

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-C-172-2012 dtd. 30/10/2012

Mrs. Sonal Harbin JhaveriComplainant

V/S

B.E.S.&T. UndertakingRespondent No. 1
Shah BrothersRespondent No. 2
Shri Pradip GandhiRespondent No. 3

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. Smt. Sonal H. Jhaveri
2. Shri Harbin Jhaveri

On behalf of the Respondent (1) (BEST) : 1. Shri P. Subhash, DECC(C), 2. Shri M.G. Patil, Dy.ECC(C)
3. Mrs S.V. D'souza, Sr.AOCC, 4. Shri G.B. Sakhare, ChEngr.

On behalf of the Respondent (2 &3) (Landlord & new occupier) : 1. Shri Devendra Doctor, 2. Shri Kumar G. Shah,
3. Shri. Dhimant Shah, 4. Shri Sushil j. Shah

Date of Hearing : 14/12/2012

Date of Order : 09/01/2013

Judgment by Shri. R.U. Ingule, Chairman

Mrs. Sonal Harbin Jhaveri, B/8, Tusharpark, Juhu Lane, Andheri (W), Mumbai - 400 058 has come before the Forum for objection regarding giving new electric meter under A/c no. 381-273-005*0 to a third person (encroacher / trespasser) for the premises (commercial tariff) setting aside the original residential consumers' reconnection rights after repair of suit building premises by the MHADA.

Complainant has submitted in brief as under :

- 1.0 The complainant has approached to IGR Cell on 03/09/2012 for objection regarding giving new electric meter under A/c no. 381-273-005*0 to a third person as mentioned above. The complainant has approached to CGRF in schedule 'A' dtd. 06/11/2012 (received by CGRF on 07/11/2012) as no remedy is provided by the Distribution Licensee regarding her grievance. The complainant has requested the Forum to not to keep surviving the electric connection granted by the BEST authority and it should be revoked with immediate effect in the light of facts given by her.

**Respondent (1), BEST Undertaking in its written statement
in brief submitted as under :**

- 2.0 As per our records Account No. 381-273-005 was existing in the name of Shri Panachand Bhuribhai for 4th flr. 64/66, Mirza Street. Mumbai-400 003, meter was removed on 24.04.2002 and not in the name of Smt. Sonal H. Jhaveri as stated by her. We have already replied to the Consumers Complaint in "C" form dated 30.8. 2012 vide our letter dt. 16.10.2012 in which we have denied the allegations regarding violation of rules. Supply to S/Shri Pradip R. Gandhi, Kirtikumar G. Kumar G. Shah bearing Account No. 381-275-010 and 381-275-011 respectively, was sanctioned on the basis of NOC from Landlord Shri Anant Girdharlal Shah & others, Agreement for sale of premises with Landlord, copy of assessment bill of BMC (since applicant having Account No. 381-275-011 is one of Land lords) - which forms indicative list of documents to be accompanied to application for supply of energy, incorporated in Annexure 'A' of Terms & Conditions of supply and schedule of charges approved by MERC. The details of the meters given on 4th flr. in the name of S/Shri Pradip R. Gandhi, Kirtikumar G. Kumar G. Shah are as given below.
- 3.0 For Room no. 401 , 4th floor, requisition no 73039 dt.1.2.12 was received for "Commercial tariff" in the name of Pradip Ratilal Gandhi. The "Agreement of Sale" registered between owners and purchaser duly registered with government authority was enclosed as occupancy proof. Also NOC from landlord to give meter for applied premises was attached and the applicant was in the possession of the premises. Accordingly meter No. L 094608 was installed bearing account no. 381-275-010 as per section 43(1) of Electricity Act, 2003, (i) MERC/Supply code/Terms & Conditions of Supply/2163 dt.3.11.2006 & (ii) MERC /Supply code/case 26 of 2006/2211 dt.9.11.2006.
- 4.0 For Room no. 402 , 4th floor, requisition no. 73040 dated 1.2.12 was received for "Commercial tariff" in the name of Kirtikumar G. and Kumar G. Shah . The occupancy proof submitted by the applicant is the latest BMC tax and assessment receipt and NOC from landlord to give meter for applied premises. Applicant was in possession of the applied premises. Accordingly the meter No. L094475 was installed bearing account no. 381-275-011 as per above act and regulations.
- 5.0 As per our records Account No. 381-273-005 was existing in the name of Shri Panachand Bhuribhai for 4th flr. 64/66, Mirza Street., meter was removed on 24.04.2002. It is to be noted that under Section 43(i) of the Electricity Act 2003 , a distribution licensee has been under an obligation to provide supply of electricity to the premises on an application submitted by the owner or occupier of such premises within one month after receipt of the application requiring such supply.
- 6.0 In the above mentioned cases, the applicant has fulfilled all the requirements as per MERC rules and regulations and our terms and Conditions of Supply and Schedule of Charges.

- 7.0 As far as the complaint regarding installation of meter in the name of third person by violation of rules and regulations, Supply Code and MHADA rules, we have to state that we deny the complaint as the applicant to whom we have sanctioned the meter is physical occupier of the premises and is in possession of the same. He has submitted the Sale deed duly registered with govt. authority. As regards MHADA rules, the Undertaking is not bound by MHADA rules. The undertaking is bound to give electric supply to the applicant as per MERC regulations and our terms and Conditions of Supply and on paying charges as per Schedule of Charges. Hence there is no substance in the complaint. As per the documents submitted by the applicants regarding the purpose of supply, i.e. residential or commercial, the meters are sanctioned accordingly as per the prevailing rules and regulations in force.
- 8.0 Regarding the point of rent receipt, electric connection and water connection which are still in the name of P.B.Jhaveri, we have to state that the job of BEST undertaking is only to give electric supply to the applicant who registers the requisition as per the prescribed standard format under Section 43(i) of Electricity Act,2003 and who fulfils our requirements as per MERC Regulations and our terms and Conditions of Supply and Schedule of Charges. Regarding the repairs of building and giving possession to the tenants in the said repaired building is related to the matter between the landlord and the occupier. BEST is not at all concerned about giving right of ownership of the premises. In this case S/Shri Pradip R. Gandhi, Kirtikumar G. Kumar G. Shah have registered requisitions for Commercial Tariff and submitted Agreement of sale, copy of assessment bill of BMC (since applicant is one of the landlords)
- 9.0 Regarding the different Court Cases mentioned in complaint letter, we have to state that on production of order for removal of sanctioned meter in the name of applicant, BEST would abide by the order of the Competent Authority. On receipt of such an order from the Competent Authority the Undertaking would immediately arrange to remove the meter.
- 10.0 Regarding the allegation that foul game is played by the landlord in collusion with the BEST authority, we have to state that these allegations made against the Undertaking is incorrect and totally baseless as the meters are sanctioned as per the rules and regulations in force.
- 11.0 In the above (2) cases, the Undertaking being a licensee is bound to give electric supply to the owner/occupier of the said premises as per section 43(1) of Electricity Act 2003. Hence, the Undertaking has not violated rules and regulations of our Supply code by giving meter to the owner or occupier of the applied premises. This grievance is related to internal family dispute for property hence BEST is not at all involved in their internal matters.

Respondent (2), Landlords S/Shri Kirtikumar G.Shah, Kumar G. Shah and Anant G. Shah in their written statement submitted in brief as under :

- 12.0 We have to state that the documents relied by Smt. Soanl H. Jhaveri are the Xerox and self created documents by manipulating the original documents and documents obtained under RTI Act. The same are not readable and they are not concerned with these documents. Thereby they have asked the complainant to produce strict proof for the documents annexed by the complainant and further requested BEST to verify the original documents of the complainant.

- 13.0 We further state that they have legally sold out the premises to Shri Pradip R. Gandhi and the said documents were registered with Sub-Registrar Mumbai by duly paying the stamp duty. On production of the said documents BEST has granted the meter as per rules and regulations in the name of purchaser.
- 14.0 We further state that the said Smt. Sonal Jhaveri have no legal right to directly approach this Forum without passing the order from competent authority and without any right over the property, since civil and criminal litigations are pending and not a single order is passed in favour of the complainant till date.
- 15.0 We state further that three persons Shri Harbin N. Jhaveri, Smt. Sonal H. Jhaveri and Shri Zubin H. Jhaveri with collusion of each other file false and frivolous complaints against us with various authorities after failing in obtaining order from the court, in order to grab money from us. We have paid Rs. 5 lacs to get the settlement Consent Term dtd. 16/10/2010 signed by Shri Harbin Jhaveri against the RAD suit no. 26 of 2010.
- 16.0 We further submit that above three persons with collusion of each other filed false and fabricated complaint by manipulating documents against us without any right over the property and till date no any relief is granted in her favour by any of the Court. We reserve the right to file detailed reply after we get legible copy and after verifying original documents which were annexed by the complainant submitted to the Forum.
- 17.0 Looking into the facts and circumstances mentioned above the complaint filed by Smt. Sonal Jhaveri is not maintainable and bad in law and false and fabricated hence same may be rejected with the cost since she has no any legal right over the suit property and electric meter which was legally connected by BEST is as per rules and regulations.

Respondent (3), new occupier Shri Pradip R. Gandhi in whose name new meter was connected has submitted in brief as under :

- 18.0 We state that the documents submitted by the complainant, Smt. Sonal H. Jhaveri are not legible and on several places date, year are manipulated and not in readable form. The documents submitted by the complainant are between herself and the landlord hence we are no way concern. The said premises on 4th floor in the building known as Chintamani Arcade, Mirza Street, Mumbai - 400 003 was legally purchased by me from the landlord. Accordingly, we have entered into a Sale Agreement which was registered with the office of Sub-Registrar Mumbai by duly paying of the stamp duty.
- 19.0 We further state that the electric meter was connected in my name by BEST 'C' ward after producing registered Sale Agreement as per rules and regulations and Smt. Sonal H. Jhaveri has no right to directly approach to this Forum without passing order from competent authority. We are no party in any legal and criminal litigations pending.
- 20.0 I hereby request the Forum to dismiss with the cost the complaint filed by Smt. Sonal H. Jhaveri which is false and fabricated one.

REASONS :

- 21.0 We have heard the complainant in person along with her husband, for the Respondent (1) BEST Undertaking, Shri P. Subhash, DECC(C), Shri M.G. Patil, Dy.ECC(C), Mrs S.V. D'souza, Sr. AOCC and Shri G.B. Sakhare, Ch. Engr. and for Respondent (2 & 3) (Landlord & new occupier) Shri Devendra Doctor, Shri Kumar G. Shah and Shri. Dhimant Shah, Shri Sushil J. Shah. Perused plethora of documents placed before this Forum.

- 22.0 The complainant has blown the controversy raised in the instant complaint, out of its proportion and that has been the salient feature of the instant matter. On the other hand the Respondent No.1 BEST Undertaking, has submitted a quite apt and clinching reply supported with the documents and that shatters the case of the complainant in toto.
- 23.0 The complainant in her effort to make the matter more intricate and complex has made a submission before this Forum along with plethora of documents *inter-alia* that her grandfather-in-law Shri Panachand Bhuribhai Jhaveri was the original tenant of the premises under consideration. The complainant along with her husband viz Shri Harbin Jhaveri and her aunt Smt. Pramilaben R. Jhaveri were staying along with said grandfather-in-law at the time of his death. All the tenancy rights of the premises under consideration have been relinquished to the complainant by her aunt Smt. Pramilaben Jhaveri. The premises under consideration was undertaken for repair by the authority of the MHADA. At the relevant time a tri-partite agreement was executed with an understanding to handover the said premises after completion of repair work to the tenant of the said premises.
- 24.0 The complainant further contends that the Respondent No. 1 BEST Undertaking by ignoring the various litigations initiated by the complainant and her husband and in violation of the law provisions and regulations, in collusion with the landlord and the authority has handed over the possession of the premises to Respondent No. 3 Shri Pradip Gandhi and provided electric connection for commercial use to him. The landlord Respondent No. 2 has also given a false NOC in the name of Respondent No. 3 Shri Pradip Gandhi despite in the tri-partite agreement dtd. 08/01/1997. The Respondent No. 1 BEST Undertaking ought not to have allotted the electric meter to the Respondent No. 3 Shri Pradip Gandhi till the courts decide the litigation pending before it in respect of the said premises. The complainant therefore sought a relief from this Forum for maintaining a status-quo till the concerned courts pass the order or to retransfer the electric connection in the name of the original consumer as on 2009.
- 25.0 This Forum finds from the submission of the complainant and on perusing the plethora of documents placed on file that the complainant has been claiming herself along with her husband viz Shri Harbin Jhaveri and her aunt Smt. Ramilaben Jhaveri, being the lawful tenant of the premises under consideration after the death of her grandfather-in-law Shri Panachand Jhaveri. The Respondent No. 1 BEST Undertaking has placed on file at Annexure-J at pg. 279/C a *Consent Terms* signed by her husband viz Shri Harbin Jhaveri in a capacity of the plaintiff in RAD Suit no. 26/2010. The said suit was filed by Shri Harbin Jhaveri before Small Cause Court Mumbai against the present Respondent No. 2 Shri Shah Brothers. A bare perusal of this *Consent Terms* dtd. 16/10/2010 blatantly manifest that Shri Harbin Jhaveri husband of the complainant, has withdrawn all his rights, title and interest in respect of the premises under consideration of this Forum i.e. 4th floor of building no. 64/66, Mirza Street, Zaveri Bazar, Mumbai - 400 003 by accepting a sum of Rs. 5 lacs from the Respondent No.2 Shri Shah Brothers. This Forum therefore finds that in view of such *Consent Terms*, it is highly unsustainable and improper on the part of Shri Harbin Jhaveri the husband of the complainant to claim any right in any capacity in the premises under consideration of this Forum.
- 26.0 Now in respect of the complainant, she has been claiming that all tenancy rights of the said premises have been relinquished to her by her aunt Smt. Ramilaben Jhaveri by handing over all agreements and by Affidavit cum Declaration. Smt. Ramilaben Jhaveri a legal heir also has been a signatory to a tri-partite agreement. The Respondent No. 1 BEST Undertaking for showing a falsity in such plead submitted before this Forum by the complainant, has placed on file a copy of Affidavit dtd. 16/12/1999 sworn in by Smt. Ramilaben Jhaveri. The same has been in Gujrathi language. Its English translation is also placed on file. The same are at Exhibit-I at pg. 273/C to 275/C. In a bare perusal of the

same, this Forum finds that Smt. Ramilaben Jhaveri has surrendered the entire possession of the premises under consideration to the landlord i.e. Respondent No.2 Shri Shah Brothers.

- 27.0 This Forum therefore finds that the claim to the premises made by the complainant on the ground of all tenancy rights being relinquished to her by her aunt Smt. Ramilaben Jhaveri, comes under a thick shadow of suspicion.
- 28.0 In the aforesaid observation and discussion this Forum finds that admittedly the premises under consideration of this Forum has been purchased by the Respondent No.3 Shri Pradip Gandhi from the Respondent No.2 Shri Shah Brothers. In this context these Respondents have placed on file a copy of register *Sale Deed* in support of its contention. It is further revealed from the documentary evidence placed on file that the Respondent No.3 Shri Pradip Gandhi has been owner as well as in possession of the premises under consideration of this Forum.
- 29.0 This Forum is of a considered view that as observed above husband Shri Harbin Jhaveri of the complainant has already relinquished his rights as a tenant in the premises under consideration. The aunty of the complainant Smt. Ramilaben Jhaveri also in the same line surrendered her rights. Admittedly as on this date the Respondent No.3 Shri Pradip Gandhi has been an *owner and occupier* of the premises. We therefore find that as envisaged u/s 43(1) of Electricity Act, 2003, the Respondent No.1 BEST Undertaking has rightly provided an electric connection to the said premises in the name of the Respondent No.3 Shri Pradip Gandhi.
- 30.0 It is blatantly manifest that there has been no any shred of evidence on records to establish any alleged collusion between the Respondents in providing electric connection to the Respondent No.3 Shri Pradip Gandhi. At the same time we do not find any regulations or rules being violated by the Respondent No.1 BEST Undertaking while providing such electric connection to the Respondent No.3 Shri Pradip Gandhi as this consumer has submitted the proper documents to the Respondent No.1 BEST Undertaking viz. *NOC* of the Respondent No.2 Shah Brothers erstwhile landlord, along with *Agreement for Sale* and copy of *Assessment Bill* of BMC.
- 31.0 It is therefore explicit that the Respondent no.1 BEST Undertaking has sanctioned the electric supply to the premises under consideration to the Respondent No.3 Shri Pradip Gandhi on obtaining the required documentary evidence in respect of *ownership and occupancy* of the premises as envisaged u/s 43(1) of Electricity Act, 2003. This Forum further observes that in regard to pendency of various litigations before the courts of law, the Respondent No.1 BEST Undertaking has rightly submitted before this Forum that on production of order for removal of the meter provided to Shri Pradip Gandhi, the Respondent No.1 BEST Undertaking would be abide by such order passed by competent authorities and would immediately arrange to remove the meter to comply such order.
- 32.0 In the aforesaid observation and discussion the complaint under consideration should fail for want of any merit therein. Accordingly we proceed to pass the following order.

ORDER

1. The complaint no. S-C-172-2012 stands dismissed.
2. Copies be given to both the parties.

(Shri S M Mohite)
Member

(Shri M P Thakkar)
Member

(Shri R U Ingule)
Chairman