

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM**  
**B.E.S. & T. UNDERTAKING**

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,  
BEST's Colaba Depot  
Colaba, Mumbai - 400 001  
Telephone No. 22853561

**Representation No. N-GN-312-2016 dtd. 08/12/2016.**

Smt. Meher Shafi Kazi .....Complainant

V/S

B.E.S.&T. Undertaking .....Respondent

**Present**

Chairman

Quorum : Shri V. G. Indrale, Chairman

Member

1. Shri S.V. Fulpagare, Member
2. Shri S.M. Mohite, Member, CPO

On behalf of the Complainant : 1. Shri Shafi I. Kazi

On behalf of the Respondent : 1. Shri A.R. Tiwari, AECC(G/N)

Date of Hearing : 03/02/2017

Date of Order : 07/02/2017

**Judgment by Shri. Vinayak G. Indrale, Chairman**

Smt. Meher Shafi Kazi, Flat no. 3A, Silva Dwell CHS., 447, Pitamber Lane, Mahim West, Mumbai - 400 016 has come before the Forum for dispute regarding application of tariff pertaining to a/c no. 641-409-033\*5.

**Complainant has submitted in brief as under :**

The complainant has approached to IGR Cell on 29/09/2016 for dispute regarding application of tariff pertaining to a/c no. 641-409-033\*5. The complainant has approached to CGRF in schedule 'A' dtd. 05/12/2016 (received by CGRF on 06/12/2016) as the complainant was not satisfied by the remedy provided by the IGR Cell of Distribution Licensee on her grievance.

**Respondent, BEST Undertaking in its written statement  
in brief submitted as under :**

- 2.0 The complainant Smt. Meher Shafi Kazi has come before the Forum regarding dispute for change of tariff from commercial to residential pertaining to a/c no. 641-409-033.
- 3.0 Electric supply was given to the premises under reference through meter no. G781321 from 18/01/1979 in the name of Smt. Giloo D'Mello for residential purpose. This electric connection was transferred in the name of the complainant on 25/04/1986. The tariff of this a/c number has been changed to commercial from February 2008.
- 4.0 The consumer vide his letters dtd. 01/07/2015, 09/10/2015, 19/01/2016 & 20/02/2016 has applied for change of tariff form commercial to residential. The consumer had stated that the premises is used by her husband for advocate office purpose and it was confirmed by carrying out inspection on 14/07/2015 that supply to entire premises was being used for advocate office and there was no residential activity carried out. Same was informed to the complainant vide letter No DECCGN/71600200B/2016 dated 13/05/2016 mentioning that the commercial tariff is applied to the premises as per tariff schedule approved by MERC. Same letter was acknowledged by the complainant.

**REASONS**

- 5.0 We have heard the arguments of Shri Shafi Kazi representative of the complainant and for the Respondent BEST Undertaking Shri A.R. Tiwari, AECC(G/N). Perused plethora of documents filed by the complainant along with Schedule 'A' and written submission filed by the Respondent BEST Undertaking along with documents marked at Exhibit 'A' to 'D'.
- 6.0 After hearing of arguments of both sides the only point that revolve for consideration is as to whether the premises exclusively used for profession of an Advocate can be charged commercial / non-domestic tariff as per tariff booklet approved by MERC in exercise of the powers vested in it u/s 61 & 62 of E.A., 2003.

- 7.0 The representative of the complainant has submitted that the complainant's husband is running profession of an Advocate in the premises for which electricity is provided by the Respondent BEST Undertaking and it is not commercial activity, therefore action of the Respondent BEST Undertaking charging tariff since February 2008 from LT-I (Residential) to LT-II (Commercial / Non-domestic) is illegal and required to be set aside.
- 8.0 The Respondent BEST Undertaking has submitted that it is not the case of the complainant that she is residing in the part of the premises and in some part of the premises her husband is doing the profession of an Advocate, therefore the complainant is liable to pay electricity charges as per commercial tariff as the husband of the complainant used the said premises exclusively as office for his profession as an Advocate / Legal Consultant for last 24 years, so their action of charging tariff from LT-I to LT-II is within an ambit of tariff booklet approved by MERC.
- 9.0 The representative of the complainant has further submitted that running a profession of an Advocate is not liable to be treated / termed as commercial establishment / activity within ambit of provision of Bombay Shop and Establishment Act, 1948, therefore not liable to pay tariff as per LT-II. The Respondent BEST Undertaking has submitted that as per EDP, CIS placed at pg. 23/C, the tariff was charged commercial from February 2008 and the complainant has made the complaint for the first time on 01/07/2015 and therefore the complaint is barred by limitation as per cl. 6.7 of MERC (CGRF & EO) Regulation, 2006. The complaint is required to be filed within two years from the date on which cause of action arose. We find some force in the submission but it appears that the complainant is having recurring cause of action so the complaint is maintainable.
- 10.0 The complainant in support of his contention has relied upon the following rulings.
- i) **2015(II) CLR 184 (Bombay High Court) Kavita Tilwani v/s State of Maharashtra.**
  - ii) **AIR 1969 SC 63 Dr. Devendra M. Surti v/s State of Gujrat.**
  - iii) **1985 (ii) LLJ 24 (Bombay High Court) Narendra Fuladi and Another v/s State of Maharashtra.**

We have cautiously gone through above case law at sr. no. 1 in which point involved so as to whether profession of an Advocate, CA, Doctors can be termed as commercial activities established within the meaning of Bombay Shops and Establishments Act, 1948. In this case law, it has been held that profession of Doctor, Advocate, CA cannot be termed as commercial activities and therefore amendment carried out in section 2(4) of said act incorporating Medical Practitioner and Legal Practitioner within definition of commercial establishment will have to be struck out since Doctor do not come under purview of said expression.

The case law cited at sr. no. 2, it has been held that word “Commercial Establishment” in section 2(4) interpretation of -- profession carried on by individual by his personal skill and intelligence -- when can fall under u/s 2(4) -- Test -- is private dispensary of Doctor is not commercial establishment.

In case law cited at sr. no. 3, the Hon’ble High Court held that Legal Practitioner is not commercial establishment within ambit of section 2(4) of Bombay Shops and Establishments Act, 1948.

- 11.0 The ratio laid down in above said case laws are not at all applicable to the instant case as point involved in this case is use of electricity for domestic and non-domestic purpose. The ratio laid in the above said three rulings, it has been held that the profession of Medical Practitioner, Legal Practitioner and CA cannot be termed as commercial establishment u/s 2(4) of the Bombay Shops & Establishments Act, 1948. The said ratio is not applicable to this case as here we have to see for the purpose for which the electricity has been used. The Respondent BEST Undertaking in support of their contention has relied upon judgment of High Court in **W.P. 6891/2010 Rajendra G. Shah v/s MSEDCL**; decided on 04/08/2011, in which it has been held that the use of any premises exclusively for an office of Lawyer, Doctor and CA cannot be regarded as domestic use. In this case law it has been observed that the user of the premises by Doctor, Lawyer and CA in the facts and circumstances as they existed today, though cannot be regarded as commercial use, is certainly not a domestic use and it is non-domestic use and therefore the tariff payable for electricity power consumed would be as applicable for non-domestic user. The case of the complainant, does not cover under note I LT-I (i) : LT - Residential which runs as under.

This category is applicable for electricity used at low / Medium Voltage for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing / cleaning, entertainment/leisure, water pumping in the following premises :

- a)     xxx     xxx     xxx
- b)     xxx     xxx     xxx
- c)     xxx     xxx     xxx
- d)     xxx     xxx     xxx
- e)     xxx     xxx     xxx
- f)     xxx     xxx     xxx
- g)     xxx     xxx     xxx
- h)     xxx     xxx     xxx

i)     *Residential premises used by professionals like Lawyers, Doctors, Engineers, CAs etc. in furtherance of their professional activities, but not including Nursing Homes or Surgical Wards or hospitals.*

- j)     xxx     xxx     xxx

- k)     xxx     xxx     xxx  
l)     xxx     xxx     xxx  
m)     xxx     xxx     xxx

- 12.0 It is not the case of the complainant that they are using some part of the premises as residence and some part as profession for an Advocate. In view of ratio laid down in Rajendra G. Shah case of our High Court action of the Respondent BEST Undertaking applying LT-II tariff to the premises of the complainant is justifiable and legal. In this case law decree for permanent injunction was granted in favour of plaintiff restraining MSEB from charging tariff applicable for commercial use that decree was confirmed by first Appellate Court. In that case decree holder / plaintiff filed execution petition against the MSEDCL, MSEDCL filed objection u/s 47 of CPC and Trial Court held that decree is un-executable. The said order has been challenged in the W.P. and the Hon'ble High Court dismissed the writ and confirmed the order passed by the Trial Court. The ratio laid down in the case law is squarely applicable to the instant case.
- 13.0 Having regard to the above said discussion we do not find any substance in the complaint so we propose to dismiss the complaint, thus in result we pass the following order.

**ORDER**

1. The complaint no.N-GN-312-2016 dtd. 08/12/2016 stands dismissed.
2. Copies of this order be given to both the parties.

(Shri S.V. Fulpagare)  
Member

(Shri S.M. Mohite)  
Member

(Shri V.G. Indrale)  
Chairman