

		Date	Month	Year
1	Date of Receipt	05	07	2022
2	Date of Registration	07	07	2022
3	Decided on	05	09	2022
4	Duration of proceeding	60 days		
5	Delay, if any.	---		

**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. 22799528

**Grievance No. D-460-2022 dtd. 07/07/2022**

Bai Tulsabai Devji Charity Trust ..... Complainant

V/S

(1) B.E.S.&T. Undertaking ..... First Respondent

(2) Smt. Bhanumati Mulraj Kabali ..... Second Respondent

**Present**

**Chairman**

Coram :

Shri S.A. Quazi, Chairman

**Members**

1. Shrimati Anagha A. Achrekar Independent Member.
2. Shri S.S. Bansode, Technical Member.

On behalf of the Complainant : Shri Prakash Mulraj Kabali.

On behalf of the first Respondent : Shri S.N. Inchnalkar

On behalf of the second Respondent : Smt. Kiran M. Raja.

Dates of Hearing : 29.08.2022 and 02.09.2022

Date of Order : 05.09.2022

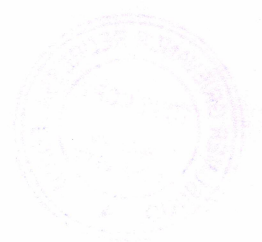


  
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Secretary  
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### Judgment

- 1.0 The complainant has grievance about first-respondent/licensee's decision of change of name of consumer from complainant's name to the name of the second respondent in respect of the electric-connection bearing old consumer a/c no.881-707-051 and regarding complainant's premises, described in the electric bill as "Ground floor, plot-15, Chandra Bhuvan, Pandita Ramabai Marg, Gamdevi, Grant Road, Mumbai-400007." (Herein after this premises shall be referred to as premises in question). This change was effected from the month of December 2015. After the change, the consumer number has been changed to a/c no. 881-707-009 in the name of the second respondent. According to the complainant, the said change in consumer-name is illegal, unjustifiable and invalid. The complainant has requested in the instant complaint that the said change in consumer-name be set aside and the complainant's name be restored as consumer of the said electric connection.
- 2.0 The following facts can be said to be not in dispute between the parties:
- a) The complainant "Bai Tulsabai Devji Charity Trust" is a charitable trust and it is registered as such with the Charity Commissioner of Mumbai under the Bombay Public Trust Act 1950 (Herein after it shall be referred to as Trust Act) This trust was created by a registered Trust Deed dt. 4<sup>th</sup> January, 1923, executed by one Smt. Bai Tulsabai Deoji Shivdas. Smt. Bai Tulsabai Deoji Shivdas was mother of Smt. Narayanibai alias Nathabai. Said Smt. Narayanibai alias Nathabai was mother of Shri Mulraj Kabali. Thus the settler of the said Trust Deed, Smt. Bai Tulsabai Deoji Shivdas was grandmother of Shri Mulraj Kabali. Said Mulraj Kabali was one of the trustees of the trust during his life time. He has died on 14.12.2010, leaving behind him the said Shri Prakash Kabali as son, who is representing the complainant trust in this proceeding before this forum. Deceased Mulraj Kabali has also left behind him the Respondent No. 2 Smt. Bhanumati Kabali as his wife/widow and Smt. Kiran M. Raja, as his daughter, who is representing the Respondent No. 2, in this proceeding before this forum. The said Shri Prakash Kabali/representative of the complainant is presently recognized by the Charity Commissioner as one of the trustees of the Complainant/Trust.
- b) There is a building by name as Chandra Bhuvan Building, situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai 400007. On the ground floor of the said building a temple by name Ambamata Mandir is situated. Till the month of December 2015, i. e. till the change effected in favour of the second respondent, the electric-connection bearing old consumer a/c no.881-707-051 was in the name of the complainant in respect of the premises described in the electric bill as "Ground floor, plot-15, Chandra Bhuvan, Pandita Ramabai Marg, Gamdevi, Grant Road, Mumbai-400007."



  
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- c) The second respondent submitted 'Change of Name' application dt.23.12.2015 bearing No.2584630 to the first respondent for change of name of consumer in respect of the aforesaid electric connection which was in the name of the complainant under old consumer a/c no. 881-707-051, in respect of the premises described in the electric bill as "Ground floor, plot-15, Chandra Bhuvan, Pandita Ramabai Marg, Gamdevi, Grant Road, Mumbai - 400007." Along with the said 'Change of Name' application dt.23.12.2015, the second Respondent Smt. Bhanumati Kabali submitted copies of the documents, which include (1) Rent Receipt No. 182, dt. 01.10.2015 in the name of Bhanumati Mulraj Kabali for ground floor, Ambamata Mandir, (2) Probate issued by the Hon'ble High Court Judicature at Bombay dt.03.07.2014 in Testamentary Petition No. 1339 of 2012, in respect of the Will dt.19.04.2008 of the said Mulraj Kabali.
- d) On the said 'Change of Name' application dt.23.12.2015 of the second Respondent, the first respondent changed the name of consumer from the name of the complainant to the name of the second respondent with effect from December, 2015.
- e) Before effecting the aforesaid change the Respondents did not give any notice to the Respondent to seek its say on the matter of the change of name in respect of the said electric connection.
- 3.0 The Complainant's case, as is mentioned in the grievance application and as submitted by its representative, in the course of the hearing before this forum, may be stated as under:
- a) The complainant Trust is owner of the aforesaid building known as "Chandra Bhuvan Building", situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai 400007. The complainant/Trust is also having its address correspondence at "C/o Kalpana P. Kabali, 23/A, Dongersi Road. 1<sup>st</sup> Floor, Ramtirth Kutir, Malbar Hill, Mumbai-400006 and it was mentioned as such in the electric bill-record.
- b) The temple/Mandir by name "Ambamata Mandir" situated on the ground floor of the said "Chandra Bhuvan Building", situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai 400007, belongs to the complainant Trust and its ownership also belongs to the complainant. Despite the admitted fact that the complainant was the registered consumer of the said electric connection at the said premises on ground floor of the said building "Chandra Bhuvan Building", situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai 400007, the second Respondent, without the knowledge and consent of the complainant applied to the first respondent for change of name and address of the consumer of the said electric connection. It is submitted that the first Respondent also did not give any notice to the complainant before effecting the change on the aforesaid application of the complainant. When came to know that on the application



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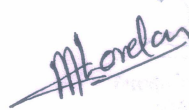


made by second-respondent, the first respondent has effected change in the consumer-name in respect of the said connection from complainant's name to the name of the second respondent/Bhanumati Kabali, in the year 2016 the complainant gave application to the first Respondent seeking information about the said change of name, under the provisions of the Right Act (R.T.I. Act).

- c) After the detailed information received from the first Respondent under the R.T.I. Act, the complainant realized that the respondents have committed illegal acts by effecting the change without giving notice to the complainant and also without the second respondent having any entitlement for it. Therefore, being aggrieved by the said change in the name of the consumer in the bill regarding the said connection, the complainant sent an objection letter dt.9<sup>th</sup> May, 2016 to the Internal Grievance Redressal Cell of the first Respondent. No action was taken by the said Cell of the first Respondent.
- d) The Respondent No. 1 has carried out the said change by violating the principles of natural justice. According to the representative of the complainant, it is a total illegality on the part of the respondents to carry out change in the record about the name and address of the consumer of the said electric connection without offering a fair opportunity of showing cause to the earlier consumer i.e. complainant herein. This act of the respondents is totally illegal and unjust.
- e) The second respondent is not entitled to get removed name of the complainant as consumer in respect of the above electric connection nor is she entitled to get her name substituted in place of name of the complainant as consumer in respect of the said electric connection. Despite this, the first respondent has carried out the change in consumer-name, which is illegal. The second Respondent suppressed material facts from the first respondent. She has suppressed various proceedings and orders passed therein by various authorities, courts and forums, including the Charity Commissioner. This has been done by the respondents without any notice to the complainant. No opportunity of hearing has been given to the complainant by the first respondent before removing the name of the complainant.
- f) It is submitted by the complainant's representative that the complainant waited for the decision of the first respondent, but no response was given by the first respondent. Meanwhile from March 2020 the Government had declared complete lock down due to spread of covid-19 virus. Due to it complainant could not pursue its complaint before the first respondent effectively. After some relaxation of the lock down on 14.01.2022, the complainant gave further letter of objection through its advocate to the Divisional Engineer of the first Respondent. However this was also not responded by the concerned official of the first Respondent. Therefore the complainant sent reminder on 13<sup>th</sup> April 2022 to the said Divisional Engineer of the



  
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first Respondent. That reminder was also not responded by the said official of the first Respondent. Thus various complaints about the above change have been given by the complainant to the Customer Care Department of the first Respondent, but the grievance of the complainant has not been satisfactorily settled. Therefore, the complainant has filed the instant complaint before this Forum.

- g) It is submitted by the representative of the complainant that the suit bearing No. 713 of 2012 was filed, in the Hon'ble Bombay City Civil Court, by the second Respondent against the complainant/Trust. In that suit the second Respondent had claimed ownership over the said building and temple therein. However, the Hon'ble City Civil Court has dismissed that suit by the order and judgment dt.27.10.2016 holding that the present second Respondent is not owner of the said Trust Building i.e. Chandra Bhuvan Building and in fact the present complainant/Trust is owner of the building, wherein the said "Ambamata Mandir" is situated. It is submitted by the representative of the complainant that even the Hon'ble Bombay High Court has held in First Appeal No. 31 of 2017 that the present complainant/Trust is owner of the building. It is settled law that grant of probate is not conclusive of ownership. Hence, the present second Respondent cannot claim ownership on the basis of the probate granted in respect of the Will deed of the deceased Mulraj Kabali.
- h) It is submitted by the representative of the complainant that the second Respondent, with ulterior motive and mala fide intention adduced forged and fabricated papers and documents in order to get her name substituted in place of the name of the complainant as consumer in respect of the aforesaid electric connection. About the alleged rent receipt, which is relied upon by the second respondent in support of her application for the change before the first Respondent, it is submitted by the representative of the respondent that this rent receipt is issued by the second respondent in her alleged capacity of land lord in favour of herself in the capacity of tenant. It is submitted that, when the complainant is owner of the building in question, how can such a forged document can be believed by the first respondent to substitute the name of the second respondent in place of the name of the complainant as consumer of the said electric connection. The representative of the complainant has also produced the copy of the Trust deed of the year 1923 and the extract of register of Trust maintained by the Charity Commissioner, in support of his contention that the said building belongs to the complainant/Trust.
- i) Citing all the above circumstances, the representative of the complainant has submitted that the said change effected in the consumer-name in favour of the second respondent may be set aside and the name of the complainant be restored as consumer of the said electric connection.



  
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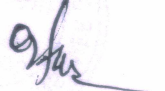
- 4.0 The first Respondent/BEST Undertaking (Licensee) has filed its reply and has submitted that the instant grievance application has no merits and it is liable to be dismissed. The case, as pleaded by the Respondent/Undertaking and as urged by its representative in the course of hearing, may be summarized as under:
- a) The second Respondent Smt. Bhanumati had submitted in all (9) documents in support of her application for change of name of consumer of the aforesaid electric connection in question. Those documents include 1) old electric bill, 2) Annexure 'A' Undertaking of the applicant about compliance of statutory requirements, 3) Authority letter of applicant Bhanumati M. Kabali, 4) Rent Receipt No. 182, dt. 01.10.2015 in the name of Bhanumati Mulraj Kabali for ground floor, Ambamata Mandir, Chandra Bhuvan Building, situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai 400007, and 5) Probate certificate issued by the Hon'ble High Court Judicature at Bombay dt. 03.07.2014 in Testamentary Petition No. 1339 of 2012, in respect of the Will dt.19.04.2008 of the said Mulraj Kabali.
- b) According to the first Respondent, it considered all the aforesaid documents submitted by the second Respondent along with her application for change of name of the consumer regarding the aforesaid electric connection. The first Respondent found that considering these documents, the second Respondent was legally entitled to get her name substituted in the record of the first respondent in respect of the aforesaid electric connection in place of the complainant/Trust as consumer of the said connection. Therefore, the first respondent substituted the name of the complainant in place of the name of the complainant/Trust as consumer of the said connection. According to the first respondent, it has not committed any illegality in its said decision making process. It has followed the due process of law as laid down in the Regulations framed by the Maharashtra Electricity Regulatory Commission (MERC).
- c) According to the representative of the first Respondent, it is true that before substituting the name of the second respondent in place of the name of the complainant/Trust as consumer of the said connection, no notice was given by first Respondent to the complainant. But, according to him, MERC Regulations 2006, as were in force at the relevant time of the aforesaid change, did not require that a notice was necessary to be given to the consumer whose name was to be replaced by the name of new consumer. Therefore, it is submitted that no question of violating the principles of natural justice at the hands of the first respondent, as is alleged by the complainant, arises.
- d) About the contention of the complainant that it has sent the letters 5<sup>th</sup> April 2016 and 14<sup>th</sup> May 2016, the first Respondent has submitted that its Superintendent Customer Care (D) ward has replied those letters by sending his letter dt.30.05.2016 addressing to the complainant. The first Respondent has produced copy of this letter with its



  
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reply at page No. 40 and 41. In that letter it was mentioned that as per section 2.9 of the Terms and Conditions of Supply as approved by the MERC, it is provided that "the BEST Undertaking (first respondent) shall neither be responsible nor liable to ascertain the legality or adequacy of any No Objection Certificate / Way leave permissions / Permissions or Consents of Statutory Authorities which might have been submitted by the Applicant/Consumer along with his application and shall believe that such certificates/permissions to be sufficient and valid, unless proved to be contrary." According to the first Respondent, in the said letter dt. 30.05.2016, it was requested to the complainant to forward copy of final order of the court, so as to enable the first respondent to place the case of the complainant before the management of the first respondent for their opinion/advice and till then the status quo shall be maintained regarding name of the consumer as changed as above.

- e) In its reply, the first respondent has referred to the contentions of the complainant that (a) it has sent the letter on 14<sup>th</sup> January 2022 to the first respondent and (b) the Hon'ble City Civil Court of Bombay has passed its judgment dt. 27.10.2016 in suit No. 713 of 2012 and it has held therein that the present respondent Bhanumati Kabali is not owner of the said "Chandra Bhuvan Building." About these contentions of the complainant, the first Respondent has submitted in its reply that it has forwarded this objection letter along with relevant papers to its legal department for their opinion. It is submitted in the reply that on receipt of the opinion from the legal department it will be submitted to this forum.
- f) For all the aforesaid circumstances, in its reply, the first respondent has submitted that the instant grievance application is liable to be dismissed.
- g) In the course of hearing before this forum, the representative of the respondent has submitted that after filing of the aforesaid reply before this forum, the legal department has sent its opinion that the complainants name should be restored as name of the consumer in respect of the aforesaid electric connection.
- 5.0 The second respondent/Smt. Bhanumati Mulraj Kabali has filed her reply and has submitted that the instant grievance application has no merits and it is liable to be dismissed. The case, as pleaded by the second Respondent and as urged by her representative in the course of hearing, may be summarized as under:
- a) The second respondent has denied that trusteeship of the said Prakash Mulraj Kabali is lawful. It is true that the trust was constituted by the trust deed dt. 4<sup>th</sup> January 1923 between Bai Tulsabai as a settler. The said Bai Tulsabai and one Shivdas were trustees of the said Trust. On the demise of the said two trustees, new trustees by name 1)



  
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Purshottam Meghji Kabali, 2) Smt. Narayani Purushottam Kabali and 3) Mulraj Purshottam Kabali, were appointed.

- b) Civil Suit No. 2319 of 1929 was filed in the Hon'ble Bombay High Court, wherein a decree dt. 9<sup>th</sup> June 1932 was passed. By virtue of this decree the property i.e. 'Chandra Bhuvan Building' was vested in the said Trust.
- c) A further suit bearing No. 74 of 1952 was filed by Purshottam Meghji Kabali, in respect of the said Trust in the Hon'ble Bombay High Court. In that suit the decree was passed. In the reply the second respondent has stated its date at some place as "18<sup>th</sup> May 1952" and at some places as dt. "18<sup>th</sup> November, 1952". As per that decree the said Purshottam Meghji Kabali/plaintiff therein was directed to pay Rs. 27,000/- to the Charity Commissioner, Mumbai, towards value/consideration of the said property 'Chandra Bhuvan Building'. On payment of the said amount as such said property was to be released from the scheme of Charity. According to the second respondent, it appears that the said Purshottam Meghji Kabali did not pay the said sum of Rs. 27,000/- by 18<sup>th</sup> May 1953, as per the decree dt. 18<sup>th</sup> November 1952. On his application, by its order dt. 19<sup>th</sup> February 1965, the Hon'ble Bombay High Court condoned the delay occurred in making the said payment. Thereupon, the said Purshottam Meghji Kabali paid the said sum of Rs. 27,000/- to the Charity Commissioner of Mumbai. On payment of the said sum of Rs. 27,000/- as such to the Charity Commissioner and by virtue of the decree dt. 18<sup>th</sup> November 1952, the said trust property 'Chandra Bhuvan Building' stands released from the claim of Charity under the said Trust Deed dt. 4<sup>th</sup> January, 1923 and the claim of the Charity Commissioner under the said Trust Deed ceased permanently.
- d) According to the second respondent, in the light of the above decree and payment of the value/consideration of the said property 'Chandra Bhuvan Building', i.e. the land and the building standing there on, the said property has ceased to be the property of the Charity Commissioner and thus it is no more a public trust property and thus it became private property of said Purshottam Meghji Kabali. The said Purshottam Meghji Kabali was father of Mulraj Kabali i.e. the husband of the second respondent Bhanumati Kabali and father of aforesaid Prakash Kabali. So after his death, his son Mulraj became owner of the said property.
- e) Mulraj Kabali died on 14.12.2010 testate leaving his last Will and Testament dt. 19.04.2008. The said Will has been duly probated by the Hon'ble Bombay High Court and to this effect the Hon.ble High Court has issued the probate dt. 03.07.2014. There under the second Respondent Smt. Bhanumati Mulraj Kabali and one Harish Shambhubhai Hirani have been appointed as Executors of Trust under the said Will. The deceased Mulraj Purshottam Kabali has bequeathed his interest in the said Bai Tulsabai Devji Trust exclusively to the second Respondent Smt. Bhanumati.



  
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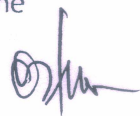


- f) The further case of the second Respondent is that by the said Will the deceased Mulraj Kabali has bequeathed his exclusively owned property i.e. 'Chandra Bhuvan Building' to this Respondent. The second Respondent has produced and placed reliance upon copy of the said probate certificate dt.03.07.2014, issued by the Hon'ble Bombay High Court in respect of the said Will Deed dt.19.04.2008. It is urged by the representative of the second respondent that after receipt of the said probate certificate dt.03.07.2014, issued by the Hon'ble Bombay High Court in respect of the said Will Deed dt.19.04.2008, the executor i.e. Shri Harish Shambhubhai Hirani has executed a Deed of transfer dt.5<sup>th</sup> July, 2014, thereby transferring the said property i.e. 'Chandra Bhuvan Building' in favor of the second respondent Smt. Bhanumati. The said Deed of transfer dt.5<sup>th</sup> July, 2014 is duly registered with the Registrar of the Assurances at Mumbai.
- g) Thus, according to the representative of the second Respondent, in the light of the aforesaid facts and the documents, the said property i.e. the land and 'Chandra Bhuvan Building' standing there on, was ceased to be the Trust property by virtue of the decree dt. 18 Nov. 1952 of the Hon'ble Bombay High Court and there upon it had become exclusively owned property of Purshottam Kabali and after his death the said property was exclusively owned by Mulraj Kabali i.e. the husband of the second Respondent. By virtue of the said Will Deed dt.19.04.2008 and the probate thereof and the transfer deed executed by the executor of that Will, the second respondent is now exclusive owner of the said property. Therefore, she is entitled to be registered consumer of the electric connection in respect of the said property and rightly she applied to the first respondent in this regard and the first respondent/BEST Undertaking has rightly and lawfully substituted the name of the second respondent in place of the name of the complainant/Trust as consumer of the said electric connection.
- h) In the light of the above, the second respondent has denied that the complainant/Trust is owner of the said property, "Chandra Bhuvan Building". It is admitted that on the ground floor of the said building there is a Mandir called Ambamata Mandir and the electric connection provided to it stood in the name of the said Trust. However, as the land and the building standing on the land is no more a trust property and now it is owned by the second Respondent, the Complainant/ is no more entitled to remain as consumer of the said electric connection. The second Respondent has denied that she has fraudulently got her name substituted in place of the complainant/Trust as consumer of the said electric connection. It is also denied by the second respondent that she has suppressed any order of any court or the charity commissioner from the first respondent while requesting for the change of name of the consumer about the said electric connection. It is submitted that the complainant cannot have any grievance about the said change. As regards the contentions of the



  
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complainant that Hon'ble City Civil Court has held that the second respondent has no right in the said property etc. it is submitted by the second respondent in her reply that the complainant is misinterpreting and misrepresenting the order and judgment dt.27.10.2016 in suit No. 713 of 2012 and the order passed by the Hon'ble High Court in First Appeal No. 31 of 2017.

- i) The representative of the second respondent has submitted that she is more entitled to get her name recorded as registered consumer as compared to the complainant and hence the instant complaint filed before this forum, by the earlier registered consumer i.e the Trust, is liable to be dismissed.

6.0 We have heard the parties. In view of the respective pleadings, submissions and the documents of the parties, following points arise for determination, on which we record our findings as under, for the reasons to follow:

Sr. N.	Points for determination	Findings
1.	Whether the decision of the first respondent about the change of consumer name from the complainant to the second respondent is legal and valid?	In affirmative.
2.	Whether the complainant is entitled to get its name restored as consumer in respect of the aforesaid electric connection and consumer account?	In negative.
3.	To what relief, if any, the complainant is entitled from this forum and what order is required to be passed to dispose of this grievance application?	The complaint will have to be dismissed with liberty to the complainant to file fresh application to the first Respondent for change, after the rights of the parties are settled finally in the proceedings of first appeal No.31 of 2017, pending in the Hon'ble Bombay High Court.

7.0 We record reasons for the aforesaid findings on points No.(1) to (3), as under:

- a) We have noted the contentions of the parties as mentioned by them in their pleadings as well as in their oral submissions. We have also perused the documents submitted by the parties on record in the course of hearing.



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- b) We have noted the admitted facts in Para-2 herein earlier. In view thereof, it can be said that there is a building by name as Chandra Bhuvan Building, situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai 400007. On the ground floor of the said building a temple by name Ambamata Mandir is situated. There is an electric connection given by the first respondent to the said premises since long. The said connection was under consumer a/c no.881-707-051 was in the name of the complainant in respect of the premises described in the electric bill as "Ground floor, plot-15, Chandra Bhuvan, Pandita Ramabai Marg, Gamdevi, Grant Road, Mumbai-400007." This position existed till the month of December 2015. However, in the month of Dec. 2015, the change was effected in respect of name of consumer in favour of the second Respondent, as the second respondent submitted 'Change of Name' application dt.23.12.2015 bearing No.2584630 to the first respondent for change of name of consumer in respect of the aforesaid electric connection. Along with the said 'Change of Name' application dt.23.12.2015, the second Respondent Smt. Bhanumati Kabali submitted copies of the documents, which include (1) Rent Receipt No. 182, dt. 01.10.2015 in the name of Bhanumati Mulraj Kabali for ground floor, Ambamata Mandir, (2) Probate issued by the Hon'ble High Court Judicature at Bombay dt.03.07.2014 in Testamentary Petition No. 1339 of 2012, in respect of the Will dt.19.04.2008 of the said Mulraj Kabali. Considering the said 'Change of Name' application dt.23.12.2015 and the aforesaid documents submitted by the second Respondent, the first respondent changed the name of consumer from the name of the complainant to the name of the second respondent with effect from December, 2015.
- c) It appears that the complainant and the second Respondent are not disputing these facts namely: (a) That the complainant "Bai Tulsabai Devji Charity Trust" is a charitable trust and it is registered as such with the Charity Commissioner of Mumbai under the Bombay Public Trust Act 1950 (Herein after it shall be referred to as Trust Act) This trust was created by a registered Trust Deed dt.4<sup>th</sup> January, 1923, executed by one Smt. Bai Tulsabai Deoji Shivdas. (b) That Smt. Bai Tulsabai Deoji Shivdas was mother of Smt. Narayanibai alias Nathabai. (c) That said Smt. Narayanibai alias Nathabai was mother of Shri Mulraj Kabali. (d) That, thus, the settler of the said Trust Deed, Smt. Bai Tulsabai Deoji Shivdas was grandmother of Shri Mulraj Kabali. (e) That said Mulraj Kabali was one of the trustees of the trust during his life time. (f) That he died on 14.12.2010, leaving behind him the said Shri Prakash Kabali as son, who is representing the complainant trust in this proceeding before this forum. (g) That deceased Mulraj Kabali has also left behind him the Respondent No. 2 Smt. Bhanumati Kabali as his wife. (h) That he has also left behind him Smt. Kiran M. Raja, as his daughter, who is representing the Respondent No. 2, in this proceeding before this



  
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forum. (i) That said Shri Prakash Kabali/representative of the complainant is presently recognized by the Charity Commissioner as one of the trustees of the Complainant/Trust.

- d) The complainant's case is that as the aforesaid property was given to the complainant's Trust by the Trust Deed dt.4<sup>th</sup> January, 1923, executed by Smt. Bai Tulsabai Deoji Shivdas, the property is owned by the complainant. The fact that the trust is registered under the provisions of Bombay Public Trust 1950 is an undisputed fact. The document of extract of register of Public Trusts is produced in this regard. It is the proof of the fact that the said property is shown in that register of trusts as property of the complainant/Trust. It is also the case of the complainant that the suit bearing No. 713 of 2012 was filed by the second Respondent against the complainant Trust claiming ownership over the said building and temple therein. The Hon'ble Bombay City Civil Court has dismissed that suit by passing judgment dt.27.10.2016. The Hon'ble City Civil Court has held that the present second Respondent is not owner of the said Trust Building i.e. Chandra Buvan Building and in fact the present complainant/Trust is owner of the building, wherein the said "Ambamata Mandir" is situated. It is submitted by representative of the complainant that even the Hon'ble Bombay High Court has held in First Appeal No. 31 of 2017 that the present complainant/Trust is owner of the building. It is settled law that grant of probate is not conclusive of ownership. Hence, it is submitted that the present second Respondent cannot claim ownership on the basis of the probate granted in respect of the Will deed of the deceased Mulraj Kabali.
- e) On the other hand it is the case of the second respondent that the said property was removed from the category of property of Charity Trust as per the decree passed by the Hon'ble Bombay High Court in suit No. 74 of 1952. Therefore, the property cannot be treated as trust property of the complainant. After that decree, the said property was private property of Shri Purshottam Kabali and after his death it was inherited by Mulraj Kabali, who bequeathed it to the second Respondent by executing a registered Will Deed, which has been probated by the Hon'ble High Court. Therefore it is submitted by the second Respondent that the said property is no more trust property but now it is private property of the second respondent by virtue of the above said decree of the court and Will and probate issued by the court. About the dismissal of the suit bearing No. 713 of 2012 was filed by the second Respondent against the complainant /Trust, claiming ownership over the said property i.e. 'Chandra Bhuvan Building' and temple therein, the second respondent has submitted that she has filed first appeal challenging the validity of that decree of Hon'ble City Civil Court, therefore, it cannot be a decisive factor.
- f) We have examined the above submissions and documents of the parties. As far as is concerned the contention of the complainant that first respondent has violated the



  
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principles of natural justice by not giving any notice and by not giving opportunity of hearing to the complainant, before causing the aforesaid change, we do not find merits in these contentions. The reason for holding as such is that there was not provision as such for giving such notice or opportunity of hearing to the existing consumer before causing change in consumer-name, in the then prevailing Regulations framed by the MERC. On 23.12.2015, the prevailing Regulations in force were (1) the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations 2005 (herein after it shall be referred to as MERC Supply Code 2005) and (2) the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (herein after it shall be referred to as MERC Standards of Performance Regulations 2014). In these Regulations the matters about supply of electricity and procedure for change of name of consumer and the standards of performances of distribution licensees etc. were governed. In none of these Regulations it has been provided that it shall be binding on the distribution licensee to issue any notice to the existing consumer before change of name of consumer by substitution of name any other person in place of the name of the existing consumer. In view of such circumstances, it cannot be said the first Respondent has violated any prevailing law or the principles of natural justice, as complained by the complainant in the present proceeding before us.

- g) We have examined the contention of the complainant that the aforesaid decision of the first respondent to substitute the name of the second respondent in place of the name of the complainant as consumer is illegal. In this regard, from the pleadings and documents produced by the parties, what appears is that the said property was given to the aforesaid trust in the year 1923 and it was also entered in the register of Trusts maintained at Mumbai by the Charity Commissioner, under the Bombay Public Trust Act 1950. But it also appears that subsequently, the suit bearing No. 74 of 1952 was filed by Purshottam Meghji Kabali, in respect of the said Trust in the Hon'ble Bombay High Court. In that suit the decree was passed on "18<sup>th</sup> November, 1952". As per that decree the said Purshottam Meghji Kabali/plaintiff therein was directed to pay Rs. 27,000/- to the Charity Commissioner, Mumbai, towards value/consideration of the said property 'Chandra Bhuvan Building' pursuant to the scheme submitted to the Hon'ble High Court under which the said property was to be sold for consideration of Rs. 27,000/-, which was to be paid to the Charity Commissioner. As per the order dt. 19<sup>th</sup> February 1965, passed by the Hon'ble Bombay High Court the said Purshottam Meghji Kabali paid the said sum of Rs. 27,000/- to the Charity Commissioner of Mumbai. According to the second Respondent, on payment of the said sum of Rs. 27,000/- as such to the Charity Commissioner and by virtue of the decree dt. 18<sup>th</sup> November 1952, the said trust property 'Chandra Bhuvan Building' stands released from the claim of Charity Trust under the said Trust Deed dt. 4<sup>th</sup> January, 1923 and the claim of the Charity

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Commissioner under the said Trust Deed ceased permanently. However, it appears that the Hon'ble City Civil Court has rejected this contention of the present second Respondent, while dismissing the suit bearing No. 713 of 2012, which was filed by the second Respondent against the complainant /Trust, claiming ownership over the said property i.e. 'Chandra Bhuvan Building' and temple therein. The Hon'ble City Civil court has held that despite the aforesaid decree and payment of Rs.27,000/-, the said decree cannot be said to have been executed by way of execution of a formal document by the charity commissioner for transfer of that property in favor of the deceased Purshottan Kabali or his heir Mulraj Kabali at any point of time and thus the property is still in the register of the Trusts as trust property of the complainant/Trust. However, it is an admitted fact that the second Respondent has filed first appeal No. First Appeal No. 31 of 2017 in the Hon'ble Bombay High Court to challenge the validity of the said judgment and decree passed by the Hon'ble City Civil Court dismissing the suit bearing No. 713 of 2012. So, it can be said that the matter is subjudice before the Hon'ble High in pending First Appeal No. 31 of 2017, as to whether the said property is continuing to be the trust property as per the Trust deed dt. 4<sup>th</sup> January 1923 or it has ceased to be as such and has become privately owned property of the second respondent by virtue of the decree passed by the Hon'ble High Court in suit No. 74 of 1952 and by virtue of the aforesaid Will deed executed by Mulraj Kabali, which is admittedly probated by the Hon'ble High Court. Thus the judgment and decree passed by the Hon'ble City Civil Court is subject to the decision of the Hon'ble High Court, which may be passed in the First Appeal No. 31 of 2017.

- h) The aforesaid circumstances, show that on or about 23.12.2015, the first respondent has taken the decision about change in the name of consumer from the name of the complainant to the name of the second Respondent. At that time the first respondent appears to have considered the facts that the property was released from the category of trust property by virtue of the decree of the Hon'ble High Court passed in suit No. 74 of 1952 and also the fact that subsequent to the said decree the registered Will Deed dt.19.04.2008 was executed by the deceased Mulraj Kabali, bequeathing the said property to the second respondent. It also appears that at the time of considering the application of the second Respondent for change in consumer's name, the first respondent also considered the probate certificate dt.03.07.2014, issued by the Hon'ble Bombay High Court in respect of the said Will Deed dt.19.04.2008. It is obvious that at that time the judgment and decree dt.27.10.2016, passed by the Hon'ble City Civil Court dismissing the suit bearing No. 713 of 2012 of the present second Respondent was not in existence. Therefore, it cannot be the grievance of the complainant herein that despite the said decree of the Hon'ble City Civil Court the said change was effected in favor of the second respondent nor can it be blamed that despite such decree the second respondent suppressed it from the first respondent much less fraudulently. At that time the facts prevailing were (a) that the decree of



  
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the Hon'ble High Court had been passed in suit No. 74 of 1952 (b) that subsequent to the said decree the registered Will Deed dt.19.04.2008 was executed by the deceased Mulraj Kabali, bequeathing the said property to the second respondent and (c) that the Hon'ble High Court had issued the probate certificate dt.03.07.2014 in respect of the said Will Deed dt.19.04.2008, executed by the deceased Mulraj Kabali, bequeathing the said property to the second respondent. On the basis of these facts, if the second respondent applied for the change and first respondent allowed same, no question arises of suppression of facts about the property being shown in the register of trust or any order about acceptance or refusal of change report of incoming or outgoing trustees. We observe as such because the fact that the property was earlier given to the trust by trust deed dt. 4<sup>th</sup> January 1923, is underlying in the fact that the decree was passed in suit No. 74 of 1952 and there under the property was ceased to be a trust property and therefore it was bequeathed to the second Respondent by her husband Mulraj Kabali under his Will Deed dt. 19.04.2008, which was probated by Hon'ble Bombay High Court vide its probate certificate dt.03.07.2014.

- i) Thus, on the basis of the aforesaid facts and documents, which were available at the time of considering the application of the second respondent on or about 23.12.2015, we find that there were sufficiently justifiable grounds to change the name of registered consumer by substituting the name of second respondent in place of the name of the complainant as consumer of the aforesaid electric connection. Whatever the complainant is now urging about dismissal of the suit bearing No. 713 of 2012 of the present second Respondent, by the Hon'ble City Civil Court on 27.10.2016 is a fact that has occurred subsequent to the aforesaid decision dt.23.12.2015 taken by the first respondent about the change in consumer's name. It may also be noted that it is an undisputed fact that said judgment and decree dt.27.10.2016 passed by the Hon'ble City Civil Court is challenged in the Hon'ble Bombay High Court in First Appeal No. 31 of 2017, which is still pending. The contentions of the representative of the complainant is that the Hon'ble High Court has observed in the said first appeal that the property is trust property. However, these observations of the Hon'ble High Court are made while passing interim order restraining the complainant from transfer of the property pending the appeal. Their observations are therefore subject to final decision in the appeal and do not finally decide the rights of the parties involved in the said first appeal. Thus the matter is subjudice before the Hon'ble Court. Till the final decision of the Hon'ble High court in the above matter the present situation will have to be maintained. In other words the name of the second Respondent will have to be continued with a liberty to the complainant to file fresh application to the Respondent after the decision of the Hon'ble High Court in First Appeal No. 31 of 2017, if it accepts the rights of the complainant as it is claiming.

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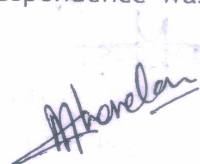
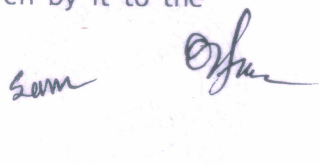
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- j) In view of the above circumstances and the view taken by us that the parties will have to wait till their rights are settled in the aforesaid First Appeal No. 31 of 2017, the documents referred to by the complainant and the copy of decision of the Hon'ble Supreme Court in Civil Appeal (SLP (CIVIL) No.12133 of 2022 (The Khasgi (Deevi Ahilyabai Holkar Charities) Trust, Indore and Anr. V/s Vipin Dhanaikar & Ors.) dt. 21.7.2022 are not of any help to the complainant to urge to modify the aforesaid change in the name of consumer about the said electric connection. The said decision is on the issues as to whether the properties involved in that case were Khasgi Trust properties and whether Khasgi Trust is Public Trust etc. Whether this decision is helpful in any way to decide the instant case before this Forum, can be decided only after the rights of the parties are settled by the Hon'ble High Court in the aforesaid First Appeal No. 31 of 2017.
- k) Moreover, it appears that the complainant has approached to this Forum beyond the prescribed period of two years limitation from the date of cause of action to file the complaint before this Forum in view of the provisions of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations of 2006 (herein after it shall be referred to as MERC Regulation of 2006) and new MERC Regulations of 2020. In Regulation 6.2 of The MERC Regulations of 2006 it was provided that consumer might intimate his grievance to the Internal Grievance Cell (IGR) of the distribution licensee of such grievance. In clause 6.4 of the Regulations of 2006, it was provided that if the IGRC did not decide the representation of the consumer from the date of the intimation of the grievance as above, then the consumer could approach to the Consumer Grievance Redressal Forum constituted under the provisions of section 42 of the Electricity Act 2003. Under clause 6.6 of MERC (CGRF & EO) Regulations, 2006, it was provided that *"the Forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."* In MERC (CGRF & EO) Regulations, 2020 also this provision is retained. In the case of "Maharashtra State Electricity Distribution Company Limited (MSEDCL) v/s Electricity Ombudsman Nagpur, and others" (W.P.1588 of 2019) decided on 8.1.2020, as relied upon by the Respondent No. 2, it had been held by the Hon'ble Bombay High Court that limitation to approach to the CGRF as prescribed by the MERC Reg. 2006, was two years from the date of cause of action. In the instant case the impugned decision of the First Respondent was taken by it on or about 23.12.2015. In April and May 2016 the complainant intimated its grievance to the First Respondent. The first Respondent has pleaded that it has rejected complainant's grievance and intimated its decision by sending its letter on 30.5.2016 to the complainant on the address given on the bill for supply of the electricity.
- l) The complainant's representative has submitted that this letter was not served on complainant. He submits that the address for correspondence was given by it to the



  
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first respondent as "c/o K.P.KABALI 23/A Dongarsi Roads, first floor, Ramtirth Kutir, Malbar Hill, Mumbai-400006" any intimation to the complainant was expected to be sent by the first respondent on this address. Therefore, he submitted that the complainant waited for the decision of IGRC of the first respondent till the filing this complaint before this forum i.e. 5.07.2022. Still, the grievance has not been redressed by the IGRC of first Respondent. Therefore, it is submitted that the complainant has approached to this Forum and within prescribed time. However, we do not find merits in these submissions of the representative of the complainant. It may be noted that the Hon'ble Bombay High Court in the case of "MSEDCL v/s Electricity Ombudsman Nagpur, and others" (supra) has followed the view earlier taken by it in the case of "MSEDCL Vs. Jawahar Shetkari Sooti Girni Ltd., Morane, Dhule" (2019 (1) Mh.L.J.342). In the case of "MSEDCL Vs. Jawahar Shetkari Sooti Girni Ltd., Morane, Dhule" (supra) is has held that in order to ensure that section 42(5) Electricity Act 2003 read with Regulations 6.2, 6.4, 6.6 and 6.7 of the MERC Regulations of 2006 coexist harmoniously, the Hon'ble High Court is of the opinion that that the consumer has to approach the IGRC with promptitude and within the period of two years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum (CGRF) before the expiry of the period of limitation of two years from the date of cause of action, as prescribed in regulation 6.6 and 6.7 of MERC Reg. 2006. In view of this decision, the present grievance application filed by the complainant before this forum on 05.7.2022 from the date of cause of action, which occurred on 23.12.2015 appears to be beyond the prescribed two years period of limitation.

- m) For all the above reasons, we have recorded affirmative findings on point No. (1) and negative findings on point No.(2).
- n) Thus we have recorded affirmative findings on point No.(1) and negative findings on point No.(2) and also we have taken the view that till the rights of the parties are settled by the Hon'ble High Court in First Appeal No. 31 of 2017, the present record of consumer name is not required to be disturbed. In view of the above findings, we hold that for the present the complainant is not entitled to get its name restored as consumer in respect of the electric connection and consumer account involved in this case. Therefore, we also hold that the instant grievance application is liable to be dismissed by giving liberty to the complainant to submit fresh application for change if its rights to the property are accepted by the Hon'ble High Court while deciding finally the aforesaid First Appeal No. 31 of 2017. Accordingly, in these terms the instant Grievance application will have to be dismissed with the aforesaid liberty to the complainant, as is being directed in the operative order being passed herein below. Accordingly, we have answered the point (3). Hence we pass the following order.

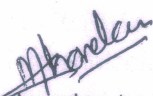


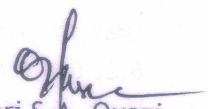
  
(Milind Karanjane)  
Secretary  
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Order

- 1) The instant grievance application No.SC-460-2022 dtd.05/07/2022 is hereby dismissed, with liberty to the complainant to submit fresh application for change if its rights to the property are accepted by the Hon'ble High Court while deciding the aforesaid First Appeal No. 31 of 2017 finally.
- 2) Copies of this order be given to all the concerned parties.

  
Shri. S.S. Bansode  
(Member)

  
Smt. Anagha A. Achrekar  
(Member)

  
Shri S.A. Quazi  
(Chairman)



  
(Milind Karanjkar)  
Secretary  
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