

Before the  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
World Trade Centre, Centre No.1, 13<sup>th</sup> floor, Cuffe Parade, Mumbai 400 005.

**CASE Nos. 10 of 2002**

**In the matter of applications filed  
by (i) Indian Hotel & Restaurant Association (ii) Electricity Consumer Association,  
Mumbai, and (iii) Shri Vijaykumar M. Hirakhanwala  
in respect of recovery of security deposit by BEST Undertaking.**

**Shri P. Subrahmanyam, Chairman  
Shri Jayant Deo, Member  
Dr Pramod Deo, Member**

**ORDER**

**Dated: September 02, 2002**

The Commission had received an application on affidavit dated 5.4.2002 submitted jointly by (i) the Indian Hotel & Restaurant Association and (ii) Electricity Consumer Association, Mumbai, in the matter of recovery of excessive security deposit by BEST Undertaking, with a prayer that *“The BEST Undertaking may kindly be ordered and directed to recall and withdraw its circular / Notices of demanding Security Deposit aggregating to an amount equivalent to the three Bills of the consumers and said act on the part of BEST Undertaking may further be declared as illegal, bad in law and colorable exercise of their powers”*.

2. The main contention of the Applicant is briefly stated at Pp 1&2 of their application:

- (a) *It is accepted fact that at the time of installation of Meter and providing electricity supply itself the BEST undertaking collects the Security Deposit from the prospective consumers, therefore once the Security Deposit is already collected from the consumer then they cannot send notice or collect any further amount in the name of Security Deposit entirely at their own whims and sweet will.*
- (b) *The BEST Undertaking has recently issued notices to its various consumers and thereby has demanded further Security Deposit aggregating to an amount equivalent to the three bills, which absolutely, exorbitant and against the principle of natural justice.*
- (c) *It is pertinent to note that in the said demand notice they have not mentioned the reasons for a sudden recovery of such a Security Deposit and only has send a vague letter stating*

*that the Security Deposit which was earlier recovered from the consumer is not sufficient and straight away demanded exorbitant amount in the name of the Security Deposit.*

3. The Commission has also received another application dated 10<sup>th</sup> June 2002 from Shri Vijaykumar M. Hirakhanwala, 91, El-Cid, Ridge Road, Mumbai 400 006 on “Collection of Security Deposit from consumers by BEST Undertaking”. Since all the three applications are of similar nature, the Commission decided to hear them together, before admission.

4. The Commission, under Section 22(2)(e) of the Electricity Regulatory Commissions (ERC) Act, 1998 and other powers vested in it, invited parawise remarks of the Respondent in the matter, which was submitted under affidavits dated 15.5.2002, and 12.7.2002 respectively. The Applicants have again submitted their rejoinders, dated 4.7.2002, on the parawise remarks of the Respondent. The hearing, before admission, in the above-referred matter was held on 6<sup>th</sup> August 2002.

5. Shri Girish, representing the Applicants (i) Indian Hotel & Restaurant Association and (ii) Electricity Consumer Association, Mumbai, submitted that they have filed the applications in the matter of recovery of excessive security deposit by BEST Undertaking,

6. He submitted that the BEST Undertaking has recently issued notices to its various consumers demanding further Security Deposit aggregating to an amount equivalent to the three bills. This is absolutely exorbitant and against the principle of natural justice, since the Respondent has already collected the Security Deposit at the time of giving connection itself. Such notices have been given to all consumers whether they are defaulting consumers or regularly paying consumers.

7. He further submitted that the Honourable Commission vide its tariff order dated 10<sup>th</sup> January 2002 has directed the MSEB to reduce the amount of security deposit equivalent to one month or maximum of two months. The same principle may also be applied to the BEST consumers. The Applicant further submitted that in principle, the security deposit is collected as a security against likelihood of non-payment of the bills raised on the consumers, and not for generation of funds for working capital etc. Therefore, the BEST should not penalize the consumers who pay their bills very promptly, and should demand extra security deposit only from the defaulting consumers.

8. The Applicant at (iii) above Shri Vijaykumar M. Hirakhanwala,, further contested the argument of the BEST about the jurisdiction of the Honourable Commission to adjudicate the matter, he submitted that under Section 22(2)(e) of the ERC Act, 1998 the Honourable Commission has ample powers to regulate the working of the BEST or any other power generating or distributing authority to function properly and equitably. Further, Section 52 of the ERC Act 1998 has an overriding effect, thereby giving sufficient authority to the Commission, a quasi-judicial body to deal in such matters.

9. Shri Girish further stated that taking into consideration the market situations, globalization and liberalization of the economy, the present `Conditions of Supply` of the BEST are becoming obsolete and there is an urgent need to modify the same to suit the present condition. He submitted that instead of demanding cash payment for Security Deposit, the BEST can opt for accepting Bank Guarantee / Letter of Credit as in line with the practice of the MSEB. This will enable the entrepreneurs / industrialists to keep the much needed cash flow under control.

10. Shri Hirakhanwala, while agreeing with the above view points, contested the argument of the BEST that it is collecting the bills after 2-1/2 months of consumption, which is totally wrong because the monthly bills are payable within one month. Hence, on an average the bills outstanding would be around for 1-1/2 months only.

#### **Response from the BEST.**

11. The BEST in its parawise remarks dated 15<sup>th</sup> May 2002 submitted that:

Para 2 *“the matter of recovery of alleged excessive security deposit does not come within the purview of Section 22(2)(e) of the ERC Act. In the circumstances of this case, no cause of action has arisen for this Hon’ble Commission to regulate the working of the Licensees and other persons authorised or permitted to engage in the Electricity Industry in the State with a view to promote their working in an efficient, economical and equitable manner. In view thereof, the Respondent states that this Hon’ble Commission has no jurisdiction under Section 22(2)(e) of the ERC Act to decide the issue regarding alleged excessive security deposit from its consumers.”*

Para-3 *“The Respondent Undertaking is a department of the BMC which is a Local Authority. As such, the Local Authority is exempted from the purview of the Supply Act, 1948.”*

Para-4(v) *“The issue regarding the question whether a 3 months’ security deposit as demanded by the Respondents was permissible under the statute and whether the demand suffers from any constitutional infirmities, was a subject matter of litigation before the Hon’ble Supreme Court in the matter of M/s Devidayal Metal Industries Vs. Municipal Corporation of Greater Bombay.” [SC order dated 16.12.1993].*

12. During the hearing held on 6<sup>th</sup> August 2002, Smt Salvi, representing the Respondent, BEST, submitted that it is collecting the energy bills from the consumer after 2-1/2 months of actual consumption. She explained that normally (say for first month) one bill is issued on average consumption basis and the second bill (for next month) is issued after actual assessment with a clear notice of 15 days credit for payment. If the consumer, still fails to pay the bill, the third bill is issued with a warning for disconnection and finally, after the stipulated period of seven days under Section 24(1) of the I.E. Act, 1910, the supply is disconnected.

13. Regarding the Security Deposit, she further submitted that the BEST is not a generating company and it purchases the power from another source for which the licensee has to make payment in advance. Therefore, if a consumer fails to make the payment for the consumed energy, the BEST has no way to collect the charges and hence the security deposit is collected. She also referred to the Honourable Supreme Court Order in the matter of Devidayal Metal Industries, Bombay v/s Municipal Corporation of Greater Bombay [ref. page 37 of the judgement “Nature of Consumption Security Deposit” [1993-SU4)-SCC-0136 SC], [Appeal No.10385 of 1983] wherein the SC found no merit in the Appeal filed by the Company and dismissed the Appeal.

14. During the hearing the Commission enquired about “the fact of the case” to which Smt Salvi agreed for detailed submission. Thereafter, the BEST Undertaking submitted its written affidavit on 13<sup>th</sup> August 2002 stating, at para 2, that “*the procedure for accepting security deposits is laid down under Clause 15 of the Conditions of Supply. As already stated in our Written Statement, these Conditions of Supply have got statutory force having been approved by the State Government from time to time*”. It is further stated “the question regarding payment of Security Deposit had already been the subject matter of consideration before the State Government and the State Government after considering all the aspects of the matter, have approved the said clause which requires that all deposits must be made in Cash.”

15. She further submitted that Section 21(2) of the IE Act empowers the BEST to frame its own ‘Conditions of Supply’, which are approved by the State Government, thereby giving it statutory authority. The BEST issued notices only to those consumers whose monthly consumption is more than 3000 units. Total number of consumers to whom notice of collection of additional security deposit issued, is 5911 with a total amount of about Rs.88 crores and about 40% consumers have paid the amount.

16. The Security Deposit is collected only to safeguard the interest of the BEST, which is as per the Government's approval of the "Conditions of Supply" [point 15 at page 9 and point 11 at page 34]. Therefore, there is neither illegality nor arbitrary action in the whole issue. She further submitted that the BEST is covered under the I.E. Act 1910 and not covered, except for fixation of tariff, under E(S) Act 1948.

17. During the hearing the Commission observed that the BEST Balance Sheet should reflect the amount of security deposit collected, number of defaulters and the money yet to be collected from the defaulters, etc. The quality and quantity of information should satisfy the stakeholders. The Commission also invited attention of the Respondent to Section 58 of the E(S) Act, 1948 which implies that the BEST is also covered under this Act.

18. The Commission further commented that while the BEST is justified to collect Security Deposit within legal framework, yet it should justify the collection of Security Deposit, either for 1/2/3 months and should explore to opt for other options like accepting Bank Guarantee / Letter of Credit, by which they can ensure recovery of the bill amount.

19. The BEST Undertaking in its submission dated 13<sup>th</sup> August 2002 stated [refer para 2] that *"this [i.e. Security Deposit acceptance and allowing interest under clause 15 of the Conditions of Supply] being a statutory provision, the suggestion made by the Hon'ble Commission is not legally supported by Clause 15(b) of the Conditions of Supply and the same may therefore be dropped."*

20. The Commission further observed that the BEST should define the relevant meaning of the 'Security' which should be made applicable to provide security rather than administrative convenience of one utility / licensee / undertaking. Bank Guarantees can be accepted for large consumers, while the domestic consumers of less than 500 units consumption may not be included. The Commission further directed the BEST to submit its response whether it can accept two months average bill amount as Security Deposit through Bank Guarantee, on which the Respondent submitted that the BEST shall submit to what extent comply the directives of the Honourable Commission can be complied by 14<sup>th</sup> of August 2002.

21. Regarding the acceptance of Bank Guarantee towards Security Deposits, the Undertaking further submitted vide its affidavit dated 13<sup>th</sup> August 2002 that *"the BEST Undertaking is a local authority and is engaged in the business of distribution of electric supply to its consumers in the*

*Island City of Mumbai. The electric supply given to the consumers is paid for after a gap of approximately 2 to 2-1/2 months. The payment by the consumer is therefore a deferred payment and the consumers enjoys a credit facility for such period". It further stated "if the suggestions of the Hon'ble Chairman are accepted, the Undertaking will have to go through the lengthy administrative procedure of invoking the Bank Guarantee and thereafter pressing the consumer to furnish an additional security deposit to make up the short fall. ... This is not only expensive but the legal procedures being long drawn, there is every likelihood that the Undertaking may not be able to recover the payment for the actual units of electric supply used by the consumers. It is therefore submitted that the suggestion to take a part of the security deposit in the form of a Bank Guarantee, would not be in the financial interest of the Undertaking."*

22. The Commission observed that while the BEST is within its legal rights to collect the Security Deposit, as a consumer oriented organisation its endeavor should be to offer convenient options to its regular paying consumers with high level of energy bill per month.

23. With the above observation, the Commission does not see any merit in considering the applications under Section 22(2)(e) of the Electricity Regulatory Commissions Act, 1998.

24. The present applications are rejected. So ordered.

Sd/-  
(Jayant Deo)  
Member

Sd/-  
(Dr Pramod Deo)  
Member

Sd/-  
(P. Subrahmanyam)  
Chairman, MERC

Sd/-  
(Sanjay Kumar)  
Secretary, MERC