

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 169 OF 2022

In the matter of Change of Name

Bai Tulsabai Devji Charitable Trust Appellant

V/s.

Brihanmumbai Electric Supply & Transport Undertaking (D Ward) ... Respondent 1
(BEST Undertaking)

Smt. Bhanushali Mulraj Kabali..... Respondent 2

Appearances:

Appellant : Prakash M. Kabali, Representing Bai Tulsabai Devji Charitable Trust
Respondent 1 : 1. P. P. Kulkarni, Superintendent, D Ward, BEST Undertaking
2. P. R. Patil, Asstt. Engineer, D Ward, BEST Undertaking
Respondent 2 : Kiran Raja, Representative/ Daughter of Bhanushali Mulraj Kabali
(Mother of Prakash M. Kabali)


Coram: Vandana Krishna (IAS Retd.)

Date of hearing : 29th December 2022 &
06th January 2023

Date of Order : 10th February 2023

ORDER

This Representation was filed on 2nd November 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order


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dated 5th September 2022 passed by the Consumer Grievance Redressal Forum, BEST Undertaking (the Forum).


2. The Forum, by its Order dated 05.09.2022 dismissed the grievance application in grievance No. D-460-2022. The relevant portion of the order is quoted below:

“...with liberty to the complainant to submit fresh application for change if its rights to the property are accepted by the Hon’ble High Court while deciding the aforesaid First Appeal No. 31 of 2017 finally.”

3. The Appellant has filed this representation against the order of the Forum. The hearing was held on 29.12.2022 where the Appellant and Respondent No. 1 was physically present. The Respondent No. 2 was not available for the physical hearing, and had not logged into the e-hearing on 29.12.2022 due to being non-conversant with the online hearing process. A separate opportunity of hearing was thus given to the Respondent No. 2 on 6.01.2023 as per her request.

4. The Appellant’s written submission and arguments in brief is stated as below: -


- (i) The Appellant is the Trustee of Bai Tulsabai Devji Charitable Trust. The said Trust is the owner of a building known as “Chandra Bhuvan Building” (Said Trust Building) situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai- 400007. The said Trust Building has its registered and correspondence address at “C/o. K.P. Kabali, 23/A, Dongersi Road, 1st Floor, Ramtirth Kutir, Malabar Hill, Mumbai- 400006”.
- (ii) The Respondent No.1 regularly issued electricity bills in the name of Bai Tulsabai Devji Charity Trust bearing Consumer No. 881-707-051*5 and Meter No. M085611. Sample electricity bills for the Period 22.10.1984 to 21.12.1984 & 23.10.2015 to 23.11.2015 are kept on record.
- (iii) On the ground floor of the said Trust Building, one “Ambamata Mandir” is situated, which also belongs to the Trust. The record of Respondent No.1 clearly shows that prior to January 2016, all electricity bills issued in respect of the said “Ambamata


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Mandir” stand in the name of “Bai Tulsabai D. Charity Trust” bearing Consumer No. 881-707-051*5 and Meter No. M085611. The Respondent No. 2 (Bhanumati Mulraj Kabali) is neither Trustee nor tenant of the said Trust building. In the said Trust building, there is no tenanted premises in the name of “Bhanumati Mulraj Kabali” (Respondent No.2) as submitted in her alleged Rent Receipt. **Note: During the hearing, it was revealed that the Respondent No. 2, Bhanumati Mulraj Kabali is actually the mother of the Representative of the Appellant, Prakash M. Kabali. Thus, it turns out that this is a family dispute between mother and son.**

- (iv) In the year 2016, Respondent No.2 fraudulently, without consent, knowledge and permission of the Trustees and/or Charity Commissioner, applied for change of name of electric connection from “Bai Tulsabai D. Charity Trust” to “Bhanumati Mulraj Kabali”. In this regard, the Appellant immediately sought information and documents under RTI Act, however, the Respondent No.2 suppressed several facts and order passed by the Hon’ble Bombay High Court as well as produced forged and fabricated documents to change the name on the electricity bill.
- (v) Being aggrieved by this, the Appellant sent an objection letter dated 9th May 2016 to Grievance Cell, BEST, Mumbai. However, the Grievance Cell neither replied nor took cognizance of it. Therefore, the Appellant again sent an objection letter dated 14th January 2022 through his Advocate to the concerned Divisional Engineer of Respondent No.1 but to no avail. His Advocate again sent a reminder letter dated 13th April 2022 to the concerned office. As on date, the Respondent No.1 has neither replied nor taken cognizance.
- (vi) The Hon’ble Bombay City Civil Court in Suit No.713 of 2012 passed an order and judgment dated 27th October 2016, and held that the said Bhanumati Mulraj Kabali is not the owner of the said Trust Building i.e., Chandra Bhuvan Building, and that in fact Bai Tulsabai D. Charity Trust is the owner of Chandra Bhuvan Building, where the said Temple is situated. Hon’ble High Court in First Appeal No.31 of 2017 has


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also opined that Bai Tulsabai D. Charity Trust is the owner of the said building. It is settled law that grant of Probate shall not be considered as conclusive proof of ownership by Respondent No.2 (Bhanumati Mulraj Kabali). Since it is tenanted premises, it is mandatory to obtain No Objection Certificate (NOC) from the owner of the said building. In the present case, the Respondent No.2 (Bhanumati Mulraj Kabali) failed to do so, and with malafide intention produced forged and fabricated documents and thereby changed the name on the electricity connection from Bai Tulsabai D. Charity Trust to her name in 2016. The said illegal act of Bhanumati Mulraj Kabali is also an offence under Indian Penal Code.

(vii) Due to inaction on the part of Respondent No.1, the Appellant waited for a reasonable time, and then, approached the Forum on 7th July 2022. **Note: During the hearing, when asked the reason for the delay in approaching the Forum, he said it was due to ignorance and pending grievance before IGRC and other ongoing litigation.**

(viii) The Forum, by its order dated 5th September 2022 dismissed the grievance application. Hence, the instant Representation is filed before this Authority on the following grounds:-


(ix) Memorandum Of Objection:

- a) The impugned Order is against the principles of natural justice.
- b) The Forum erroneously came to the conclusion that grant of probate is a conclusive proof of title. However, in the instant case, Trust is the owner of the property, and being a landlord, it is a mandatory condition to obtain its NOC before substituting the name on the electricity bill.
- c) The Forum conveniently ignored the observation and finding given by the Bombay City Civil Court and Hon'ble High Court in respect of the ownership of Trust building.
- d) The Forum ought to have considered the fact that before December 2015, the electricity bills stood in the name of the said Trust.


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- e) The Forum erred in construing the facts (para h of impugned order) that the deceased Mulraj Kabali (father of the Representative of the Appellant) had bequeathed the said property to his wife i.e., Respondent No.2 (Bhanumati Kabali). In fact, Bhanumati Kabali is a mere executor of the said Will. The deceased Mulraj had actually bequeathed his property to Prakash-30% (Son), Kiran-30% (Daughter) and Prateek-40% (Grandson). Since the deceased Mulraj Kabali is a mere Trustee and not the owner of Trust, he cannot bequeath the Trust Property to anybody through a Will.
- f) The Forum erroneously dismissed the complaint with a condition that if Hon'ble High Court accepted the right of the Trust, in that event, the Appellant has the liberty to submit a fresh Application for change. The Forum ought to have restored the name on the electricity bill as it stood prior to December 2015.
- g) The Forum failed to justify the reasons and findings in respect of the issues framed under the said impugned order.
- h) The Forum failed to appreciate the fact that since 2016, the Appellant awaited to get the issue to be resolved, however Respondent No.1 failed to do so till filing of the said complaint before the Forum. Hence, the cause of action continued till filing of the said Complaint before the Forum. The Forum admitted the contention of Respondent No.1 as the gospel truth without verifying a single documentary evidence in this regard, and erroneously noted that the said Application filed by the Appellant appears to be beyond the prescribed 2 years' period of limitation.
- i) The Forum ought to have considered the fact that, after becoming aware about the change of name on Electricity Bill, **Appellant immediately filed an objection letter dated 09.05.2016 to Internal Grievance Redressal Cell (IGRC) of Respondent No.1.** However, IGRC neither replied nor decided the objection of the Appellant for more than 5 years. Because of non-decision and


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unsatisfactory replies of IGRC, the Appellant had again filed an objection with the Divisional Engineer of the Respondent No.1.

- j) The Forum ought to have considered, as laid down under Regulation 6.2 of CGRF & EO Regulations, 2006, that if the consumer lodges his grievance with the IGRC within a reasonable time, and if the grievance is not satisfactorily redressed within a period of two months prescribed, he cannot be rejected on the premise that the entire litigation journey was not complete in two years. The cause of action to approach the Forum would be the date on which the period within which the IGRC was expected to decide the grievance expires and the consumer becomes entitled to move the Forum.
- k) The Forum ought to have considered that as spelt out by a conjoint reading of the language of Regulations 6.2, 6.4, proviso to 6.5, 6.7 (a) and (b) and the limitation as prescribed by Regulation 6.6, in conjunction with the Rules of procedure as framed under Regulation 6.2 and the requirement of approaching the IGRC before approaching the Forum and harmonizing them in a meaningful manner, the cause of action will have to be held to arise when the IGRC fails to redress the grievance. Any other construction or meaning would result in creating a situation, where the above provisions cannot be reconciled with each other. Considered in a different light, the Forum, in view of the necessity to approach the IGRC first, has been rendered as if it is an Appellate Authority over the action or inaction taken by the IGRC, hence the cause of action for approaching the Forum can only be the inaction, or inadequate action of the IGRC as to the grievance referred to it under Regulation 6.1, and the limitation shall begin from such date as held by Hon'ble Bombay High Court, Nagpur Bench in Civil Writ Petition No.7900 of 2017, Maharashtra State Electricity Distribution Company Limited Versus M/s. RSR Mohota Spinning & Weaving Mills Limited.


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- l) The Forum ought to have considered that though the CGRF & EO Regulations 2006, prohibit to entertain the grievance beyond the period of two years from the date of cause of action. However, in the present case, the Appellant has put his grievance before IGRC, but they did not resolve it due to their negligence, and therefore the Forum ought to apply general provision of Limitation Act. Section 5 of Limitation Act deals with extension of prescribed period in certain cases. Section 14 of Limitation Act deals with exclusion of time of proceeding bonafide in court without jurisdiction. Thus, it is just and proper to invoke the provision of Section 5 coupled with Section 14 of Limitation Act, 1963 and to condone the delay in making the grievance before the Forum.
- m) The Forum ought to have considered that **it is just and proper to exclude the time taken by Customer Care Dept. for resolving this grievance.** In appropriate cases specified period may be excluded on account of statutory provision like Sections 5 to 14 of Limitation Act, 1963.
- n) The impugned judgment creates a precedent for wrongdoers, who will substitute their name in place of the lawful consumer, and thus compel the layman to run from pillar to post for getting justice.
- o) **The Forum on the one hand, has admitted that the Trust is the owner of the property. If that is so, then how can an occupant/tenant substitute his or her name on the electricity bill without obtaining NOC from the landlord.**
- p) The Forum erred in construing the MERC Standards of Performance Regulations 2014 and noted that *“in one of these Regulations it has been provided that it shall be binding on the distribution licensee to issue any notice to the existing consumer before change of name of existing consumer. In view of such circumstances, it cannot be said that the First Respondent has violated and prevailing law of the principles of natural justice, as complained by the Complainant in the present proceeding before us.”* It is pertinent to mention here



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that law of natural justice is basic foundation, based on which rule of law is harmoniously implemented by Judiciary. One cannot ignore and/or by-pass the fundamental principles of natural justice.

- q) The Forum conveniently ignored the observation and noting passed by Hon'ble Supreme Court in Civil Appeal No. 12133 of 2022, wherein Hon'ble Supreme Court has observed that Trust property cannot be alienated unless it benefitted for the Trust and / or its beneficiaries. However, in the instant case the Respondent No.2 is neither a Trustee nor beneficiary of the said Trust.
- r) The Forum has passed the said impugned order without considering the merit of the matter.
- (x) The Appellant received the impugned order on 26.09.2022 along with covering letter dated 22.09.2022 sent by office of the Forum. After receipt of the said impugned order, the Appellant has to file the Representation before the Electricity Ombudsman within 60 days from the date of receipt of the impugned order. The 60 days' time will expire on 25.11.2022. Thus, there is no delay in filing of the above Appeal and it is well within time limitation.
- (xi) In the light of aforesaid facts and circumstances, The Appellant prays:-
- a) to allow the Appeal.
- b) to quash and set aside the order dated 05.09.2022 passed by the Forum.
- c) Consequently, to restore the name of Bai Tulsabai D. Charity Trust in place of Bhanumati Mulraj Kabali on the Electricity bill of Consumer No.881-707-051*5. And Electricity Meter No. M085611.

5. The Respondent No. 1 filed its reply on 23.11.2022. The Respondent's submission and arguments in brief are stated as below: -



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- (i) Initially “**Chandra Bhuvan Building**” (**Said Trust Building**) situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai- 400007 had “Ambamata Mandir” on the ground floor, having electric connection vide Consumer A/c No. 881-707-051*5 and Meter No. M085611 in the Name of Bai Tulsabai D. Charity Trust.
- (ii) The Respondent No.2 (Bhanumati Mulraj Kabali) vide ‘Change of Name’ application No. 2584630 dated 30.12.2015, submitted the following documents:-
1. Change of Name application (Pg no1 to 4)
 2. Old Electricity Bill of consumer No. 881-707-051 of the month of Nov.2015. (Pg 5no. To 6)
 3. Annexure-A:- Undertaking. (Pg no. 7)
 4. Authority letter of Bhanumati M. Kabali(Pg no. 9)
 5. Rent Receipt No. 182 dated 01.10.2015 in the name of Bhanumati Mulraj Kabali for ground Floor, Ambamata Mandir. (Pg no 11)
 6. Aadhar Card No. 7811 1920 7337 in the name of Bhanumati Mulraj Kabali address of other premises. (Pg no 13)
 7. Voters Card of Bhanumati Mulraj Kabali address of other premises. (Pg no 15)
 8. Passport No. G 0443546 (Pg no 17)
 9. Registered letter, dated 02/121/2015 (Page 19)
 10. Probate of High Court of Judicature at Bombay, dated 03.07.2014.

Brief Summary of the case:-

- (iii) The Change of Name on the Electric Bill was carried out based on the documents submitted at Sr. No. (1) to (5) and (10) above, wherein the application for change of name on Electricity Bill was submitted along with Authority letter, undertaking letter, rent receipt issued by the Bhanunati Mulraj Kabali and Probate Order dated 03.07.2014 given by the High Court.
- (iv) Being aggrieved by the change in the name, Bai Tulsabai Devji Charitable Trust submitted an objection letter to BEST Undertaking dated 5th April 2016, 9th May 2016 and 14th May



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2016. Accordingly, a reply was forwarded to Bai Tulsabai Devji Charitable Trust vide letter dated 30th May 2016 issued by Supdt.CC(D) ward. Wherein it was mentioned that, as per Section 2.9 of Terms and Condition of Supply as approved by MERC “*The Undertaking shall neither be responsible nor liable to ascertain the legality or adequacy of any No Objection Certificates / Way leave permissions / Permission or Consents of Statutory Authorities which might have been submitted by the Applicant / Consumer along with his application and shall believe that such certificates / permissions to be sufficient and valid, unless proved to be contrary.*” (Copies attached at Exhibit ‘B’)

Further, in the said letter, it was requested to forward the final order of the Court so as to enable the Respondent No.1 to forward the case for their management’s opinion/ advice; till then the status quo would be maintained. However, there was no further communication for a considerable time.

- (v) The Trust again forwarded an objection letter dated 14th January 2022 and 13th April 2022 through their Advocate to the concerned Divisional Engineer, along with the order and judgement dated 27.10.2016 of Hon’ble Bombay City Civil Court in Suit No. 713 of 2012, and the First Appeal No. 31 of 2017 on the said judgment at Hon’ble High Court. The case was referred to the legal Department for legal opinion on the above court orders
- (vi) Meanwhile, Bai Tulsabai Devji Charitable Trust filed grievance with the Forum vide Case No.D-460-2022 dated 07th July 2022, and after hearing the case the Forum disposed it off on 22nd September 2022.
- (vii) The cause of action arose prior to two years. The change of name had been effected in December 2015 and no action was taken after the Respondent’s letter dated 30th May 2016, neither did they approach after the High Court Order dated 27th October 2016, until January 2022 . Hence, the case is time barred.
- (viii) In the light of aforesaid facts and circumstances, it is prayed to dispose the grievance filed by Bai Tulsabi D. Charity Trust in line with the Forum’s decision.


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6. The Respondent No. 2, Bhanumati Mulraj Kabali filed its reply on 24th November 2022 of which the submission and arguments in brief are stated as below: -

- (i) The Appellant has filed this representation under the CGRF & EO Regulations, 2020 against the Order dated 5th September 2022 passed by the Forum. The Order has considered all aspects that have been raised in the present representation, and is filed to harass the Respondent No. 2, who is the mother of the Complainant (Prakash M. Kabali), aged 90 years.
- (ii) The Forum's Order is correct, legal and confirms to the Regulations framed under the Electricity Act, 2003.

A] The undisputed facts are stated as under:


- (i) On 18th November 1952 the Hon'ble Bombay High Court in Suit No. 74 of 1952 approved the Scheme for the Management and Administration of Tulsabai Devji Charitable Trust. In the Scheme, it is stated that the properties of the Trust shall only consist of the sum of Rs. 27,000/-. It makes it clear that the Trust does not have any other additional or further property except the above.
- (ii) Mulraj Kabali, husband of Bhanumati Kabali had also written a letter to the Charity Commissioner on 27th September 1993 to take on record the Decree for Confirmation of the Scheme.
- (iii) Execution of the Scheme is not in question, and the Charity Commissioner has also acknowledged the Trust property as being Rs. 27,000/- which was invested in short term deposit and National Defence Loan Scheme for maintaining the income of the Trust.
- (iv) Even Kalpana Kabali, wife of Prakash Kabali, Representative of the Appellant, had submitted an Affidavit to the Charity Commissioner on 10th May 2011 to take cognizance of the Scheme.
- (v) The Order dated 23rd March 2005 passed by the Charity Commissioner in an Application No.13/2004 filed by Kalpana Kabali, wife of Prakash Kabali, noted the enforcement of


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the scheme and that the Ambamata Temple and Chandra Bhuvan property to be not part of the Trust.

- (vi) The Will and Probate of Mulraj Kabali was affirmed by the Hon'ble Bombay High Court in Testamentary Probate Petition No. 1349 of 2012 on 3rd July 2014. It is submitted that the subject matter property is listed in Schedule I which contains the **personal** property of Mulraj Purshottam Kabali, and the executor is named as Bhanumati Kabali. The person who has filed the Complaint had also filed a Caveat before the Hon'ble Bombay High Court which was dismissed by the Court, and the execution of the Will was upheld.
- (vii) Subsequently a Deed of Transfer was executed on 5th July 2014 between the executors of the Will and Bhanumati Kabali, whereby the subject property was transferred to Bhanumati Kabali.
- (viii) The Respondent has filed a Contempt Petition No. 294 of 2015 in the Hon'ble Bombay High Court against the Complainant. The Court by its Order dated 29th June 2015 acknowledged the fact that there is a prima facie case and Bai Tulsabai Devji Charitable Trust and Prakash Kabali has violated the Court's Order dated 25th February 2014 in Appeal from Order No. 1317 of 2013. The Order had directed to maintain status quo by not transferring the building and/or take any steps in that regard.
- (ix) The Respondent has filed First Appeal No. 31 of 2017 in the Hon'ble Bombay High Court challenging the Order of the City Civil Court. The Court has directed status-quo and that no action to be taken.
- (x) The Hon'ble Bombay High Court is seized of Administration Suit No. 245 of 2014 and Suit No. 902 of 2016 [Suit(L) No. 866 of 2016] relating to the same subject-matter which has repeatedly passed status-quo Orders on 29th April 2016 and 22nd September 2016 in respect of the suit property.
- (xi) The Complainant had also filed a Revision Application No. 71 of 2013 before the Small Causes Appellate Court which was dismissed. The Court by its Order dated 20th March


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2013 held that that there is a prima facie case that Bhanumati Kabali has some right, title and interest in the suit premises and is an owner also collecting the rent.

- (xii) It is submitted that in a Suit filed before the Small Causes Court, being RAE Suit No. 1039 of 2015, the Court vide its Order dated 29th November 2021 rejected application filed by a tenant under Order 7 Rule 11 of CPC, and after considering the First Appeal and the Probate, held that the question of landlord and tenant relationship has to be decided at trial after considering the evidence of the parties. Thus upholding the Suit filed by Bhanumati Kabali.

B] The representation is not valid on the following grounds:

- I. (i) The Complainant is not entitled to file the present Representation as he does not fall under the definition of “consumer”.
- (ii) Section 19.22 states that the Electricity Ombudsman shall entertain a representation only if:
- (a) *It has been filed by the Complainant being the aggrieved consumer either directly or through his duly authorised representative or the Association representing the consumer/s;*
- (iii) Section 2 (15) of the Electricity Act, 2003 states that “consumer” means *any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.*
- (iv) **The Complainant is not a consumer according to the above clause, as he is not using the electricity supplied for his own use (as he is neither residing nor**



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occupying the same) nor his undisputed premises connected to such supply of electricity.

II. This complaint is outside the scope of the Grievance Redressal Forum Regulations, 2020


- (i) It is submitted that Section 2.1 (d) of the Regulations, 2020 states “Complaint” means *a submission made by a consumer expressing dissatisfaction with the electricity supply service provided by the Distribution Licensee.*
- (ii) Section 2.1 (e) of the Regulations, 2020 states “Grievance” means *any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to Standards of Performance of Distribution Licensees as specified by the Commission and includes inter alia Grievances in respect of non-compliance of any Order of the Commission or any action to be taken in pursuance thereof, which are within the jurisdiction of the Forum or Electricity Ombudsman, as the case may be.*
- (iii) The above clauses make it clear that the Complaint has to be filed for deficiency of service provided by the licensee. It could be in the nature of irregularities in supply of electricity, malfunctioning of meters, inflated arrears or in relation to the standard of performance as specified in the Code or any other contract, agreement in force. It does not cover the change of name of the account which has been legally approved on an application submitted by a person and approved under the relevant provisions of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and Electricity Act, 2003.


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III. Non-Maintainability due to lapse of time

- (i) Section 7.8 of the Regulations, 2020 states that the Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.
- (ii) The Change of Name Application was submitted with all the necessary documents including the Rent receipts, Authority Letter, Identity card, undertaking and the Probate as affirmed by the Hon'ble Bombay High Court in Testamentary Probate Petition No. 1349 of 2012 on 23/12/2015 and the said Application came to be accepted on 30/12/2015 in accordance with provisions of the Electricity Act, 2003 and the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. The Authority has accepted the Application only after carrying out due diligence and the Complainant cannot doubt the correctness of the decision at this stage.
- (iii) The Complainant cannot be said to be bonafide to come after a lapse of almost 7 years when he could have approached the Forum long back. He cannot contend that he was not aware of the issue, since the electricity bill was being dispatched and delivered in the name of Bhanumati Mulraj Kabali at the property address, and therefore he had sufficient knowledge of the change in name.
- (iv) It is submitted that the Complainant had himself sent a letter in 2016 to the B. E. S. & T. Undertaking and the authority had replied to the Complainant way back in 30/05/2016 stating that it is not required to go into the legality of the documents and it will maintain status quo. Hereto annexed and marked as **Exhibit-P** is the copy of the reply.
- (v) If the Complainant was not satisfied with the action taken or inaction of the authority or IGR Cell, he could have sent a reminder letter within two months as per Section 6.4 of the Regulations, 2006, or approached the Forum within two years as per Section 6.6 of the Regulations, 2006. Even if the cause of action is termed as


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starting from the inaction, or inadequate action of the IGRC then also the term of 2 years has long expired.

- (vi) Further according to “Procedures for Redressal of Consumer Grievances” Rules published by the BEST has stated in Rule 5, “*The Consumer may represent his grievances before Consumer Grievances Redressal Forum by filling Schedule ‘A’ form (Six (6) no. of sets) if they are not satisfied with remedy provided by IGRC or no remedy provided by IGRC within a period of two months from the date of submission of Annexure ‘C’ form.*”
- (vii) **The Order dated 5/9/2022 passed by the CGRF in Paragraph 7.0(k) and (l) has recorded this fact, and held the grievance application to be beyond the limitation period by a vast margin, as the cause of action arose on 23/12/2015 and the Complaint was filed on 5/7/2022.**
- (viii) The Complainant in the representation is relying on Section 5 and 14 of the Limitation Act, 1963.

Section 5. Extension of prescribed period in certain cases.—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

The Section extends limitation only in certain cases, and that also when he was under some misunderstanding of some order, practice or judgment of the Court, and cannot be made applicable in all cases, especially when the Regulations and the Rules are clear. Ignorance of law is not an excuse and cannot be a ground to be allowed under any circumstances. Besides, the Complainant’s wife Kalpana Kabali,


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who is one of the Trustees, herself is an Advocate by profession who has the necessary knowledge of procedures and was aware of the Rules published and the Regulations issued while addressing the Complaint.

14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature...

This Section extends limitation when the person is already pursuing a proceeding bona fide in a Court of law. It does not apply when just a letter is written by the Complainant to a Company or an authority, in this case the BEST Undertaking, way back in 2016.



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- (ix) The Regulations framed under the Electricity Act, 2003 is a complete Code in itself, and the special law will prevail over the Limitation Act. Also Section 174 of the Electricity Act, 2003 states that the Act to have overriding effect on any other law for the time being in force.
- (x) It is a common law principle that the law will not help a person who sleeps over their rights. In the present case, the Complainant has not taken any steps to address his Grievance for 7 years and cannot now be entertained as per his whims and fancies. That also when the matters in the High Court, Small Causes Court, Charity Commissioner are coming up for final hearing.

IV. Subject-Matter pending before another Court of Law

- (i) The Regulations, 2022 in Regulation 19.22 mention that the Electricity Ombudsman shall entertain a representation only if all the following conditions are satisfied. The relevant portion is quoted below:

(g) The representation by the Complainant, in respect of the same Grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has not already been passed by any such court, tribunal, arbitrator or authority;


- (ii) The subject-matter of the Complaint is currently pending in multiple Courts. The Complainant has itself attached Orders of the Hon'ble Bombay High Court in First Appeal No. 31 of 2017 wherein the Appeal filed by the Respondent has been admitted and is listed for hearing. The Respondent has filed a Civil Application No. 179 of 2017 and a First Appeal No. 31 of 2016 before the Hon'ble Bombay High Court challenging the Order passed by the City Civil Court. **The Plaintiffs (Current Respondent No.2) have taken a ground of maintaining the property, collecting rent from tenants. It has also taken a ground that municipal tax, water tax including the electricity bill is in the name of the Plaintiff. The Court has passed an Order on 7/02/2017 admitting the matter for final hearing and**


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directed to maintain status quo and to take no action without the leave of the Court. The Complainant had the opportunity to point out the change of Name of meter to the Hon'ble Bombay High Court but has failed to do so. The Complainant cannot now come before this Forum for the same subject-matter and by-pass the highest Court of the State.

- (iii) The Hon'ble Bombay High Court is also seized of Administration Suit No. 245 of 2014 and Suit No. 902 of 2016 relating to the same subject-matter. The Complainant has not raised this grievance in any of the aforesaid pending matters and is acting in a malafide manner to change the name of the meter connection, when status-quo Orders have been passed repeatedly by the Higher Courts.
- (iv) The Respondent has also filed a Misc. Application No. ACC (Hosp) 104 of 2018 under Rule 13(iv) of the Maharashtra Public Trusts Rules, 1951 (The Deputy or Assistant Charity Commissioner may correct clerical or accidental mistakes in any of the entries in the Register of Public Trusts) and the relevant provisions of the Maharashtra Public Trusts Act, 1950 before the Ld. Charity Commissioner for the same subject matter which is pending and due for hearing. The copies of the Electricity Bills and other utility bills are submitted before the Commissioner. The Application was filed with the leave of the Hon'ble Bombay High Court in Writ Petition No. 2275 of 2016. If the Ld. Charity Commissioner is pleased to allow the said Application, it would correct the error in entries relating to the Subject property that is there in the Schedule-I of the Commissioner which would in turn have the effect of final adjudication of transfer of ownership to Bhanumati M. Kabali. Hereto annexed and marked as **Exhibit-S** is the copy of the Application No. ACC (Hosp) 104 of 2018. . Hereto annexed and marked as **Exhibit-T** is the copy of the Order dated 1/10/2016.
- (v) The Complainant itself has relied upon the Application for Change of Name submitted to the BEST Undertaking before the Hon'ble Charity Commissioner in


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Application No. 207 of 2015 filed under Section 41E of the Maharashtra Public Trusts Act, 1950 and has prayed for an Order in that regard.

- (vi) **One more reason to reject the Representation is the false declaration that is made with ulterior motive by the Appellant, as under:.**

“The subject matter of the present representation has not been decided by any competent authority/court /arbitrator, and is not pending before any such authority/ court/ arbitrator.”

V. Additional grounds to reject the representation

- (i) The Complainant is not residing in the subject premises nor is concerned with the maintenance of the same. Bhanumati Kabali has been paying the bills from the last 7 years and has all the receipts for the same. He cannot be allowed to enjoy this undue benefit and take a contrary stand now. Even the tenants occupying have been paying their rents to Bhanumati.
- (ii) The Assessment records and the Water Department Bills of the Municipal Corporation of Greater Mumbai since several decades also show the name of Smt. Narayanbai Purshottam Kabali and Nathibai Purshottam Kabali, who was the mother of Mulraj Kabali (husband of Bhanumati).
- (iii) Bhanumati Kabali has also lodged a FIR against the Complainant in the Malabar Hill Police Station being FIR No. 131 of 2019. The Chargesheet is already filed in the matter and cognizance been taken by the Ld. Metropolitan Magistrate, Girgaon vide Police Case PW No. 94 of 2020 under Sections 341, 504, 506, 509, 34 IPC.
- (iv) The Trust is not filing accounts since the year 31.03.1991 and is defaulting even though a Notice has been sent by the Charity Commissioner, Public Trust Office. As per Section 31A read with Rule 16A of the Bombay Public Trusts Rules, 1951, the Budget shall be submitted by a Trustee of a Public Trust to the Charity Commissioner at least One Month before commencement of each Accounting Year.


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- (v) The property is in a dilapidated condition, and the M.B.R & R. Board under MHADA has sent notices to get it repaired or demolished. The tenants have also written to Bhanumati M. Kabali in the capacity of the owner to give permission to repair the building, as there is a serious risk of injury to life. Attached is a letter written by the tenants to the Undersigned seeking permission for repairs, and also complaining that the Complainant is creating problems in the maintenance work.
- (vi) It would be in the interest of natural justice that the name that is present from the last 7 years is not effaced, and the proceedings pending before various Courts are not frustrated. The Charity Commission has in its Order dated 23.3.2005 recorded the Bombay High Court Scheme and that the Ambamata Temple does not belong to the Complainant. The Appellant would be also be liable under the Contempt of Courts Act, 1971 if the status-quo orders of the Hon'ble Bombay High Court are not adhered to. One Contempt Petition is already pending against the Appellant.
- (vii) Keeping in view the above suits which are pending and due for final hearing in the Hon'ble Bombay High Court, Small Causes Court and the Learned Charity Commissioner, and the status-quo which is in force, the present representation should not be allowed and be rejected.

Analysis & Ruling

7. Heard the parties and perused the documents on record. The Appellant and Respondent No.1 were heard on the scheduled date of hearing, however, due to unavoidable circumstances, the Respondent No.2 was not able to attend the hearing. She was physically heard later on.

8. There is a building known as Chandra Bhuvan Building, situated at 15, Pandita Ramabai Road, Gamdevi, Mumbai 400007. On the ground floor of the said building a temple by name "Ambamata Mandir" is situated, and an electric connection is given by the Respondent No.1 under Consumer A/c No.881-707-051 which was in the name of the Appellant till the month of December 2015. However, in the month of December 2015, a change was effected in pursuance to a 'Change


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of Name' application dated 23.12.2015 bearing No.2584630 from Respondent No.2. Along with the said 'Change of Name' application, the Respondent No.2, Smt. Bhanumati Kabali submitted copies of documents, which include

- (i) Rent Receipt No. 182, dated 01.10.2015 in the name of Bhanumati Mulraj Kabali for ground floor, Ambamata Mandir
- (ii) Probate issued by the Hon'ble High Court Judicature at Bombay dated 03.07.2014 in Testamentary Petition No. 1339 of 2012, in respect of the Will dated 19.04.2008 of Mulraj Kabali.

In view of these documents, the Respondent No.1 changed the name of the consumer from the Appellant to Respondent No.2 with effect from December, 2015.

9. A brief history of the case is that the Appellant namely "Bai Tulsabai Devji Charity Trust" is registered as such with the Charity Commissioner of Mumbai under the Bombay Public Trust Act 1950. This trust was created by a registered Trust Deed dated 4th January 1923, executed by one Smt. Bai Tulsabai Deoji Shivdas who was the mother of Smt. Narayanibai alias Nathabai, who was the mother of Shri Mulraj Kabali. This means that the settler of the said Trust Deed, Smt. Bai Tulsabai Deoji Shivdas was the grandmother of Shri Mulraj Kabali. The said Mulraj Kabali was one of the trustees of the trust during his life time, and he expired on 14.12.2010, leaving behind him his son, Shri Prakash Kabali who is representing the Appellant in the instant Representation; his wife, the Respondent No. 2 Smt. Bhanumati Kabali, and his daughter, Smt. Kiran M. Raja, who is representing her mother, the Respondent No. 2. Shri Prakash Kabali is presently recognized by the Charity Commissioner as one of the trustees of the said Trust. The aforesaid property was given to the Trust by the Trust Deed dated 4th January 1923 which was executed by Smt. Bai Tulsabai Deoji Shivdas, and the Appellant claims that the property is owned by the Appellant Trust, and the Trust is registered under the provisions of Bombay Public Trust 1950. The extract of register of Public Trusts is produced by the Appellant as the proof that the said property is shown in that register of Trusts as property of the Appellant Trust. The suit bearing No. 713 of 2012 was filed by the Respondent No.2 against the Appellant claiming ownership over the said



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building and temple therein. The Hon'ble Bombay City Civil Court has dismissed that suit by passing judgment dated 27.10.2016, and has held that the present Respondent No.2 is not the owner of the said Trust Building i.e. Chandra Bhuvan Building, and in fact the present Appellant Trust is the owner of the building, wherein the said "Ambamata Mandir" is situated. It is submitted by the Appellant that even the Hon'ble Bombay High Court has held in First Appeal No. 31 of 2017 that the present Appellant Trust is the owner of the building. It is settled law that grant of probate is not conclusive proof of ownership; hence, the present Respondent No.2 cannot claim ownership on the basis of the probate granted in respect of the Will deed of the deceased Mulraj Kabali.

10. On the other hand, it is the case of the Respondent No.2 that the said property was removed from the category of property of Charity Trust as per the decree passed by the Hon'ble Bombay High Court in suit No. 74 of 1952. Therefore, the property cannot be treated as trust property of the complainant. After that decree, the said property became the private property of Shri Purshottam Kabali, and after his death it was inherited by Mulraj Kabali, who bequeathed it to the Respondent No.2 by executing a registered Will Deed, which has been probated by the Hon'ble High Court. Therefore, it is submitted by the Respondent No.2 that the said property is no more trust property but is now the private property of the Respondent No.2 by virtue of the above said decree of the Court & Will and probate issued by the Court. Regarding the dismissal of the Suit No. 713 of 2012 filed by the Respondent No.2 against the Appellant, claiming ownership over the said property i.e. 'Chandra Bhuvan Building' and temple therein, the Respondent No.2 has submitted that she has filed first appeal challenging the validity of that decree of the Hon'ble City Civil Court; therefore, it cannot be a decisive factor.

11. We have examined the contention of the Appellant that the decision of the Respondent No.1 to substitute the name of Respondent No.2 in place of the name of the Appellant Trust as consumer is illegal. In this regard, from the pleadings and documents produced by the parties, it is clear that the matter has been and is still under litigation. This is a clear case of a civil dispute


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regarding the ownership of the concerned property between the two parties, specifically between mother and son. In these circumstances, it would not be advisable for this forum to entertain either of these claims of ownership, and it would be in the interest of justice to maintain the status quo in respect of the name of the consumer on the electricity bill, and to leave it to the higher courts to decide the issue regarding ownership. The Respondent No. 2 has been paying the electricity bills for the last several years as the consumer, and there is no reason to disturb this situation. Without going into the detailed history of the dispute, suffice it to say that the matter is sub-judice before the Hon'ble High Court in pending First Appeal No. 31 of 2017, as to whether the said property continues to be Trust property as per the Trust Deed dated 4th January 1923 or not. In the circumstances, Respondent No. 1 would be well advised to wait for the final decision of the High Court before taking any further steps.


12. In view of the circumstances above, the Forum has rightly passed the order by giving liberty to the Appellant Trust to submit a fresh application for change of name if its rights to the property are accepted by the Hon'ble High Court in its decision of First Appeal No. 31 of 2017.

13. Regarding the issue as to when the cause of action arose, we do not find any merit in the Appellant's case that the cause of action continued right from 2015 to 2022 due to the inaction of the IGRC. If the IGRC was delaying its decision, the Appellant could have approached the Forum within two years, i.e., by 2018 or so.

14. At this stage, the instant Representation is time barred as per Regulation 7.8 of CGRF & EO Regulations 2020 which is quoted below:-

“ 7.8 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”

The cause of action started in 2015 and the Appellant approached the Forum only on 05.07.2022 which is beyond the two years' limitation period from the cause of action.


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15. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
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