

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REVIEW APPLICATION NO. 5 OF 2020

IN

ORDER PASSED IN REPRESENTATION NO. 30 OF 2020

In the matter of premises in arrears

Himanshu A. Khanvilkar Applicant
(Original Appellant)

V/s.

Brihanmumbai Electric Supply & Transport Undertaking (CCF/N) Respondent
(BEST Undertaking)

Appearances

For Applicant : Himanshu A. Khanvilkar

For Respondent : P.S. Naik, Divisional Engineer (F/N)

Coram: Deepak Lad


Date of Hearing: 4th September 2020

Date of Order : 9th September 2020

ORDER

This Review Application is received by email on 15th July 2020 and register on 15th July 2020 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) for review of the Order dated 25th June 2020 passed in Representation No.30 of 2020.

2. The representation was rejected by the Electricity Ombudsman (Mumbai)'s Order dated 25.06.2020.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



3. Aggrieved by this order, the Applicant has filed this review application stating the reason in brief as below: -

- (i) The Applicant entered into the Sale Deed Agreement with earlier Occupier Shri Shantaram Laxman Tambe (Husband of Smt. Usha Shantaram Tambe) which is duly notarized on 28.11.2017.
- (ii) The Electricity Ombudsman, Mumbai [herein after referred to as EO (M)] has observed in Para 7 (b) that the Appellant in the purported sale deed at Sr. No.7 has taken upon himself the liability of payment of taxes, rent, arrears, electricity charges and other outgoing of the said shop to the concerned authorities of Tahsildar, Collector, BMC, MHADA, BEST from the date of execution of the so called sale deed.

The Applicant has reproduced the said clause as below:-


“The purchaser shall be responsible for payment of taxes, rent, arrears, differences, electricity charges and other outgoing of the said Shop to the concerned authorities of Tahsildar, Collector, BMC, MHADA, BEST Ltd from the date hereof.”


As per said Clause, the Applicant is liable to pay any further dues of payment of taxes, rent, electricity charges etc. to concerned authorities like MCGM, MHADA, BEST which is pending from the date of Sale Deed i.e. 28.11.2017. Hence, there is an error apparent on the face of the record. The Appellant is not responsible for old electricity dues of earlier consumer of this property.

- (iii) The Applicant was shocked when it came to his knowledge that the Seller has not paid the pending dues of the electricity of the Respondent. The Applicant repeatedly stated that the Applicant is not liable for the dues which is pending before December 2017, the said electricity consumption was used by the Seller and the Applicant was not aware of electricity dues.
- (iv) The above mistakes and faults in the original representation came to the knowledge of the Applicant, hence, prays to consider the above points for review of the impugned order.

4. The Applicant has filed his additional submission dated 24.07.2020 stating as under:


- (i) The Applicant has submitted the application for new electricity connection on his own name in the said premises of 164 /165, Transit Camp, Pratiksha Nagar, Sion,


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in March 2019 along with required documents. At the time of application for new electricity connection in March 2019, he came to know that there was huge dues of the outstanding amount of Rs.9,71,426 /- towards the electricity bill on the said premises.

- (ii) The Respondent has revised the said outstanding bill to Rs. 5, 70, 860/- under Amnesty Scheme 2019 by waving delayed payment charges and interest on arrears.
 - (iii) The previous owner, Smt. Usha Tambe, was widely known as 'Mausi' in their area therefore, his wife referred the previous consumer as 'Mausi' during the hearing in the Forum. Taking this on record, the Forum reached to the conclusion that the previous owner was the relative of the Applicant. The Applicant states that there is no relation at all between him and the previous consumer.
 - (iv) The Applicant is not legal heir of the original consumer. Hence, the Applicant's liabilities shall be restricted to a maximum period of six months of the unpaid charges as per Regulation 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations).
 - (v) The Applicant prays the relief of liabilities of outstanding dues of electricity under Regulation 10.5 of the Supply Code Regulations.
5. The Respondent filed its reply by letter dated 27.07. 2020 stating in brief as under: -
- (i) The electricity connection (Consumer no. 755-055-105) for this premises was in the name of Smt. Usha S. Tambe. The electric supply was disconnected by removing the meter on 16.06.2014. The electricity bills showing dues were regularly sent to these premises after meter removal. The consumer account was closed on 25.06.2019 with outstanding dues of Rs. 9,71,426.21. The Respondent has revised the said outstanding bill to Rs. 5,70,860/- under Amnesty Scheme 2019 by waving delayed payment charges and interest on arrears.
 - (ii) The Applicant approached for new electric connection in the said premises. The Applicant is liable to pay the said bill.
 - (iii) The Respondent prays that the review application of the Applicant be rejected.
6. Due to the COVID-19 epidemic in India and subsequent situations arising out of it, the hearing was held through video conferencing on 04.09.2020.


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7. During the hearing the Applicant argued in line with his written submission. The Applicant argued that the Applicant has never committed for payment of outstanding dues against the old connection. On the contrary, as per the agreement he is entitled to pay energy charge from the date of agreement. Moreover, assuming relation of the Applicant with the previous owner by the Forum is totally incorrect. The Applicant is not a legal heir of the original consumer. The Applicant pays the rent of the said property to MHADA. Hence, the Applicant's liabilities shall be restricted to a maximum period of six months of the unpaid charges as per Regulation 10.5 of the Supply Code Regulations. The Applicant has prayed that the review be allowed, and the case be decided on merit.

8. The Respondent argued in line with its submissions. This is a rental property which is given to Smt. Usha Tambe by MHADA. The alleged Sale deed is not registered at the office of the Sub Registrar of Government of Maharashtra. The Applicant has repeated the same issue in review application hence there is no sufficient ground for review. The Respondent prays that the review application of the Applicant be rejected. The arrears have already been revised and reduced in accordance with the amnesty scheme of the Respondent.


Analysis & Ruling

9. Heard all the parties and perused the documents on record. This Review application has been filed by the Applicant under Regulation 19 of the CGRF Regulations which provides as below:-

“19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.

19.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

19.3 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application. Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.


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19.4 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

10. The suit premises is the property of MHADA and is used as transit camp for Redevelopment schemes. The erstwhile occupier Smt. Usha S. Tambe was having electric connection in her name which was disconnected on 16.06.2014. This premises is claimed to have been purchased by the Appellant through a sale deed executed on 28.11.2017 which is notarized on a stamp paper of Rs.100/-. Basically, there cannot be a sale deed of this property in absence of proper authorisation by MHADA. The main contention of the Review Applicant is that he has not at all agreed in the alleged sale deed at Para No. 7 that he will pay the arrears of this electricity connection. He further argued that para no. 7 is intended to take care of payment by him for various heads from the date of alleged sale deed and has nothing to do with past arrears. However, the Respondent reiterated that the premises being in arrears new connection cannot be released in name of Review Applicant.


11. Considering the various issues in the subject matter and perusing the documents on record, the Regulation 10.5 of the Supply Code Regulations is not squarely applicable in the case as the connection standing in the earlier occupier of the premises has been permanently disconnected by the Respondent for non-payment of arrears. The Regulation 10.5 which is referred to by the Review Applicant in fact deals with the change of name of the electricity connection and recovery of past arrears. The said Regulation is reproduced below:

“10 Change of name

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.”

Regulation 10.5 of Supply Code Regulation which was referred to by the Applicant in the original proceedings has again been referred to by him in this Review Application. This Regulation is applicable in case of Change of Name as the title of the Regulation suggest. The


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old connection has been permanently disconnected by the Respondent on 25.06.2019 for the accounting purpose. However, the case at hand is of new connection in the name of the new occupier who could be owner / occupier.


In this Review Application, the Applicant has raised the same issues which he has already raised in the original Representation No.30 of 2020. The scope of Review is specified under Regulation 19 of the CGRF Regulations.

The Applicant has neither pointed out any mistake or error apparent on the face of record, nor discovered and produced any new or important matter or evidence, which he was not aware of at the time of original proceeding except reiterating that para 7 of his agreement with the earlier occupier speaks about his liability post takeover and not pre-takeover. Therefore, there is no justification for allowing this Review Application. The Review Applicant is attempting to rehear the matter under the guise of review, which is not permitted under the law and further, review cannot be an appeal in disguise.

12. I do not find any reason to review the order in Representation No.30 of 2020 dated 25.06.2020 as the application does not stand scrutiny to the Regulatory provision in this regard.

13. In view of the above, the review application is rejected and disposed of accordingly.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

