

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 30 OF 2020

In the matter of premises in arrears

Himanshu A. Khanvilkar..... Appellant

V/s.

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

Appearances

For Appellant : Himanshu Khanvilkar

For Respondent : Akhila Karbhari, AAM CC(F/N)


Coram: Deepak Lad

Date of Order: 25th June 2020

ORDER

This Representation is filed on 17th February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 20th December 2019 passed by the Consumer Grievance Redressal Forum, BEST Undertaking (the Forum).

2. The Forum, by its Order dated 20.12.2019 has dismissed the grievance in Case No. N-FN-399-2019. The Forum has come to the conclusion that having regard to the said facts of the case and the terms and conditions of the documents entered in between complainant and earlier occupier, the complainant is liable to pay the earlier dues of Rs.9,71,426.21 which was


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the amount at the time of filing the application for electricity connection. However, the amount has been reduced to to Rs.5,70,860/- as per Amnesty Scheme 2019.

3. Not satisfied with the order of the Forum, the Appellant filed this representation stating in brief as below: -

The Appellant has purchased the premises being 164 /165, Transit Camp, Pratiksha Nagar, Sion, Mumbai in December 2017. At the time of application for new electricity connection in March 2019, he came to know that the outstanding amount of Rs.9,71,426 is due towards the electricity bill on the said premises. The Appellant states that this outstanding arrears was against the previous occupier of the premises, the electricity meter of which was removed long back and as such, the Respondent cannot recover the outstanding amount as per Section 56 (2) of the Electricity Act, 2003 (the Act). He has requested to revoke the outstanding bill and provide him new electricity connection.

4. The Respondent BEST Undertaking filed its reply on 05.03.2020 stating as under: -


- (i) This is a case of new connection to premises whose electric supply was disconnected in June, 2014. The electricity connection for this premises was in the name of Smt. Usha S. Tambe, Consumer no. 755-055-105. The electric supply was disconnected by removing the meter on 16.06.2014 (wrongly written as 16.06.2016) for non-payment of electricity bill dues.
- (ii) There was wrong billing complaint on consumer A/c no. 755-055-105. The complaint was resolved in the year 2014 by giving credit in the bill month of October, 2013 for amount wrongly billed. Further, the delayed payment charges and Interest on arrears levied till rectification of wrong billing was credited in the billing month of February, 2014. However, during the wrong billing period, the then consumer did not pay even the current bill amount resulting into accumulation of arrears. Till consumer's wrong billing complaint was attended, his electric supply was not disconnected. Even after resolving her billing complaint in February, 2014, the consumer did not pay the outstanding dues. Hence, supply to his meter no. D094768 was disconnected on 16.06.2014 for non-payment.


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- (iii) The electricity bills showing dues were regularly sent to these premises after meter removal. The delayed payment charges and interest on arrears was levied every month as the then consumer was not making payment.
- (iv) The consumer account was closed on 25.06.2019. The final outstanding amount for these premises after closing of account is Rs. 9,71,426.21.
- (v) Shri Himanshu A. Khanvilkar has applied for new electric connection vide application no. 420167 dated 09.09.2019 wherein he has been asked to pay the outstanding electricity dues amounting to Rs. 9,71,426.21 for the same premises earlier occupied by Smt. Usha S. Tambe. The applicant along with other documents submitted the sale deed agreement dated 07.12.2017 for the purchase of the said premises as a proof of his occupancy.
- (vi) The complainant raised objection and approached Internal Grievance Redressal Cell (IGRC) on 01.08.2019 stating that the electric meter to the said premises has been removed. As such, BEST cannot recover the outstanding amount as per Section 56(2) of the Act.
- (vii) Vide letter no. CC(F/N)/Annex-'C'/856/2019 dated 13.09.2019, he was informed that Section 56(2) of the Act does not apply in his case as the meter is already removed for the non-payment of electricity bills. Further, the electricity bills were generated even after meter removal and sent in the name of Smt. Usha S. Tambe continuously till June, 2019 when the consumer account was closed. However, as a remedial measure, the Respondent offered to waive the delayed payment charges and Interest on arrears levied after meter removal as per the internal Procedure Order No. 246-A of Amnesty Scheme 2019. He was, therefore, asked to pay the revised amount of Rs.5,70,860/- as an outstanding due on Consumer no. 755-055-105.
- (viii) However, Shri Himanshu A. Khanvilkar was not satisfied with this remedy and approached the Forum on 23.10.2019 for redressal of his grievance.
- (ix) The Forum on 20.12.2019 gave an order that the complainant has to pay the revised outstanding amount of Rs. 5,70,860/-. The said order holds as below:

a) The complainant himself has admitted the liability of electricity dues and he cannot deny his liability only on the grounds that the Respondent BEST Undertaking was negligent in recovering electricity dues from earlier occupier.



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On this point, CGRF observed that the electricity is public property. Law, in its majesty be highly protect public property and behoves everyone to respect public property. In view of terms and conditions of sale deed agreement, the complainant will step into the shoe of earlier occupier from whom he came in possession of the said premises.

b) From the record, the total electricity dues as on the day of filing application for electricity connection was Rs. 9,71,426.21/- and now in view of Procedure Order no. 246-A of Amnesty Scheme 2009, the delayed payment charges and interest on arrears have been waived and now arrears due come to Rs. 5,70,860/- so it is expected from the complainant to pay the said electricity dues.


- (x) Till date the outstanding amount remains unpaid. Therefore, the application no. 420167 for new connection is cancelled and the electric supply connection is not released for nonpayment of outstanding amount.
- (xi) The Respondent prayed that only the legitimate revenue of Rs. 5,70,860/- due to it is requested here on following grounds:
- The case does not come under section 56(2) of Electricity Act, 2003 as claimed by Shri Himanshu A. Khanvilkar, complainant.
 - As per para 7 of the sale deed agreement dated 07/12/2017 submitted by complainant along with his application, as a purchaser he is responsible for all liabilities on the said premises including outstanding dues of electricity charges of BEST Undertaking. He was aware of the outstanding dues towards electricity bills and his full and final purchase price of the premises naturally includes all the liabilities on that premises including electricity dues.
 - The delay in disconnection from our side was due to wrong bill case which was later on resolved. However, this cannot be grounds for complainant to deny the liability which is admitted by him,
 - The offer has been made to complainant to pay the revised outstanding amount of Rs. 5,70,860.00 instead of Rs. 9,71,426.21 as per the Amnesty scheme. The net reduction is of Rs. 4,00,566.00 which is quite substantial.


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5. Heard both the parties on 17th June 2020 through video conferencing. The Appellant and the Respondent reiterated their respective says in line with their written submissions. During the video conference, it was informed to both the parties to file their respective arguments, if they wish to do so. In pursuance of this, both the parties filed the written arguments. The Appellant argued that on 09.09.2019 had submitted application along with all required documents for new electric meter at shop premises at 164 /165 Transit Camp, Pratiksha Nagar, Sion, Mumbai vide requisition No.420167. Thereafter, the Appellant received a bill dated 29.06.2019 of outstanding amount of Rs. 9,71,426.21 for Consumer No.755-055-105*1 CA No.2005526. The Appellant, being not willing to pay such a huge amount of the previous consumer, Mrs. Usha S.Tambe, the Respondent then issued a fresh bill of Rs. 5,70,860/-. The Appellant did not accept this also. This issue was not resolved by the concerned officials of Customer Care F/N, the Appellant therefore approached the Forum. Unfortunately, the Appellant was not able to attend the hearing at the Forum but deputed his wife to attend it. His wife was unaware about the outstanding amount and had to face many baseless questions. The previous owner, Usha Tambe, was widely known as 'Mausi' in their area therefore, his wife referred the previous consumer as 'Mausi' during the hearing. Taking this on record, the Forum reached to the conclusion that the previous owner was the relative of the Appellant. The Appellant states that there is no relation at all between him and the previous consumer. Regarding the legal transfer documents executed, the said documents were prepared on ready format, therefore, the question of mentioning in the documents is baseless. The Appellant stressed for relief under Regulation 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) and justice be given as per that Regulation.

6. The Respondent BEST Undertaking reiterated that the written submission dated 05.03.2020 prevails and would be taken as its final submission. The Respondent argued in respect of a new point taken by the Appellant with regard to Regulation 10.5 of the Supply Code Regulations. This Regulation is in respect of Change of Name / Transfer of meter and this case is about application for new connection therefore there is no question of this Regulation to be applied here. Hence, the Respondent prayed to direct the Appellant to pay the legitimate dues of Rs. 5,70,860.00 laid down by it through the Procedure Order No. 246.


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Analysis and Ruling

7. Due to the COVID-19 epidemic in India and subsequent situations arising out of it was not possible to schedule the hearing. Due to orders / guidelines issued by the Government of Maharashtra, the hearing was held through video conferencing on 17.06.2020. Both the parties were heard. I noted the following important points: -


- (a) 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 connection in her name which was disconnected on 16.06.2014.
- (b) 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. Notwithstanding this, 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 said clause is reproduced 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.”

- (c) This is not the case of change of name. On the contrary, the supply in respect of the erstwhile connection was disconnected on 16.06.2014 for non-payment of arrears and the Appellant has applied for fresh connection in March 2019.
- (d) The Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014), Regulation 6.10 stipulates as below:-

Reconnection of supply following disconnection due to non-payment of bills

“6.10 Where the Distribution Licensee has disconnected supply to a consumer for a period of not more than six months, then if such consumer pays all amounts due and payable by him to the satisfaction of the Distribution Licensee or, in case of a dispute, pays such amounts under protest, the Distribution Licensee shall reconnect supply within— (i) eight (8) hours from the payment of dues made by the consumer in Class I cities ; (ii) twenty four (24) hours from the payment of dues made by the consumer in


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Urban Areas and (iii) two (2) days from the payment of dues made by the consumer in Rural Areas.

Provided that, where the period of disconnection exceeds six months, an application for reconnection of supply shall, after either payment of amounts due or upon settlement of dispute, be treated as a fresh application for supply of electricity under the provisions of the Act.” (Emphasis added)


8. In view of the above proviso and the analogy which flows from this proviso, it is clear that past dues are to be paid by the Appellant who has expressly undertaken the responsibility of payment of all such dues in the so called Sale Deed dated 28.11.2017. The argument of the Appellant that the entire executed legal transfer documents is on the readymade format does not hold good as the same is signed by him before the Notary. Moreover, reference of Section 56 (2) of the Act by the Appellant is not correct as the Respondent has continuously billed the consumer till disconnection. It is not the case that the erstwhile consumer was not billed but subsequently shown as recoverable.

9. It is not understood as to why the Respondent closed the account of the erstwhile consumer in the year 2019 when the connection was disconnected in 2014. However, this does not come in way of the dispensation of this order as the Respondent has treated the Appellant's case under the Amnesty Scheme.

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

11. The secretariat of this office is directed to refund Rs.25000/- deposited by the Appellant immediately.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

