. Sanjay M Jhaveri is physically occupier of this premises.

- 5.0 Thereafter, we once again sought the legal opinion for processing the request made for change in name by Smt. Sonal Jhaveri vide our letter dated. 18/10/2011 for necessary opinion. On 31/10/2011 legal department informed us that, as this transfer has been challenged by Shri Sanjay M Jhaveri in the court and even the society's action for making change in name was challenged by Shri Sanjay M Jhaveri before the registrar of co-operative societies against which the Registrar has passed the order on 13/10/2005 whereby their earlier directions dated 30/12/2004 has been set aside. In view of above our legal advisor requested to maintain "status quo". Accordingly we informed to Smt Sonal H Jhaveri vide our letter dated 08/11/2011 to bring the appropriated order from the Competent Court in order to get electric meter transferred in her name. Till date we are not in receipt of any such order, therefore the change in name is pending. The copies of correspondence with legal department are already given to Smt. Sonal H Jhaveri vide our letter dated 19/10/2011 and letter dated 12/12/2011.
- 6.0 On 24/11/2011 Smt. Sonal Jhaveri filled second appeal under RTI Act, before the Hon'ble Chief Information Commissioner. In the order of Hon'ble Chief information Commissioner, Commissioner, directed us to call both the parties and disposed the complaint and inform the decision to both the parties. Vide our letter dated 17/01/2012 we informed both the parties to remain present with documentary evidence on 24/01/2012 at 10.30 hrs in the cabin of Divisional Engineer (D Ward). On 24/01/2012 the meeting was held, both the parties remained present, but both the parties were not ready to settle the issue, we instructed them to give their say in this regard in writing within 10 days. Thereafter, we informed this to Chief Information Commissioner vide our letter and copy of the same is forwarded to both the parties. We forwarded the note vide our letter dated 01/03/2012 to Legal Department seeking guidelines in the matter. On 9th April, 2012, legal department advised us to maintain "status quo and call upon the parties to bring the appropriated order from the Competent Court". The same was informed to both the parties vide our letter dated 17/04/2012 and vide letter dated 18/04/2012 same was also informed to Hon'ble Chief Information Commissioner.
- 7.0 We do agree that the Security Deposit Receipt is in the joint name of K. M. Jhaveri & M. R. Jhaveri and Electricity bill copy produced was in the name of K. M. Jhaveri.
- 8.0 As per the contents, no record is available regarding non-acceptance of application for change in name by Smt. Sonal H. Jhaveri. It seems that, Smt. Sonal H. Jhaveri, may collected the blank requisition form, from our office and fail to submit the same. Because for any request for change in name application, we were accepting processing fees of Rs.4/- along with the Security Deposit and thereafter the request was processed and investigated later. In case any abnormalities or discrepancies or fraudulent document or any objection regarding change in name observed the amount of Security Deposit will be forfeited by BEST Undertaking and the request made was kept in abeyance. In case, change in name was effected same will be revert back to original consumer.
- 9.0 We replied to various applications of Smt. Sonal H Jhaveri under RTI Act, 2005 & even we had put up subject file for legal opinion. As per the remarks of legal department, she was informed telephonically to submit the change in name application.

- 10.0 All the correspondence in this regards are available.
- 11.0 In this regards we have to state that, on receipt of Smt. Sonal Jhaveri's 1st RTI application dated 19/01/2011, we have made all efforts to search the documents submitted by Shri Sanjay Jhaveri at the time of change in name as per our record in the year 2005, when change in name was effected, but the documents are not traceable. In absence of the said documents, we are not sure what exact documents submitted by Shri Sanjay Jhaveri for change in name.

As earlier stated in para 11, on receipt of any request application for change in name by accepting Rs.4/- along with security deposit and then after the application is processed and investigated later.

- 12.0 After receipt of change in Name application from Smt. Sonal H Jhaveri, we wrote letter to present consumer Shri Sanjay Jhaveri vide our letter dtd 05/08/2011, to submit authenticate documents regarding ownership of said premises. In response, Shri Sanjay Jhaveri vide his letter dated 17/08/2011 informed that subject premises dispute is pending in the court. In support he has enclosed court order copies dated 30/12/2004 & 13/10/2005. Thereafter, the subject file was forwarded to legal department for advise. In reply legal department advised us to maintain 'status quo' and same was informed to Smt. Sonal H. Jhaveri to bring the appropriate order from the Competent Court in order to transfer electricity meter in her name.
- 13.0 The content made in this regard is not true. We have complied Hon'ble Chief Information Commissioner's order in toto.
- 14.0 The statement made by Smt. Sonal H. Jhaveri is false. In response, to our letter dtd 05/01/2012, Shri Sanjay Jhaveri visited our office on 11/01/2012 in person and requested vide his letter dated 10/01/2012 to grant him additional 10 more days for submission. Further, on dtd 18/01/2012 he has submitted the documents. Thereafter hearing was conducted on 24/01/2012 in the cabin of DECC(D). Immediately after hearing and as per written application made by Smt. Sonal H. Jhaveri copies of all relevant documents were collected by her husband Shri Harban Jhaveri on dtd 07/02/2012.
- 15.0 We like to bring to the notice before the Hon'ble Forum that, in one of the case of reverting change in name in the name of diseased person, Legal Department has advised us that, "electricity bill cannot be reverted back in the name of deceased person. Being the previous Consumer K. M. Jhaveri is a deceased person. Hence, the reversion in change in name for consumer no. 896-259-105 cannot be effected.
- 16.0 We pray to the Hon'ble Forum to dismiss the grievances made by the applicant as the case is kept pending until the order received from Competent Court.

REASONS :

- 17.0 We have heard complainant Smt. Sonal H. Jhaveri in person and for the Respondent BEST Undertaking Shri. S.S. Bansode, DECC(D), Shri. J.B. Jadhav, AECC(D) and Shri. G.D. Ubalkar, AAM(CC)-D. We have also heard the Respondent No.2 Shri Sanjay M.

Jhaveri, in whose name the present electricity bill stands and a brother of the complainant.

- 18.0 A salient feature of the instant case has been that a very simple and straight controversy has been blown out of its proportion, on account of a bitter inimical terms between the siblings i.e. complainant, Mrs. Sonal Jhaveri and her brother Mr. Sanjay Jhaveri, emanating from claiming ownership of a flat / premises, under consideration.
- 19.0 Admittedly at present the electricity bill has been standing in the name of the Respondent Mr. Sanjay Jhaveri to which by filing the instant complaint a strong exception has been taken by his sister, on a ground that the premises under consideration has been owned by her deceased mother Smt. Kumudini Jhaveri who through the will has given this premises to her.
- 20.0 Before we proceed to advert to the concerned provisions of law provided under the Electricity Act, 2003 and the regulation framed there under, we would like to point out here an admitted facts between the litigating parties. In this connexion a bare perusal of the letter dtd. 18/02/2012 addressed to DECC(D) by the complainant Mrs. Sonal Jhaveri blatantly manifest that as submitted on pg. 3 the complainant Mrs. Sonal Jhaveri, the Respondent Mr. Sanjay Jhaveri and the other sister Mrs. Sapna Jhaveri, are the legal heirs of their parents who were jointly owning the premises under consideration.
- 21.0 The complainant has further admitted that till the High Court decides the probate petition, three of them have equal right in the said premises. Significant to observe that thereafter the complainant has candidly admitted that the Respondent BEST Undertaking is not supposed to decide a controversy of ownership arose between the siblings. The complainant in the instant complaint and her letter dtd. 18/02/2012, and in her orally submission made before this Forum, has admitted in clear terms that the Respondent Mr. Sanjay Jhaveri, has been in occupation of the premises under consideration from September, 2004 till this date. This Forum therefore finds that the Respondent, Mr. Sanjay Jhaveri has not been a tress passer in the premises under consideration. About the ownership of the premises under consideration a matter has been pending before the Hon'ble Bombay High Court and Mr. Sanjay Jhaveri has been in occupation of the premises. Thus as admitted by the complainant although jointly but the Respondent Mr. Sanjay Jhaveri has been owner as well as occupant of the premises.
- 22.0 Now on the back drop of the aforesaid admitted set of facts this Forum finds it expediting to advert to the relevant provision of the laws provided under the Electricity Act, 2003 in respect of supply of electricity to a premises. In this context this Forum finds the relevant statutory provision being provided under subsection 43 (1) of the Electricity Act, 2003 and the same runs as under :

Electricity Act, 2003 Section 1 (43) - Duty to supply on request -

- (1) Save as otherwise provided in this Act, every Distribution Licensee, shall on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.*

<i>Provided (1)</i>	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
(2)	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
(3)	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>
	<i>xxx</i>	<i>xxx</i>	<i>xxx</i>

- 23.0 As observed above this Forum thus finds a definite and clear cut statutory provision casting a mandate on the Distribution Licensee to supply electricity to the *owner* and /or *occupier* on submission of its application. Explicitly therefore *owner* and / or *occupier* would be entitled under said statute to get a supply. This Forum may further observe that in respect of *change of name* on an electricity bill, in the contingency of death of consumer or transfer of ownership or occupancy of premises no special provision has been provided under the Electricity Act, 2003.
- 24.0 This Forum further observes that however, to take care of such situation a delegate authority of legislation viz. Maharashtra Electricity Regulatory Commission (MERC) has framed Regulation under 10, under MERC (CGRF & EO) Regulation, 2006. This Forum is referring to this regulation no. 10 in respect of *change of name* as much hue and cry has been made by the complainant that despite there was no proper compliance made by the Respondent Mr. Sanjay Jhaveri, the Respondent BEST Undertaking has changed the name of her deceased mother and brought on electricity bill in the name of Respondent Mr. Sanjay Jhaveri improperly and illegally.
- 25.0 In considered view of this Forum the regulation framed by a delegate authority of legislation viz. Regulatory Commission and the other code of supply framed by the Distribution Licensee, need to be interpreted harmoniously in achieving the object of the legislature in enacting the main provision provided under section 43(1) of the Electricity Act, 2003. In nutshell of the regulation and other procedures adopted by the Respondent BEST Undertaking need to run in tandem and should be supplementary to the main provision provided under 43 of the Electricity Act, 2003, and can not supplant it or run in counter to it.
- 26.0 In view of this Forum therefore, it is obvious and explicit that the *owner* or *occupier* would be entitled for supply of electricity or for submitting an application for *change of name*. Admittedly the Respondent, Mr. Sanjay Jhaveri has been a **joint owner** along with the complainant and other sister viz. Mrs. Sapna Jhaveri, being legal heirs of their deceased parents, besides it admittedly Respondent Mr. Sanjay Jhaveri has been in **occupation** of the premises under consideration that to from September, 2004 as admitted by the complainant.
- 27.0 It is further admitted between the litigating parties that a Probate Petition has been pending before the Hon'ble Bombay High Court wherein direction has been issued to maintain a *status-quo*. To conclude on this aspect this Forum finds that admittedly the Respondent, Mr. Sanjay Jhaveri has been *owner* as well as *occupier* of the premises under consideration, therefore entitled for getting a supply to the premises in his occupation as well as to submit an application for *change of name* to get the name of his deceased mother replaced with his name.

- 28.0 This Forum further observes that the Respondent Mr. Sanjay Jhaveri would be entitled to have his name to appear on the electricity bill till he has been evicted by a legal process from the premises under consideration. At the cost of repetition, at this juncture this Forum observes that the Respondent Mr. Sanjay Jhaveri being in **occupation** of the premises under consideration and being not a trespasser has been legally entitled to get the electricity supply to his premises as well as to get **change name** of his deceased mother as envisaged under Regulation 10, despite there has been a controversy about ownership of the premises.
- 29.0 The instant matter has been made intricate and complex by either party to the litigation by placing on file a plethora of documentary evidence. However, as observed above the complainant has herself admitted that the Respondent BEST Undertaking has not been an authority to decide the ownership of the premises under consideration. To reiterate the Respondent Mr. Sanjay Jhaveri has been admittedly in occupation of the premises therefore, this Forum does not find it fit and appropriate to advert to all these voluminous documentary evidence, being unwarranted and uncalled for and would simply result in burdening this order.
- 30.0 Before we part with this order, this Forum may observe that there is no any merit in any relief sought by the complainant from this Forum. This Forum finds that the complainant has sought three alternative relief. Firstly, the electric meter to be reverted back to the original consumer's name i.e. deceased mother's name. Secondly, the electricity meter to be shown in the name of all three legal heirs i.e. complainant, Respondent Mr. Sanjay Jhaveri and the other sister, Mrs. Sapna Jhaveri. Thirdly, to maintain a status-quo in respect of the said electricity meter prior to 08/02/2012 i.e. the date on which Mr. Sanjay Jhaveri had submitted an application for **change of name**.
- 31.0 In this context this Forum observes that reverting back the electricity meter in the name of original consumer or maintain status-quo prior to 08/02/2012 mean to bringing back the name of deceased mother on the electricity bill, which would not be sustainable in the eyes of law for a simple reason that there cannot be a privity of contract between the Respondent BEST Undertaking and a deceased consumer. Now in regard to bringing the name of all the three legal heirs on the electricity bill, it is explicit that the electricity bill has not been a proof of any ownership. In this regard significant to note that it has been conspicuously mentioned on the electricity bill itself that the said bill has been issued against the recovery of charges for supply of electricity and the same cannot be used as a evidence for any other purpose. We thus find no relief claimed by the complainant hold any iota of merit there in. Needless to mention we find the complaint liable to be dismissed, accordingly we do so.

ORDER

1. Complaint no. S-(D)-159-2012 dtd. 16/07/2012 stands dismissed.
2. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman

