

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-F(N)-105-10 dt . 16-09-2010

M/s Vidyalankar Dnyanapeeth TrustComplainant

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 : 1. Shri Mahesh Pai

On behalf of the Respondent : 1. Shri V.K. Raul, Asst. Legal Advisor
2. Shri S.T. Tayade, AECC (F/N)
3. Shri V.P. Sawant, AOCC(F/N)

Date of Hearing : 23-12-2011

Date of Order : 28-12-2011

Judgment by Shri. R.U. Ingule, Chairman

M/s Vidyalankar Dnyanapeeth Trust, Vidyalankar College Building, Sangam Nagar, Mumbai - 400 037 had come before CGRF, BEST for grievances regarding refund of outstanding amount paid against A/c No 000-022-000 of previous consumer M/s Unitech Pre-Fab Ltd. on 16/09/2010 and their case was registered vide case no. N-F/(N)-105-10 dtd. 16/09/2010.

Hon'ble Forum had given the judgment of this case vide order dtd. 03/11/2010 wherein M/s Vidyalankar Dnyanapeeth Trust's complaint was allowed and Respondent BEST Undertaking has been directed to refund the amount of Rs. 1,33,611/- to the complainant which was paid by them towards the unpaid electricity charges of the earlier consumer M/s Unitech Pre-Fab Ltd.

Respondent BEST Undertaking had chosen to file a writ petition no. 648 of 2011 in the High Court against the above mentioned order of CGRF. In this regard Hon'ble Bombay High Court set aside the order given by CGRF and as requested by the councils of both the sides, directed the CGRF to pass a fresh order in terms of regulations, Conditions of Supply and in accordance with the law in the light of the order passed by the Division Bench of the Hon'ble Bombay High Court in the matter of M/s Namco Industries Pvt. Ltd. v/s The State of Maharashtra and Others, writ petition no. 9906 of 2010.

As directed by the Hon'ble Bombay High Court, the above case was re-opened and the hearing of the same was scheduled by CGRF, BEST on 13/12/2011 at 12.30 hrs. However, the representative of Respondent BEST Undertaking from Legal Dept. had requested the Forum to adjourn the hearing for a suitable date due to the reason that they did not get the time to go through the judgment passed by the Division Bench of the Hon'ble Bombay High Court in the matter of M/s Namco Industries Pvt. Ltd. v/s The State of Maharashtra and Others. Accordingly, the matter was adjourned for hearing on 23/12/2011.

**Respondent BEST Undertaking in its statement
before the Forum had submitted as under :**

1. The Respondent BEST Undertaking stated that the Hon'ble Division Bench of the Bombay High Court while deciding the writ petition no. 9906 of 2010 of M/s Namco Industries Pvt. Ltd. v/s The State of Maharashtra and Others had discussed the present position in the law as under :
 - i) *Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.*
 - ii) *Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous own/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser".*
2. A Division Bench of Bombay High Court has taken a similar view having regard to Clause no. 10.5 of the Maharashtra Electricity Regulatory Commission Regulations in **Akanksha International v/s Maharashtra State Electricity Distribution Co. Ltd.**

3. The Respondent BEST Undertaking therefore requested the Hon'ble Forum to decide the case in view of the above submissions.

Complainant has submitted in brief as under :

4. The complainant states that as regards the law position under Supply Code Regulation 10.5 is concerned, he has nothing to comment as the same is very clear and interpretation of the same has already been given by Hon'ble Bombay High Court.
5. However, he would like to draw Hon'ble CGRF's attention to the following points.
 - i) What efforts have been taken by the Respondent BEST Undertaking to recover the unpaid electricity charges of the earlier consumer, M/s Unitech Pre-Fab Ltd. Had there been a sincere try on part of the Respondent BEST Undertaking arrears could not have remained unpaid. He is therefore of the view that it is because of the careless attitude on the part of the officials of the BEST Undertaking resulted to dispute.
 - ii) It is understood that while giving connection to M/s Unitech Pre-Fab Ltd. sufficient amount of security deposit was not taken in order to safeguard the interest of the Undertaking by the officials of the Respondent BEST Undertaking. The unpaid charges of electricity would not have remained has the security deposit would have taken in this case.
 - iii) The portion of the land where the earlier consumer had been conducting his business is not developed and the electricity is not taken for this portion of this premises. Since they are not presently occupying that part of the premises and the Regulation 10.5 is applicable only for the owner / occupier of the premises, when the earlier consumer has been in occupation the Regulation 10.5 should not be made applicable in this case.

REASONS :

6. We have heard Shri Mahesh Pai for the complainant and for Respondent BEST Undertaking, Shri V.K. Raul, Asst. Legal Advisor, Shri S.T. Tayade, AECC (F/N) and Shri V.P. Sawant, AOCC(F/N), at length. Perused documents.
7. This Forum has been deciding the instance matter in its second round of hearing, after passing the earlier order on 03/11/2010. The same was a subject matter of challenge before Hon'ble Bombay High Court in writ petition no. 648 of 2011. Therein the Hon'ble Bombay High Court has referred to the observation of this Forum that the Respondent BEST

Undertaking did not bring to its notice any statutory rules or terms and conditions of supply enabling it to demand the arrears of electricity charges from the complainant, therefore proceeded to allow the complaint.

8. Thereafter, the Bombay High Court has pointed out one of the Regulations 10.5 provided under the MERC (Electricity Supply Code and other Conditions of Supply) Regulation, 2005. The Hon'ble Bombay High Court has also adverted to its decision in a case of *M/s Namco Industries Pvt. Ltd. v/s The State of Maharashtra and Others*, and by remitting back the instance matter, directed this Forum to dispose of the same a fresh. Hence the instance order.
9. This Forum observes that while deciding the instance matter on our hand, a statutory provisions provided under Regulation 10.5 of the MERC (Electricity Supply Code and other Conditions of Supply) Regulation, 2005, plays a vital role. This Forum therefore finds it expedient to reproduce the said statutory provisions for ready reference and it runs as under.

10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be:

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.

10. As observed by the Hon'ble Bombay High Court in a case of *M/s Namco Industries Pvt. Ltd. v/s The State of Maharashtra and Others*, the deficiency in law which was noticed by the Supreme Court in its decision in *M/s Isha Marbles* and rest of the other cases, has been evidently rectified by the said statutory regulations viz. Regulation no. 10.5. A bare perusal of Regulation 10.5 blatantly manifest that as per the said statutory provisions, unpaid electricity dues would be a **charge** on the property and can be recovered by the Distribution Licensee from the new owner / occupier. This Forum observe that only qualification provided in this Regulation 10.5 has been that in the case of legal heirs the liability to clear the electricity charges has been full, while in respect of rest of the new owner / occupier, the same has been restricted to the maximum period of six months of the unpaid charges for electricity supply to such premises.

11. In a considered view of this Forum, the premises now presently owned and occupied by the complainant was supplied with the electricity. Therefore despite the complainant has been a new owner / occupier, as envisaged under Regulation 10.5 he has been foisted with a statutory liability of paying electricity charges in arrears of the erstwhile owner / occupier, for a maximum period of six months of the unpaid charges for electricity supplied to his premises. The moment complainant owns or occupies the premises, he supposed to have accepted said "charge" on the property as per Regulation 10.5.
12. The representative Shri Mahesh Pai appearing for the complainant has made an attempt to contend that the Respondent BEST Undertaking has been grossly negligent in putting any efforts to find out the erstwhile owner / occupier for recovering the electricity charges in arrears. The representative Shri Mahesh Pai further argued out that the complainant has been merely an occupier of the structure under consideration, therefore not liable to pay any arrears of electricity charges.
13. No merit however can be ascribed to the aforesaid arguments advanced by the representative Shri Mahesh Pai, for a simple reason that as envisaged under Regulation 10.5 the electricity charges in arrears constitute a *charge* on the premises transferred to the new owner / occupier of the premises. In the view of this Forum to reiterate the moment the complainant owned / occupied the premises to which the electricity was provided, the complainant suppose to have owned /occupied the same with a statutory liability of paying arrears to a maximum period of six months of the unpaid charges of electricity supply to such premises.
14. Admittedly, the erstwhile occupier was in arrears of electricity supplied to the said premises, which has been later on owned and occupied by the complainant. Therefore, as contemplated under Regulation 10.5 the complainant has been obviously liable to pay the arrears of electricity to the maximum period of six months of unpaid charges. In our considered view the complainant has miserably failed to advance any meritorious arguments enabling it to escape from the liability to pay the electricity charges in arrears of the erstwhile occupier, as provided under Regulation 10.5.
15. Before we part with this order, we may observe that on behalf of the Respondent BEST Undertaking, a heavy reliance has been placed on Regulation 10.5 for claiming the electricity charges from the complainant. Thus far and no further. This Forum therefore upholding contention raised by the Respondent BEST Undertaking proceeds to pass the following order.

ORDER :

1. Complaint No N-F(N)-105-10 dated 16-09-10 stands partly allowed.
2. The Respondent has been directed to recover the arrears of electricity charges from the complainant to the extent of a period of six months of the

unpaid charges for electricity supplied to the premises owned / occupied by the complainant.

3. The Respondent BEST Undertaking has been further directed to report the compliance of this order within a period of fortnight there from.
4. Copies be given to both the parties.

(Smt Varsha V Raut)
Member

(Shri S P Goswami)
Member

(Shri R U Ingule)
Chairman