

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-G(S)-165-12 dt. 31-07-2012 (New)
No. N-G(S)-107-2010 dt. 28-09-2010 (Old)

M/s. Sumer Kendra Premises Co.op Socy Ltd.Complainant

V/S

1) B.E.S.&T. UndertakingRespondent
2) M/s. Sumer Builders Pvt.Ltd.Respondent

Present

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

On behalf of the Complainant: 1. Shri Bipin M Shah

On behalf of the Respondent: 1. Shri S. B. Lande, AECC(GS)
2. Shri A. V. Chachad, Sup(P) (GS)
3. Shri R. S. Ambre, Sup
4. Shri S. N. Bhosale

Date of Hearing: 04-09-2012, 14.09.2012,
26.09.2012 & 04.10.2012

Date of Order: 25th October, 2012

Judgment by Shri. R.U. Ingule, Chairman

M/s Sumer Kendra Premises Co. Op. Socy. Ltd., CS No 1621, Pandurang Budhkar Marg, Worli, Mumbai – 400025 has come before Forum for grievances regarding dispute against demand of arrears pertaining to A/c No 719-370-001 (old) & A/c No 202-027-899 (new).

Complainant has submitted in brief as under

1. The complainant has approached to IGR Cell of the Respondent on 7.5.2010 regarding his dispute of arrears pertaining to A/c No 719-370-001 (old) & A/c No 202-027-899 (New) of firefighting service.
2. Not satisfied with the reply of respondent's IGR Cell dt. 02-07-2010, complainant approached to CGR Forum in schedule A format on 27.09.2010.
3. The complainant has requested Forum to quash and set aside the latest bill dt. 11-08-2010 for the month of July, 2010 issued by the respondent in respect of meter no R960054, A/c No 719-370-001, 202-027-899*4 and meter no 088763 in respect of A/c No 719-367-001*5 (of lift, water pump, passage lighting & other common amenities) demanding a sum of Rs 23,43,217/- as the respondent BEST has not followed the procedure laid down under Electricity Act, 2003 and Electricity Rules, 2005 while raising the bill. The issuance of the said bill demanding amount from the complainant is illegal as the meter for which the bill is raised was never applied by him and have never consumed energy through the said meter by the applicant. The bill raised is time barred as per Section 56 (2) of Electricity Act, 2003. The complainant requested to give credit for the amount he has paid towards actual consumption of electricity.
4. He has also requested the Forum to direct the respondent BEST to pay a sum of Rs 50,000/- towards compensation for providing deficient services.
5. He also requested the Forum to pass an order restraining the respondent from disconnecting the electric supply till the final outcome of the case.

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

6. The Requisition No.50228 dated 24.1.1994 was registered by M/s. Sumer Builders Pvt. Ltd. for fire fighting purpose for load of 51.98kW (Page1-45). Subsequently, Meter No.R960054 was installed on 4.7.1996 under A/c.No.719-370-001 in the name of M/s. Sumer Builders Pvt. Ltd. for fire fighting purpose. However, this meter was not registered in our record. In April 2004, the meter no. R960054 was taken on our master file under A/c. No. 719-370-001 & billed on the basis of units recorded by the meter as per the applicable tariff.
7. On the basis of Requisition No.50228 registered on 24.1.1994 by Sumer Builders Pvt. Ltd., the fire fighting meter was installed for “standby” purpose in the name of Sumer Builders Pvt Ltd., at Grd. floor, Sadhana Mill Compound, Pandurang Budhkar Marg, Worli, Mumbai 400 018. M/s. Sumer Builders Pvt. Ltd. is the developer of the said Society. The Society registered in the year 1995, i.e. after development of the said property. Initially, the said meter was installed for firefighting purpose on request from the developer. As stated by the applicant the firefighting equipment installed at their Society is supplied power through the electricity meter R960054 referred above.
8. The meter R960054 installed in July 1996 was not registered in our record. In April 2004, the meter no. R960054 was taken on our master file under A/c. No. 719-370-001. From the reading folio, it is observed that the after installation of the meter, the reading remained constant till July 1999. Thereafter, there was substantial increase in readings recorded by the meter. Hence, on the basis of the 68842 units recorded in May 2004 the bill was preferred for 68778 [i.e. 68842-64(initial reading)] units for the period from May 1996 to May 2004 and the amount of Rs.6,56,100.34 was debited in A/c. 719-370-001. This is the meter installed for firefighting. Hence as per applicable tariff, fixed charges on the basis of connected load was charged for the period from July 1996 to Aug 2005 and an amount of Rs. 3,59,772.60 was debited in the bill of Sept 2005.

9. The consumer is also using electric supply for common amenities under the A/c.719-367-091. The consumer has not paid the accumulated bill amount towards A/c No. 719-370-001 of firefighting meter. The fire fighting meter is a statutory requirement and electric supply for the said meter cannot be disconnected. Hence, vide our letters referred therein, the Consumer had been asked to make payment towards the said account, else the outstanding amount of firefighting account will be debited in Consumers account 719-367-091. Subsequently the said amount was debited in A/c.719-367-091 in Dec 2007.
10. The applicant vide his letters stated that the said meter was not installed for the Society is not correct as the said meter was installed prior to registration of Society on request from the developer. From the consumption of the meter since Sep'99 it is evident that the meter was in use by the Society.
11. The Consumer has not paid the initial outstanding amount. Hence the amount increased to Rs.17,28,439/- due to levy of delayed payment charges. Notice of disconnection under section 56(1) of Electricity Act, 2003 was served to the consumer for disconnection.
12. Initially, vide our letters dated 21/12/2005 & 31/7/2006, the consumer has been informed of the outstanding accumulated bill amount. Thereafter vide our letters dated 29/1/2009, 4/6/2009, 4/9/2009, 1/10/2009 the consumer has been repeatedly informed about the details of bill generated. During this period the consumers representative Shri Sanjay Goradia and others have also been explained about the installation of meter and subsequent billing. As suggested by them, the calculation in respect of accumulated bill in detail have been shown and explained to their representative Shri Bipin Shah.

13. As the consumer has not paid the said amount, hence vide our letters referred therein, the Consumer had been asked to make payment towards the said account failing which electric supply will be disconnected.
14. The consumer has made the payment of Rs.1,95,963/- on 22.10.2009 towards current bills of firefighting A/c.No.719-370-001.
15. The consumer had made the payment of Rs.1,95,963/- against A/c.No.719-370-001. However, no payment was received against A/c.No.719-367-091. So the consumer was sent the bill for A/c. No.719-367-091.
16. The notice sent by the consumer through his Advocate has been replied vide our letter CC(G/S)/AEGS/OAGS-2/HB/3605/2010 dated 15.2.2010. Please refer page 125 of the submission made by us.
17. The reply to the legal notice dated 6.1.2010 has already been forwarded vide our letter dated 15.2.2010. Please refer page 125 of the submission made by us.
18. The information required by the applicant vide RTI dated 9.12.2009 has been furnished on 8.1.2010.
19. The first bill for the said meter was raised in May 2004. The amount towards the said bill became due on presentation of the said bill only. Thereafter also the said amount is continuously appearing in the consumer account. Hence the above amount is recoverable & is not time barred. Please refer to the judgment of High Court in BEST V/s Yatish Sharma placed at 147-173 of the submission made by us.

20. The consumer stated that they are having the firefighting equipment. The electric supply to this equipment is through meter No.R960054. Now, the payment towards the current bill of the meter is being made by the consumer. The installation of fire fighting meter is a statutory requirement. Please refer Chief Fire Officer's letter placed at page 175-179. Initially, the meter for firefighting purpose was installed on 4.7.1996 on request from developer M/s. Sumer Builders Pvt. Ltd . After completion of the construction the same was handed over to the Society which was registered in the year 1996. The meter installed is in the name of M/s. Sumer Builders Pvt. Ltd & not Sumer Kendra premises Co-op Society Ltd and the supply through the said meter is being used for the firefighting equipment.

So far the consumer has made the payment as follows:

Rs.4,00,000/- on 19.03.2009 A/c.No.719-367-091 (Common amenities Account)

Rs.1,95,963/- on 26.10.2009 A/c.No.719-370-001 (Old Account of firefighting)

Rs.2,00,000/- on 7.09.2010 A/c.No.202-027-899 (New Account of firefighting)

21. Our pray to the Hon'ble CGRF is to direct the applicant to pay the full amount of Rs.22,19,446.99 towards new A/c.No.202-027-899 (A/c allotted in lieu of 719-367-091) upto 1.9.2010.

Respondent Sumer Builders Pvt. Ltd. in its written statement

in brief submitted as under

22. Respondent Sumner Builder has placed on file its written arguments *inter-alia* contending being not liable to pay the electricity charges claimed by the Respondent BEST Undertaking, as the same has been availed and utilized by the Complainant society and not by it.

REASONS

23. We have heard Mr. Bipin Shah for the Complainant society, for respondent BEST Undertaking Mr. S. B. Lande, Mr. Ajay V. Chachad, R. S. Ambre & Mr. S. N. Bhosale and on behalf of respondent builder a written argument has been placed on file under the signature of its Director.
24. This forum has been now deciding the controversy raised before it by the Complainant society, in its second round of hearing. This forum had passed an order dated 11/01/2011 which was challenged by the respondent BEST Undertaking by filing a Writ Petition no. 533 of 2012 before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court therein has remanded the instant matter to this forum for hearing afresh. Hence, the instant order.
25. At the outset, this forum observe that, the entire controversy raised in the instant matter by the Complainant society, has been focused around the alleged use of electricity through the meter no. R 960054 provided for Fire Fighting purpose.
26. The Complainant society has, *inter-alia* contended that it come to be register under the Maharashtra Co-Op. Societies Act in the month of September 1995. The premises occupied by the Complainant society has been constructed by the respondent M/s. Sumer Builders Pvt. Ltd. in the year 1995. The Complainant society has been well equipped with the fire fighting equipments, therefore, not in a need to have any separate meter for fire fighting purpose.
27. It is on 3rd month 2007, the Complainant society learnt on receiving a letter from the respondent BEST Undertaking about installation of fire fighting meter on 4th July 1996 with A/c No. 719-370-001 in the name of respondent builder for fire fighting purpose with the load of 51.98 KW. The Complainant society never used any electricity through the said fire fighting meter. It never applied for such fire fighting meter and also was not aware of installation of the same in its premises. Adverting

to the letter dated 24/10/2008 placed on file at Exhibit-D at page 37, the Complainant society submitted that on receiving the electricity bill for the use of fire fighting meter, the Complainant society actually found out the exact location of the meter in its premises. Thus, despite not applying for such fire fighting meter and for not using the same, the electricity consumption bill has been served on the Complainant society by the respondent BEST Undertaking, therefore the same is illegal.

28. The Complainant society further adverted to a letter dated 6/8/2008 addressed to the respondent builder by the respondent BEST Undertaking placed on file as Exhibit-C at page 31 and submitted that vide this letter the Complainant was informed to pay the arrears of Rs. 16,08,769.90 and proceeded to debit the other account for amenity purpose bearing no. 719-367-091 in the bill of December 2007.
29. In contra, the respondent BEST Undertaking *inter-alia* contends that being a statutory requirement, the respondent builder had applied for the fire fighting meter and accordingly it was installed in the premises occupied by the Complainant society on 4/7/1996 with A/c No. 719-370-001 in the name of respondent builder and billed on the basis of the units recorded by the said meter as per the applicable tariff. However, the said meter no. R-960054 for fire fighting was taken on master file for the first time in the month of April 2004.
30. The respondent BEST Undertaking further contends that on the *reading folio*, it is observed that after installation of fire fighting meter, the reading remain constant till July 1999. However, thereafter, there was substantial increase in the readings recorded by the said meter. Hence, on the basis of reading recorded on *reading folio* in the month May 2004 of 68842 units, the bill was preferred for 68842 less 64 (initial reading) i.e. for 68778 units consumed during a period from May 1996 to May 2004 and the charges amount of Rs. 6,56,100.34 was debited in A/c No. 719-370-001.

31. The said meter was installed for fire fighting purpose. Hence, as per the applicable tariff fixed charges on the basis of connected load was also charged for the period from July 1996 to August 2005 and debited in the bill of September 2005. The respondent BEST Undertaking further contends that the first bill for the said fire fighting meter was raised in the month of May 2004 and thereafter, also the said amount has been continuously appearing in the Complainant society's account. The installation of fire fighting meter has been a statutory requirement. Taking into consideration the purpose of it, the respondent BEST Undertaking has not disconnected the electricity supply made through it despite non-payment of the electricity charges by the Complainant society forwards the same.
32. This forum thus observe that, the entire controversy has been in respect of the payment of electricity charges for the electricity consumption through the fire fighting meter no. R-960054 with A/c No. 719-370-001. As contended by the respondent best Undertaking on account of its bonafied mistake, the said meter was not taken on the *ledger folio*. However, from the month of September 1999 till January 2001, the *reading folio* maintained by the respondent BEST Undertaking had shown consumption of 68778 units. Therefore, in the first instance from the date of installation i.e. 4/7/1996 and thereafter also the Complainant society being actual user of the said meter, has been liable to pay fixed minimum charges on the basis of the connected load viz 51.98 KW and in addition to it also liable to pay for the actual consumption of units through the said fire fighting meter.
33. This forum finds that a table placed on file by the Complainant society alongwith Exhibit-D at page 38 gives the details as to how the BEST Undertaking has charged the Complainant society for Rs. 6,35,262.53 for consumption of 68778 units during a period from September 1999 till November 2001. Therein the respondent BEST Undertaking has added fixed charges alongwith delayed payment charges and interest and thus the total charges has been arrived at Rs. 16,08,769.90 and debited this amount in the A/c No. 719367091 in the month of December 2007. This A/c has been provided for common amenity meter no. Q-940282. Accordingly, this forum

finds such entry of charges being made in the *ledger folio* maintained by the respondent BEST Undertaking and placed before this forum.

34. This forum further observes that there are total 3 meters provided in the premises of the Complainant society. The meters viz Q-940282 and R-890195 with the A/c No. 719-367-091 and 719-367-091, the Complainant society has been using for common amenities such as, staircase, water pump, vharanda, lift, etc. The third meter bearing no. R-960054 with A/c No. 719-370-001, has been used for fire fighting purpose as observed above which has been a focal point of the dispute to be resolved by this forum. At this juncture, this forum also observe that the second amenity meter no. R-890195 came to be replaced later on by another electronic meter no. P-980216 with the A/c No. 200-002-445 from the month February 1998. Accordingly, we find the entries being made in the *ledger folio* placed before this forum.
35. It is vitally significant to observe at this juncture that, the Complainant society has candidly admitted having used two meters referred to above for the common amenity purpose. It is further significant to observe that, the Complainant society has also admitted paying the charges to the respondent BEST Undertaking, for using the electricity for common amenity purpose through these both meters, despite these meters are standing in the name of respondent builder. Now, the vital question arises before this forum, whether the Complainant society has used the electricity through the fire fighting meter no. R-960054 for a period as alleged by the respondent BEST Undertaking, and liable to pay the charges against it.
36. The respondent BEST Undertaking has vehemently urged that alongwith the use of common amenity meter, the Complainant society has also used the electricity through the fire fighting meter installed in its premises. Placing a heavy reliance on the *meter reading folio* placed on file before this forum at page no. 47 and 63, the respondent BEST Undertaking has urged that in an ordinary course of its business its meter readers by visiting the place of consumers where meters are fitted, record the consumption of unit by the concerned consumer on the *meter reading folio*.

Accordingly, this forum finds that, *meter reading folio* maintained by the meter reader shows that in respect of fire fighting meter no. R-960014, the initial reading of 64 has been recorded at the time of installation of the said meter. Thereafter, from the month of July 1997, the reading has been constantly shown as 66 till July 1999. For the first time in the month of September 1999, the said fire fighting meter has recorded reading as 11348 and thereafter, the said meter was recording progressive unit consumption till month of January 2001. The *meter reading folio* at page 63 shows the last reading recorded therein by the meter reader being 63185 till the month of January 2001.

37. Thereafter, the second *meter reading folio* placed on file at page no. 47 manifest that the meter reader for the year 1996 has recorded the initial reading as 64, thereafter, on 7/5/2004 has shown the reading as 68842. This forum finds that, as absorbed above albeit the respondent BEST Undertaking did not bring this fire fighting meter on its *ledger folio* but it is having a valid record i.e. *mete reading folio* maintained by its meter reader placed before this forum blatantly manifest the consumption of 68778 units through this fire fighting meter no. R-960054. It may be noted at this juncture that initially the meter reader record the meter reading in *reading folio* and therefrom it goes to *ledger folio* maintained in Electronic Data Processing department to prepare a bill to be served on the consumer.
38. In order to establish that, the Complainant society has consumed the electricity for its common amenity purpose through Fire Fighting meter, the respondent BEST Undertaking has vehemently submitted that the Complainant society with the help of change over switch electricity supply from the fire fighting meter was availed for its common amenity purpose, during the period from September 1999 till January 2001. Therefore, for said period for the first time the fire fighting meter no. R-960054 has recorded the consumption of electricity and accordingly noted down by its meter reader on the *meter reading folio*.

39. In support of its said contention, the respondent BEST Undertaking has adverted to the *ledger folios* in respect of the common amenity meter Nos. Q-940282 and P-980216. This forum on perusing the *ledger folio* in respect of these 2 amenity meters for a period from January 1997 till July 1999 finds that, the average bi-monthly consumption in respect of meter no. Q-940282 was 305 units, while in respect of common amenity meter no. P-980216 it was 6020 units till the period wherein fire fighting meter was recording zero consumption of units.
40. However, this forum thereafter observes that during the period from July 1999 till January 2001 the fire fighting meter has recorded average bi-monthly consumption of 7013 units while for the same corresponding period the common amenity meter no. Q-940282 has recorded average bi-monthly 460 units and other common amenity meter no. P-9802168 has recorded significantly low consumption i.e. 1612 units.
41. Thus, this forum finds that, there has been a sudden drop in the consumption recorded by the common amenity meter no. P-9802168 from bi-monthly consumption of 6020 units to 1612 units. It is therefore, blatantly manifest and evident that such sudden drop in unit consumption through common amenity meter, has been due to using the fire fighting meter no. 960054, which has for the first time recorded average bi-monthly consumption of 7013 units.
42. It is further significant to observe that, from the month March 2001 the fire fighting meter again started recording zero consumption of units and correspondingly for the same period the common amenity meter no. P-9800216 again started recording increased average bi-monthly consumption unit of 4259. This forum finds it appropriate for proper appreciation of this fact to place below the table giving the gist of the unit consumption recorded by these meters for the concern period, which speaks volume for itself.

Sr. No.	Period	Average bi-monthly Units for the period of common Amenity Meter	Average bi-monthly Units for the period of common Amenity Meter	Average bi-monthly Units for the period of Fire fighting Meter
		Mtr. No. Q 940282	Mtr. No. R 890195 / P 980216	Mtr. No. R960054
1	Jan 97 to July 99	305	6020	0
2	Sept 99 to Jan 01	460	1612	7013
3	Mar 01 to Nov 02	2314	4259	0

Note:- Earlier Mtr No. Q 940282 and R 890195 were billed under one A/C. 719-367-091 In the month of Feb 98 mtr. No. R 890195 was replaced by electronic Mtr. No.P980216 and started billing under A/C 200-002-455.

43. In view of this forum, it is blatantly manifest that, the Complainant society has consumed the electricity through the fire fighting meter using change over switch, for the purpose of its common amenity purpose such as, lift, Vharanda, Staircase, water pump, etc. This forum further observe that, when the representative of the Complainant society was confronted with these figures of electricity consumption as observe above, he could not give any satisfactory explanation for the same. A lame attempt however has been made by the representative of the Complainant society that for the period fire fighting meter has shown the consumption of the electricity units, there has not been exact drop in the electricity consumption unit in the common amenity meters. However, this forum does not ascribe any merit to such contention for a simple reason that a bare perusal of the unit consumption recorded in *ledger folio* and *meter reading folio* manifest that, there has been always a variation to some extent in every bi-monthly period in the usage of electricity.
44. This forum thus finds that the Complainant society was well aware of the installation of the fire fighting meter alongwith equipment in its premises. The same got installed by the respondent builder as a statutory requirement. Thereafter, the said fire fighting meter has been used by the Complainant society for its common amenity purpose as observed above. Significant to observe that, despite the common

amenity meters are standing in the name of respondent builder, the Complainant society has never deny its liability to pay its electricity charges as it has availed and consumed the electricity for the common amenity.

45. Therefore, in the light of basic principle of law viz *Doctrine of Acquiescence* the Complainant society has been liable to pay the charges for availing and using the electricity through the fire fighting meter no. R-960054, albeit it stands in the name of Respondent builder. Thus, this forum does not find any merit in the defense raised by the Complainant society that, it was not aware of such installation of fire fighting meter and not availing any electric supply there from. The documents placed before this forum such as *ledger folio* and *meter reading folio* totally shatters said defense raised by the Complainant society.
46. To conclude, this forum holds that as the Complainant society has been paying the electricity charges for the common amenity meters despite standing in the name of Respondent builder in the same line, it should pay the electricity charges for availing and using the electricity through the fire fighting meter no. R-960054, the details of which have already been provided to the Complainant society by the respondent BEST Undertaking in the table enclosed alongwith letter dated 4/6/2009 served on the Complainant by hand delivery. The copy of the said letter has been placed before this forum by the respondent BEST Undertaking on page 101.
47. We may observe that the Respondent BEST Undertaking in its ordinary course of business activities, maintaining a *ledger folio* and *meter reading folio*, that too in respect of its about 9.5 lac consumers. We therefore hold the *ledger folio* and *meter reading folio* maintain in respect of Complainant society, and placed before this Forum being a cogent evidence to resolve the controversy before us.
48. Last but not the least contention remained to be assess and analyse, has been in regard to the charges claimed by the Respondent BEST Undertaking from the Complainant society has been allegedly time-barred, as envisaged u/s 56(2) of the

Electricity Act 2003. In this connexion, this Forum observe that a bare perusal of Section 56(2) manifest that the time limit provided therein, would not be applicable in the contingency, when such sum due has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee has not cut off the supply of the electricity. This Forum finds that admittantly electricity supply provided to the Complainant society has not been cut-off, besides it the Respondent BEST Undertaking in its record has been showing continuously charges being recoverable. In view of this Forum therefore claim made by the Respondent BEST Undertaking has not been hit by limitation provided u/s. 56(2) of the Electricity Act 2003, as alleged by Complainant society.

49. Before we part with this order, we may observe that the Complainant society ought to have applied for the *change of name* as envisaged under Regulation 10 provided under the MERC (Conditions of Supply Code) Regulations, 2005 when admittantly it has been paying the electricity charges despite fully knowing the meters being standing in the name of respondent builder, especially when the Respondent BEST Undertaking had informed it accordingly and supplied the required form for the same.

ORDER

- 1.0 The complaint no. N-G(S)-165-2012 dated 31/7/2012 stands dismissed.
- 2.0 The Complainant society has been directed to pay electricity charges in arrears as claimed by Respondent BEST Undertaking in a three monthly equal installments. The first installment to be paid within a period of one month from the date passing this order.
- 3.0 The Complainant society further directed thereafter to apply immediately to the respondent BEST Undertaking for *change of name* and the respondent Sumer Kendra Builder Pvt. Ltd. has been directed to give its consent to the same.
- 4.0 Copies be given to all the parties

(Shri Suresh Mohite)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman

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