

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. S-D-126-11 dt . 5-8-2011

Rockford Structures Pvt. Ltd,Complainant

V/S

B.E.S.&T. UndertakingRespondent

Present

Quorum :
1. Shri R U Ingule, Chairman
2. Shri S P Goswami, Member
3. Smt. Varsha V. Raut, Member

On behalf of the Complainant : Mr. Tahir A. Khan

On behalf of the Respondent :
1. Shri. Sanjay S. Bansode, DECC 'D' ward
2. Shri. Sunil G. Jadhav, AECC 'D' ward
3. Shri. K.S. Dandekar, DyE, CC 'D' ward

Date of Hearing : 07-09-2011

Date of Order : 14-10-2011

Judgment by Shri. R.U. Ingule, Chairman

Rockford Structures Pvt. Ltd., Room No.209, 2nd floor, Konark Shram, Plot No.156, Raja Bahadur Mill Compound, Tardeo Road, Mumbai - 400 034 has come before Forum for grievances regarding withdrawal of outstanding bill amount of Rs.4,96,083.46 alongwith D.P. Charges, A/c No 821-013-021.

Complainant has submitted in brief as under :

- 1.0 The complainant Rockford Structures Pvt. Ltd states that they had bought premises at Islampura Road (bearing C.S. no 2928 of Buleshwar Division) Mumbai from Mr. S.B. Iarani on 27-8-2009. At that time complainant inquired with Respondent about pending bill or outstanding amount for the same premises. Respondent told complainant that there is no pending bill or outstanding amount. Complainant states that they applied for temporary meter for construction purpose for the same plot, that time also complainant asked regarding outstanding amount to the Respondent. Respondent checked and told complainant that there is no any pending outstanding amount. However, as per complainant the Respondent asked him to give a undertaking letter. Complainant has given the said undertaking letter to the Respondent & electric supply was released for above said plot by the Respondent through temporary meter no. N098646; A/c no. TIS/4137/10-11.
- 2.0 Complainant further states that they had made the complaint to the Respondent on 25-3-2011, asking about alleged amount of Rs.4,96,083.46 vide Respondent's letter & electricity bill dated 21-3-2011 & to provide him evidence of proof about the alleged amount. As per complainant Respondent had not given proper reply.
- 3.0 Complainant states that they made compliant in Annexure-C form dtd. 18-04-2011. Complainant discussed the same matter with Respondent's officer but complainant disagreed to pay the outstanding amount. Complainant asked Respondent to give him ledger book of the A/c No 821-013-021 and same was given by Respondent. Complainant further states that he checked the readings and the payment history from the ledger book by which complainant raised points as below:
 - 3.1 Why Respondent did not take proper reading from time to time ?
 - 3.2 If Respondent required outstanding amount why dispute was not cleared within 6 months ?
 - 3.3 Respondent taking wrong readings, instead of 4 digits to 5 digits on May-1997 which shows that the Respondent's officer was not going on the site.
 - 3.4 If party did not pay the balance bill amount why meter was not disconnected within 3 months & why was the meter not removed within 4 months ? as per Electricity Act.
 - 3.5 If party had not paid any bill for a long time why Respondent not took legal action against the party ?
 - 3.6 If party had not paid any bill how did let the meter on the site for 49 months which is against the MERC rules.
 - 3.7 The Respondent cannot recover the amount so claimed from new party.

- 4.0 Complainant further states that he discussed the matter with Respondent's Divisional Engineer on 6-5-2011 that time Respondent's Divisional Engineer showed him complaint letter from old party and also showed other 2 accounts of outstanding amount. But Respondent did not provide the copy of outstanding bill. Complainant requested Forum to instruct Respondent to provide them the details of such accounts of O/S Security Deposit.
- 5.0 Complainant requested the Forum that to look into this matter and issue order to Respondent to withdraw all the alleged amount with D.P. Charges because old party had already paid Rs.25,073/- which is near about per month average for 12 months. This amount is against MERC rules. Complainant further requested Forum to issue orders to withdraw the claim amount of Rs.4,96,083.46 immediately and his temporary electric meter should not be removed till the decision of the matter.

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

- 6.0 Respondent state that complainant M/s Rockford Structures Pvt. Ltd., applied for Temporary Electric Supply for development of the plot, after demolishing of all structure at Islampura Road, Mumbai. Complainant further requested respondent for arrears of dues of Service no. 10747. Based on the information & Service No. 10747 given by complainant respondent had verified the service record for which the information was sought is handed over to the complainant for payment of the same. Complainant purposely hide the information of outstanding pertains to the premises 'Rising Sun Bakery'.
- 7.0 Respondent further state that it was not noticed during the investigation because of the entire plot was demolished and no other any of structure or service was remained over there. Therefore respondent was not very much clear that entire amount of o/s belongs to the plot was paid or not and complainant has submitted undertaking for settlement of dues, if pending any. Based on his undertaking respondent had granted temporary Electric Supply for construction. Respondent state that on routine scrutiny of documents and record it comes to their notice that, an amount of outstanding is in the name of Rising Sun Bakery is pending and for said premise there's a development on plot is going on. On verification of document and all relevant papers it was known that complainant is the developer for the said plot and he had awarded Temporary Supply for construction purpose on dtd. 02/12/2010.
- 8.0 Letter dtd 21/03/2011 was sent by respondent to complainant informing them that, the payment of dues of old occupant / tenant is outstanding amounting to Rs.4,96,083.46.
- 9.0 Respondent state that from the available record, it can be clearly observed that, the dues are outstanding on 'Rising Sun Bakery'. In the year March, 1999 correspondence were made by the respondent in reply, in behalf of 'Rising Sun Bakery' Advocate, D.T.Gandhy wrote a letter dtd. 20th Dec.

2000, along with the cheque dtd 29/06/2000 amounting to Rs.30,000/- which was received at respondent Head office on 28/03/2001 due to the lapse of date the cheque was not deposited and the outstanding amount till date is outstanding.

- 10.0 Point wise answers given by respondent to the questions raised by the complainant are as under:
- 10.1 As per respondent time to time reading as per the schedule of reading is always carried out. As per respondent consumer never disputed his electricity bill, incase party is having any kind of dispute regarding wrong OR High bill dispute may have been solved long back. The supply was been used for Bakery, as the account stands in the name of 'Rising Sun Bakery'. It is very clear from the name that the electricity is used for heating; hence it has been observed that the consumption is high.
- 10.2 Respondent state that even though it seems that, there was a punching mistake in the meter reading but still matter was rectified and consumer was bill on the actual consumption and not as per the wrong punched reading which can be very clearly observed in the ledger.
- 10.3 As per respondent it is much cleared from the ledger that, the Consumer is a defaulter and not paid electricity dues regularly, since, May 1997 and subsequently, meter was removed for non-payment of electricity outstanding dues.
- 10.4 As per respondent this is the old outstanding case of 1997 to 1999, as respondent does not have any paper documents only billing ledger is available. It is very difficult to say, that why meter was not removed for long period i.e. 49 months. As per respondent MERC Regulations come in force from the year January 2005. Hence, there is no question of following rules of MERC in the year 1997-99.
- 10.5 Respondent state that complainant is the developer and not an individual consumer, he had purchased all the property along with the liabilities. As per respondent complainant approached to respondent for grant of temporary electricity supply for construction purpose. As it is a duty of developer to clear all pending electricity dues, also at the time of application for granting temporary supply. While giving temporary supply complainant has given undertaking that he will clear the dues, if any are noticed. Being the purchaser complainant knows that there is an outstanding of Rising Sun Bakery, he tried to hide the information while applying for temporary meter and paid the electricity dues of current live account only. While attending the outstanding cases periodically respondent come to know that complainant is using electricity supply through temporary meter for development of premises where earlier there was the premises of Rising Sun Bakery, which was demolished. As per respondent based on the undertaking given by complainant respondent granted temporary supply for development purpose, therefore, it is the moral duty of

complainant to pay the outstanding amount pertains to the plot which he is developing.

11.0 PRAYER

Respondent prayed to the Hon'ble Forum, to dismiss the grievances made by the complainant as this is the old legitimate amount of electricity charges of the year, 1999 and also as per the MERC Regulations for SOP section 7.2

REASONS

- 12.0 We have heard the representative Mr. Taheer A. Khan for the complainant construction company and representatives Shri. Sanjay Bansode, Shri. Sunil G. Jadhav & Shri. K.S. Dandekar for the Respondent. Perused papers placed before us.
- 13.0 Admittedly the complainant construction company under consideration, has purchased a premises located at Islampura Road, Mumbai, from the owner Mr. S.B. Irani who was running a business in the said premises in the name and style as "Rising Sun Backery". The complainant has purchased the said premises on 27th Aug, 2009 and learnt at the relevant time that no electricity bill was in arrears.
- 14.0 The complainant on purchasing the said premises, approached the Respondent BEST Undertaking for providing a temporary electric connections with meter. To reiterate, initially the Respondent BEST Undertaking did not find any electricity charges in arrears, and on demanding an undertaking from the complainant provided the electric supply. Thereafter the Respondent learnt about the erstwhile owner of the "Rising Sun Backery" was in arrears of the electricity charges and the said premises was purchased by the complainant for developing the same. Therefore by serving a letter dtd. 21st March, 2011 the Respondent informed the complainant to pay the arrears of electricity charges of Rs.4,96,083.46. We thus find that the Respondent has been demanding the electricity charges in arrears of the erstwhile owner of the "Rising Sun Backery", from the present complainant owner.
- 15.0 We observe that in regard to imposing a liability of paying arrears of electricity of the erstwhile owner on the subsequent purchaser of the said property, the settled law has been reiterated by their *Lordship of Supreme Court in case of Haryana State Electricity Board V/s. M/s. Hanuman Rice Mills, Dhanauri (AIR 2010 SC 3835)*. The Hon'ble Supreme Court *inter aila* observed that it is obligatory on the part of Distribution Licensee to rely on any statutory rule or terms and conditions of supply authorizing it to demand the dues of the previous owner from the purchaser. We may observe at this juncture that this Hon'ble Supreme Court has adverted to its earlier judgements in the cases viz. (i) Isha Marbles V/s. Bihar State Electricity Board and Another, (ii) Dakshin Haryana Bijli Vitran Nigam Ltd V/s. M/s. Paramount Polymers Pvt. Ltd., (iii) Hyderabad Vanaspati Ltd V/s.

A.P.SEB & (iv) Paschimanchal Vidyut Vitran Nigam Ltd. & Ors V/s. DVS Steels & Alloys Pvt. Ltd. & Ors.,

- 16.0 In our view it is therefore obvious that in the present case the Respondent has been under obligation to show any statutory rules or terms and conditions of supply authorizing it to demand arrears of electricity of the previous owner of Rs.4,96,083.46 from the present complainant purchaser. However, we observe that while demanding the payment of such arrears the Respondent found to have been fully relying entirely on an undertaking given by the complainant purchaser dtd. 29-11-2010. This undertaking has been placed before us at Exhibit-K by the Respondent.
- 17.0 A bare perusal of the undertaking at Exhibit-K given under the signature of the Director of the complainant construction company manifest that without any reservation and in a blanket manner the complainant purchaser has undertaken to pay arrears if any. We however find ourselves unable to fasten the liability of payment of any arrears of the erstwhile owner on the complainant on the basis of such undertaking, as on perusing the record placed before us we are reaching to a conclusion that the Respondent BEST Undertaking has failed in making out any 'legitimate dues of electricity charges', for the reasons stated hereunder.
- 18.0 From the ledger folio produced by the respondent and on perusing the ledger from Oct-1995 to Oct-1999, we observe that the arrears have been generated for the first time in the month of Jan-1996 due to the reason that the readings of the meter jumped to 5679 units from 340 units within a span of 2 months, showing the consumption of 5339 units consumed by the consumer. We find the same being abnormally high. In the month of Feb-1996 the consumer was billed for 762 assumed units and in the month of March 1996 the billing was done on the basis of 1694 units originated from the meter reading of 7373 units.
- 19.0 In this month of March 1996 the consumer has made a payment of Rs.2,000/- towards his adjusted units. However, in our opinion, while adjusting the units based on actual consumption, as explained by the respondent in his say that the abnormal arrears generated due to the sudden jump in the reading reflected in the arrears column of the ledger folio, except the payment was adjusted and brought down to a factual value.
- 20.0 The similar exercise was done by the respondent in the month of July-1996 when a payment of Rs.2,000/- was accepted. However, as mentioned earlier, we observe that the correction was not carried out by the respondent on the ledger folio in the arrears either to be brought to zero level or to a factual value. Thus, in the absence of the corrective figures, the arrears went on accumulating and went on growing abnormally high.
- 21.0 We further observe that in the month of Dec-1996 the consumer has made again a payment of Rs.10,000/- towards his actual adjusted units. However

the arrears were not corrected to the actual value in the ledger folio and thus allowed to be accumulated to the tune of Rs.83,131.15

- 22.0 As submitted by the respondent in its say, in the month of May-1997 the readings of 10125 units shown could be due to wrong punching, as the meter cannot show this reading of 5 digits, as the same was 4 digits meter. We find that inspite of this, the correction in the accumulated arrears amount was not carried out in the ledger folio by the respondent and we observe that the arrears were continued to be allowed to grow to Rs.4,83,794.84, till the meter was finally removed due to demolition of the building.
- 23.0 After perusing the ledger folio, we find that the officials of the respondent while defending their case could not justify their claim. The billing carried out could have justified by respondent on the basis of the connected load and the usage of electricity for such type of industries i.e. Bakery etc. and also by studying the earlier consumption pattern of the consumer. However, we find the respondent failed to put proper efforts to justify and defend their case. We regretfully note that the past as well as present officials of the respondent, have shown a very casual and lethargic approach, in correcting the entries in the ledger and taking prompt action. To conclude we find the defence taken by the respondent being ill founded and unsustainable one. In the net result there is no any legitimate quantified arrears in existence, to recover from the complainant
- 24.0 The complainant therefore is liable to be allowed and accordingly we do so.

ORDER :

1. Compliant no. S-D-126-11 dtd. 5-8-2011 stands allowed.
2. Respondent BEST Undertaking restrained from claiming alleged electricity charges in arrears from the complainant.
3. Copies be given to both the parties.

(Smt Varsha V Raut)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman