

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 212 OF 2019

In the matter of releasing new connection without permission

Vijay Eknath Lad..... Appellant

V/s.

Brihanmumbai Electric Supply & Transport Undertaking Respondent No.1
(BEST Undertaking)

Shriram Vilas Lad Respondent No.2

Appearances

For Appellant : 1. Vijay Eknath Lad
2. Mahadev S. Kamerkar, Representative

For Respondent No.1 : 1. S.S. Bansode, Divisional Engineer, Customer Care (F/South)
2. R.G. Baile, AAO


For Respondent No.2 : Shriram Vilas Lad

Coram: Mr. Deepak Lad

Date of Order: 23rd January 2020

ORDER

This Representation is filed on 4th December 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated


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15th October 2019 passed by the Consumer Grievance Redressal Forum, BEST Undertaking (the Forum).

2. The Forum, by its order dated 15.10.2019 has dismissed the grievance application (No. N-FS-390-2019) of the Appellant.

3. Aggrieved by the order of the Forum, the Appellant has filed this representation (along with the submission filed before the Forum which is also to be considered) stating in brief as under:-

- (i) The Appellant is a senior citizen and owner of Shop No.4, Bhiwandiwala Building, St. Paul Street near Hindmata Cinema, Dadar, Mumbai. The Appellant is billed at Commercial tariff category having Consumer No. 582-157-008*4 for Shop No. 4.
- (ii) The Respondent No. 2, Shriram Vilas Lad is a nephew (son of his stepbrother) of the Appellant who has applied for electric connection in the same premises showing Shop No.4 /A as a separate identity. However, it is not so. The Respondent No. 2 has created fraudulent documents for showing the occupation of the said shop. The Respondent No.2 is not legally in settled possession of the suit shop who has broken the lock and trespassed. A criminal complaint is filed in Bhoiwada Court which is pending for final disposal.
- (iii) The Appellant has objected for sanction of new connection vide his letter dated 22.08.2017, 22.10.2017 and 28.11.2017.
- (iv) The Respondent No.1 has released the electric connection in Shop No. 4/A (which is not existing) in his property without the consent of the Appellant who is the lawful owner and landlord of the premises i.e. Shop No.4 and who is regularly paying property tax and rent of the said shop.
- (v) The Appellant has filed a civil suit in the Bombay City Civil Court against the Respondent No. 2 and others vide Notice of Motion 3385 of 2017 dated 28.09.2017. The case is registered as S.C. Suit No. 7300 of 2018 dated 16.04.2018.



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- (vi) The Appellant filed the complaint in the Internal Grievance Redressal Cell (IGRC) on 18.04.2018, however, the IGRC did not give any hearing. The Appellant again filed the case with them in C Form on 29.05.2019. The hearing was on 21.06.2019 wherein he was not allowed to put up his issues. Hence, the Appellant approached the senior officer of F-South Ward of the Respondent No. 1 on 04.07.2019 and thereafter the IGRC has called for a hearing. The approach of the Respondent No.1 was inhuman with the Appellant who is a Senior Citizen. The IGRC by its order dated 29.07.2019 has rejected the grievance application.
- (vii) The Appellant filed the grievance with the Forum on 03.09.2019. The Forum, by its order dated 15.10.2019 dismissed the grievance application.
- (viii) The impugned order of the Forum has been passed in flagrant violation of well-known principles of natural justice to the super senior citizen i.e. the Appellant herein. The Appellant craves leave to refer to and rely upon the reported Supreme Court judgment 2013 STPL (WEB) 363 SC Coram Surinder Singh Nijjar and Pinaki Chandra Ghose JJ in Shakuntalabai And Anr V/S Nanaji Dewaji Wadaskar which dealt case on similar point.
- (ix) The Appellant therefore prays that the Respondent No.1 be directed to disconnect the electric connection of the Respondent No.2 with immediate effect and award Rs.100000/- towards the inconvenience, mental and physical agony and monetary loss due to time lapsed in grievance mechanism.

4. The Respondent No.1, BEST Undertaking has submitted the reply by its letter dated 30.12.2019 stating as under: -


- (i) Respondent No. 2 submitted application for new electric connection on dated 07.11.2017 for his shop at Shop No. 4/A, Ground Floor, Bhivandiwala Bldg., 181-183, St. Paul Street, Hindmata, Dadar (East), Mumbai. The application was submitted with Form No. B, D and E of Shop & Establishment License as an occupancy proof. These documents clearly mention the name of his father, Late Mr. Vilas Eknath Lad and his


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uncle, Vijay Eknath Lad, the Appellant in the present case. The application for getting electric connection was sanctioned on the following documents: -

- (a) The Applicant is in physical possession of the said premises.
 - (b) The Applicant holds the document as Form No. 'B' in which his name is clearly mentioned.
 - (c) He also submitted the indemnity bond on stamp paper of Rs. 500/-.
- (ii) The Respondent No. 1 was satisfied with the documents submitted and has released new electric connection in the name of Respondent No. 2 on 07.12.2017 observing all the formalities in line with Section 43 of the Electricity Act 2003 (the Act) and Regulation No.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations).
- (iii) The Shop No.4 was occupied by the Appellant's father, Eknath Atmaram Lad as a tenant and was having electric connection in his name. After his death, the electric connection was transferred in the Appellant's name at around 2011. The shop No.4 is subdivided into two parts namely Shop No.4 and 4/A. The Shop No.4 is occupied by the Appellant having Commercial consumer (No. 582-157-008*4) and Shop No.4/A is occupied by the Respondent No.2 having Commercial consumer (A/c No. 582-157-022) from 07.12.2017. There is a dispute between Appellant and Respondent No.2 about the property.
- (iv) The Appellant filed the grievance application under Annexure 'C' in the Internal Grievance Redressal Cell (IGRC) on 18.04.2018 taking objection for released new connection in the name of Respondent No.2. The same was replied by the Respondent No. 1 inadvertently as a general complaint.
- (v) The Appellant has filed the complaint again on 29.05.2019. The complaint was registered against application in Annexure 'C'. During the hearing on 21.06.2019, the Appellant left midway without giving any reason and later on 04.07.2019 he filed his written argument through his advocate. After hearing and perusing all the documents


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filed by the Appellant and Respondent No. 2, the premises is under the possession of Respondent No. 2 and he has completed all the formalities to get electric connection. The IGRC, by its letter dated 29.07.2019 has rejected the complaint.

- (vi) During the hearing, the Respondent No.1 came to know from Respondent No.2 that there is dispute between the Appellant and Respondent No.2 and civil suit is pending before the City Civil Court in the matter. There are no directives from any court or any statutory authority to the Respondent No.1 restricting for sanctioning electric connection to the said premises as per Regulations.
- (vii) The Respondent No.1 prays that the representation of the Appellant therefore be rejected.

5. The Respondent No.2, Shriram Vilas Lad has submitted the reply by its letter dated 09.01.2020 stating as under: -


- (i) At the outset, most of the contents of the representation filed by the Appellant, are against the interest of the Respondent No.2, are flatly denied and the Appellant is put to the strict proof thereof. It is further submitted that all the averments, contentions and allegations made in the representation by the Appellant are false and are made only with the view to harass. The documents relied upon by the Appellant are flatly denied by the Respondent No.2.
- (ii) Both the authorities below have concurrently come to conclusion that the electricity connection given to the Respondent No.2 vide the orders dated 02.08.2019 and 15.10.2019 is given properly and there is no equity of whatsoever nature in favour of the Appellant herein and there is no substance in the complaint made by the Appellant hearing before the said authorities. In view of the same since the said orders are absolutely, well-reasoned and do not call for any interference of whatsoever nature at the instance of this honourable court the representation is liable to be rejected with the cost of the Respondents
- (iii) It is further stated that from the pleadings of the Appellant herein only it can be seen that the half portion of the shop in relation to which the electric connection has been


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given, is in his possession and therefore there is no illegality of whatsoever nature in granting electricity connection in his favour. It can be seen from the pleading of the Appellant himself that the grandfather of the Respondent No.2 who initially was in possession of the shop premises which is the subject matter of the present proceeding was in fact the tenant and therefore the Respondent No.2 has share in the said shop and is entitled to be in possession of the same.

- (iv) The authorities below have appropriately considered the facts involved in the matter and the fact that the gumasta license (shop and establishment) in relation to the said shop is also recorded in the name of Mr. Vijay Lad and Mr. Vilas Lad who is the father of the Respondent No.2. It is also appropriately considered by the law authorities that the Appellant herein have filed a suit bearing number 730 of 2018 against the Respondent No.2 and other legal heirs of Mr Vilas Lad for the relief of declaration and injunction. It is pertinent to note that the said suit is still pending for adjudication and the Respondent No.2 has kept a provision to file his written statement in the said suit.
- (v) The paragraph 6 of the Forum's order dated 15.10.2019 is very much clear about the fact that the Respondent No.2 is in possession of the half portion of the suit property and therefore is entitled to have electricity connection in the said portion.
- (vi) It is further pertinent to note that the Respondent No.2 has also executed an indemnity bond in favour of the Respondent No.1 in the required form. The said Fact has not been disputed by the present Appellant.
- (vii) It is further pertinent to note that the paragraph 8 of the Forum's order dated 15.10.2019 passed by the appellate authority is expressly clear about the fact that the Regulation No. 6.7 of CGRF Regulations clearly debars the cognizance of complaints being taken at the instance of a person especially when the Appellant himself has filed a suit and asked for the relief of declaration in possession. The observation of the courts below to the effect that in view of the said regulation especially relation number 6.7 (d) the cognizance of the complaint filed by the present Appellant could not have been taken and the same has been rightly turned down by the authorities below.


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- (viii) It is most respectfully stated and submitted that, there is no perversity of whatsoever nature thereby requiring the interference at the instance of this honourable authority in the orders passed by the authorities below. The said orders are perfectly reasoned and the claim of the Appellant has been rightly turned down.
- (ix) The authorities below have appropriately considered the fact that the complaint of the present Appellant is not supported by any documentary evidence on the contrary the contentions raised by the Respondent No.2 are well supported by the legal and valid documents. For the said regions the present representation filed by the Appellant is required to be dismissed with the cost of the present respondents
- (x) Without prejudice to the contentions raised hereinabove the Respondent No.2 states that the rear side of facts involved in the present matter is as under:-
- a. The present suit property was in possession of Late Shri Eknath Atmaram Lad as a tenant. It is further stated that he expired on 23.03.1978. It is further stated and submitted that Shri Eknath Lad had two sons by name Vijay (the Appellant) and Vilas (who is the father of the Respondent No.2). It is further stated and submitted that Mr. Vilas Eknath Lad expired on 13.06.2017. The Respondent No.2 and others are the legal affairs of Mr Vilas Eknath Lad. It is therefore the case of the Respondent No.2 that he is in possession of the suit property as the legal heir of Mr Vilas Eknath Lad and immediately after the death of his father, the present false proceeding has been initiated by the Appellant. It is most respectfully stated and submitted that since 1930 the light bill was standing in his name alone.
 - b. It is further stated and submitted that the Gumasta licenses in respect of the suit property at the relevant time was also standing in his name only. It is further stated and submitted that thereafter the applications in Form B Under Rule 5 of the Bombay Shops And Establishments Act 1948 which are required to be signed by the employer of the concerned establishment from 1978 until recently shows the name of the present Appellant as well as the father of the Respondent No.2, Mr Vilas as the employer. It is further pertinent to note that


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some of the applications which are signed by the Appellant himself shows the name of both the brothers as the employer of the establishment in dispute at the suit premises. It is therefore case of the Respondent No.2 that the Appellant does not have exclusive rights as has been mentioned in the proceedings in respect of the suit premises but the Respondent No.2 is also entitled to the share in respect of the suit property. It is the specific case of the Respondent No.2 that the father of the Respondent No.2 till his death, (after the death of Mr. Eknath) was in possession of the suit property and thereafter the Respondent No.2 are in possession of the same.


- c. It is further stated and submitted that, the Appellant and the father of the Respondent No.2 had executed an affidavit dated 24.05.1980 where it was expressly admitted by the Appellant herein that the shop which was at that time registered in the name of their father and after the death of both, the brothers are entitled to get the said shop transferred in their names in the record of the Bombay Municipal Corporation and further to get the names mentioned in the other relevant records of the Bombay Municipal Corporation such as Stall Board etc.
- d. The registration certificate of establishment produced by the Appellant along with the suit in the City Civil Court is fabricated documents and the name of the father of the present one and which appears in point number 3 has been deliberately scored off by the Appellant to show that the Appellant alone is the person in possession of the suit property. It is further stated that the registration certificate of establishment in respect of the suit property which is received by the Respondent No.2 under the provisions of right to information act clearly shows the name of the Father of the Respondent No.2 as in employer. It is further stated and submitted that the Respondent No.2 is keeping provision to initiate necessary criminal action for making forgery in the record against the Appellant. It is the case of the present Respondent No.2 that the registration certificate in respect of the suit property was standing in the name of both the


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brothers from 1978 till 2017. The Respondent No.2 craves leave to refer and rely upon the said certificates as and when produced.

- e. It is also submitted that the Appellant, by using the said forged documents have sought to transfer the electricity meter in his name alone in the year 2012 and has again committed the act of forgery with a view to cause wrongful loss to the Respondent No.2 and by causing wrongful gain to himself. It is further stated that the Respondent No.2 has got the relevant document from the concerned authority that too under the Right to Information Act that the Appellant has relied upon the forged and fabricated document to get the light meter connection transferred in his name. All the acts have been committed by the Appellant behind the back of the Respondent No.2 and only with a view to usurp the suit property in his favour and to harass the Respondent No.2.
- f. He submits that the father of the Respondent No.2 had taken certain loan in respect of the present shop from Vaishya Sahakari Bank Ltd. They further states and submits that since there was default in respect of payment of the said loan with bank had initiated the dispute against the father of the Respondent No.2 and certain other persons in the co-operative court No. 2 Mumbai bearing dispute application number CC-II-301 of 2004 which also included the attachment of the present suit property. It is further stated that these facts are admittedly before the proceedings initiated by the present Appellant. It is further stated and submitted that the entire amount due was paid by the Respondent No.2. The said facts are also within the knowledge of the Appellant and therefore till the father of the Respondent No.2 expired, no action of whatsoever nature was initiated by the Appellant. It is the specific contention of the Respondent No.2 that since the father of the Respondent No.2 has expired the Appellant is trying to take undue advantage of the said fact by initiating various proceedings to harass him.
- g. He further states and submits that his father was carrying on the business of Pan and Bidi Shop under the name of "Lad Bidi Shop" in the suit premises till


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his death and thereafter the Respondent No.2 is carrying on the business of selling Dry Fruits And Biscuits Farsan Items And Chocolates etc. at the said suit premises under the name of 'Natures Scoop (Dry fruit Junction)'. The Registration Certificate of the business of the Respondent No.2 under the Food Safety And Standards Act 2006 is issued in respect of the present suit property. The contention of the Appellant to the effect that the Appellant is alone in possession is therefore false. The Respondent No.2 craves leave to refer and rely upon the photographs showing the actual position and running business.


6. As the IGRC and the Forum have passed speaking and reasoned orders, by appropriately appreciating the facts and records, there is no error apparent in the said judgments. Therefore, for the reasons mentioned above, it is most respectfully prayed that the representation made by the Appellant may kindly be rejected.

7. During the hearing on 09.01.2020, the Appellant, Respondent No.1 and Respondent No. 2 argued in line with their respective written submissions.

The Appellant argued that the Respondent No.2 forcefully break open the shop No.4, trespassed the suit premises and put up a partition. Thereafter, he obtained new connection without any NOC from the Appellant.

The Respondent No. 1 argued that it has released the connection based on the documents submitted by the Respondent No.2 and after satisfying that he is in occupation of the shop No.4/A. While releasing the connection, the Appellant did not object. At the time of release of connection, there was a partition between Shop No. 4 and 4/A.

Respondent No.2 argued that the partition between 4 and 4/A was already in existence and specifically 4/A was and is legally occupied by him. As a matter of fact, both these shops were supplied power from the existing commercial meter standing in the name of the Appellant. Both these shops were having separate entries. The same arrangement continues even today. However, post death of father of the Respondent No.2, the Appellant started harassing him. Sometimes, the Appellant used to switch of the lights and close his own shop which resulted the Respondent No.2


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to suffer in his business. In order to escape from this harassment and as being lawfully entitled, being a lawful heir, the Respondent No. 2 applied for a new connection with appropriate documents. Based on these documents, the connection was released by the Respondent No.1.

Analysis and Ruling

8. Heard all the parties and perused the documents on record. I noted that there is an affidavit on record which is executed 24.05.1980. This affidavit is executed and signed by the Appellant and the father of the Respondent No.2 wherein it is expressly admitted by the Appellant that the shop which was at that time registered in the name of their father and after the death of both, the brothers are entitled to get the said shop transferred in their names in the record of the Bombay Municipal Corporation and further to get the names mentioned in the other relevant records of the Bombay Municipal Corporation such as Stall Board etc. Secondly, after perusing the Form D of Bombay Shop Establishment Act having Registration No. FS001837/Shop I Ward FS bears the name of Vijay Eknath Lad as name of the employer. This certificate is issued for renewal of registration and is for the period 2013-14. Similarly, Form B under the Shops and Establishment Act bears the name of Vijay Eknath Lad (the Appellant), and Vilas Eknath Lad (Father of Respondent No.2). This certificate is issued for renewal of registration and is for the period 1991-1993. It means that at least since 1991, the registration certificate was in the name of two persons, one being the Appellant and the other being father of the Respondent No.2. All these three documents put together conclusively prove that the Appellant, and the Respondent No.2 through his late father, Vilas Eknath Lad has right over the entire premises (4 and 4/A put together). Moreover, argument of Respondent No. 2 that he is in lawful possession of shop No. 4/A was not objected to by the Appellant.

9. The facts of the case have been properly appreciated by the Forum and issued reasoned and speaking order. I am also of the opinion that the Respondent No.2 is a lawfully occupied person of Shop No.4/A. Therefore, the Respondent No. 1 i.e. BEST Undertaking has rightly released the


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connection in the name of the Respondent No.2. The cause of litigation primarily appears to be right over the legal occupation of the tenanted property.

10. In view of the above, I do not find it necessary to interfere with the order of the Forum. The representation is rejected and disposed of accordingly.

Sd/-
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