

		Date	Month	Year
1	Date of Receipt	27	04	2021
2	Date of Registration	29	04	2021
3	Decided on	28	09	2021
4	Duration of proceeding	152 days		
5	Delay, if any.	92		

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. 22799528

Grievance No. S-C-429-2021 dtd. 29/04/2021

S.M. Merchant and M.T. Merchant

.....Complainant

V/S

B.E.S.&T. Undertaking

.....Respondent

Present

Chairman

Coram :

Shri S.A. Quazi, Chairman

Member

1. Smt. Anagha A. Acharekar, Independent Member
2. Shri S.S. Bansode, Technical Member

On behalf of the Respondent (1) : 1. Shri Inchnalkar

On behalf of the Complainant : 1. Shri Raj Merchant

Date of Hearing : 15/09/2021

Date of Order : 28/09/2021

Judgment

- 1.0 This complaint was received on 27/04/2020 and registered on 29/04/2020 in the office of the Forum. However, due to pandemic of Covid-19, lockdown was declared by the Government from 23/03/2021 onwards and it was extended from time to time and subsequently the guidelines were issued by MERC in that respect. The consumer was not ready for hearing through Video Conferencing. For these reasons, the matter could not be heard for long period. After relaxation of lockdown, the matter was fixed for hearing physically on 15/09/2021. Accordingly, the matter was heard on 15/09/2021 and now the judgment is being given. For these reasons the matter could not be decided within the time prescribed by the Regulations. Therefore, the delay of 92 days has occurred in deciding this complaint.
- 2.0 The grievance mentioned in this complaint application before this Forum is about change of tariff from LT(I)-B to LT(IV)-B. The complaint application is filed by mentioning the complainants name as S.M. Merchant and M.T. Merchant in the prescribed format of complaint/application of Schedule 'A' and only they have signed the Schedule 'A' application. However, in a separate sheet annexed in response to the Col. 5 of Schedule 'A' about details of the complaint, there are five other complainants mentioned therein with their respective consumer account numbers (viz consumer a/c nos. 343-215-002, 343-215-039, 343-215-006, 343-215-023 & 343-215-004) along with the aforesaid two complainants mentioned in Schedule 'A' viz S.M. Merchant and M.T. Merchant. It appears from perusal of this separate sheet that there is a building called Shirin Manzil comprising of ground plus fourth floor. The premises of the complainants S.M. Merchant and M.T. Merchant who are mentioned as complainants/applicants in Schedule 'A'/application are pertaining to consumer a/c no. 343-215-025. It appears from electric bill of this a/c No. 343-215-025 that premises of this account-connection is situated at first floor of the said building Shirin Manzil and the complainants S.M. Merchant and M.T. Merchant are it's registered consumers. There are other electric connections given on different floors and premises of this building. The above said other five consumer a/c nos. 343-215-002, 343-215-039, 343-215-006, 343-215-023 & 343-215-004 are amongst them, but they are not mentioned in the annexure "A" application as complainants or the persons having grievance nor have they signed the annexure 'A' application. Therefore, we are not treating this grievance application as having been filed by the holders of the aforesaid five a/c 343-215-002, 343-215-039, 343-215-006, 343-215-023 & 343-215-004 which are situated on ground floor, 2nd floor & 3rd floor. We are treating this grievance / complaint/ application as having been filed by the holders of a/c no. 343-215-025 only i.e. S.M. Merchant and M.T. Merchant. Therefore, whatever observations and findings are being recorded in this judgment, they are pertaining to only the complainants S.M. Merchant and M.T. Merchant and in respect of their a/c no. 343-215-025 only. In other words, this judgment is deciding the grievance pertaining to a/c no. 343-215-025 only and not pertaining to other accounts mentioned above.

3.0 The case of the complainants may be stated as under :

- a) The consumers of a/c no. 343-215-025 submit that they along with other five consumers / account holders are occupiers / owners / landlords of the said building namely Shirin Manzil, which is comprising of ground floor + four floors. They have been given electric connection for domestic use i.e. tariff category LT-I(B). They have received a letter of change of tariff from LT-I(B) to LT-IV(B) and these letters are dtd. 21/10/2020. The electric charges of LT-I (B) are lower rates than the charges pertaining to LT-IV(B) and therefore the complainants have got grievance about such change in the tariff. The Respondent / Licensee has alleged in these letters that the premises is given to the Students and Working Men / Women Hostels and therefore the law regarding rates of electric charges applicable to LT-IV (B) category user is applicable to the case of the complainants.
- b) However, the complainant's contention is that they have given the premises on Leave & License basis and there exists Leave & Licenses agreement to this effect between the landlord and licensee for continuous period of 11 months or more as per Section 24 of Maharashtra Rent Control Act, 1999. This is observed even by the IGRC of Respondent in its order dtd. 05/03/2019 that the premises is given on Leave & License basis for continuously longer period and not for shorter period of a day or two. However, according to the complainant, despite such recent findings of respondent's IGRC and contrary to such findings, now the Respondent is holding the complainant's premises under the category of accommodation to "All Student or Working Men /Women's Hostels". It is submitted by the complainant that the Respondent has no evidence or reason to hold so.
- c) The complainant's application further contends that the medical officer of health department of MCGM had on various occasions inspected and found that the premises is used for residential purpose as per Leave & License Agreement and there exists no sign of running guest house in the premises. Similarly, the other authorities of police and fire brigade etc. have observed that the premises is not used as guest house or hostel for accommodation of persons of various categories for temporary or shorter period.
- e) For all the aforesaid reasons, the complainants have requested to set aside the Respondent's order dtd. 21/10/2020 pertaining to their a/c no. 343-215-025 and premises about conversion of the tariff category from residential to commercial i.e. from LT-I (B) to LT-IV (B). The complainant has requested that the Respondent be directed to treat the complainants within the category of domestic user to whom LT-I (B) tariff is applicable.

4.0 The Respondent / Licensee has opposed the above case of the complainant. Their case may be stated as under:

- a) The complainant was given electric connection by the Respondent under the category of domestic user and accordingly the electric charges were imposed on lesser rates. However, it was found that the complainants did not use this connection for their own private domestic use, but they run guest house in the premises in question by giving accommodation to the students or working men / women. This was found during the visits of officials of the Respondent on various occasions. Moreover, the officials of MCGM also found during their visits from time to time that the complainant is running guest house in the premises without license of Municipal Corporation Greater Mumbai (for short MCGM) and in contravention of the provisions of Mumbai Municipal Corporation Act (for short MMC Act) and, therefore, they have filed complaint in Magistrate's Court alleging that complainants have thereby committed the offence punishable under the MMC Act. The authorities of the MCGM have also assessed the premises of the complainant for taxes on commercial use basis. On all these facts, the Respondent had imposed penalty u/s 126 of Electricity Act, 2003 against the complainants for misusing the domestic electric connection for commercial use by running the guest house in the premises. However, the complainant had challenged the said action of the Respondent before higher authorities and IGRC of the Respondent. The said authorities of the Respondent/Distribution-Licensee, ultimately held that the complainants run hostel for students or working men / women, but as this category of user fell under LT-I (B) residential category, the above action of the Respondent/licensee about imposition of penalty for misusing domestic category connection for commercial uses, was held to be not correct. In view of this, the IGRC of the Respondent/Licensee had set aside the order of conversion of tariff pertaining to the complainant's account from residential to commercial user. The Respondent has referred to the order dtd. 05/03/2019 of IGRC in this regard and has also produced copy thereof.
- b) The further case of the Respondent is that the said order passed by IGRC on 05/03/2019 was based on tariff order of MERC issued vide case no. 203 of 2016 for being applicable for the period up to 31/03/2020. The said tariff order of MERC is applicable only up to 31/03/2020 and not for the subsequent period. For the subsequent period, now the MERC has issued fresh tariff order dtd. 30/03/2020 for the tariff period effective from 01/04/2020 to 31/03/2025 vide case no. 324 of 2019. Under this order dtd. 30/03/2020 of MERC now the consumer's category of "All Student or Working Men / Women's hostel" is changed from residential category under LT-I (B) to commercial category i.e. LT-IV (B) under the head of "Public Service" and this is w.e.f. 01/04/2020 and valid upto 31/03/2025. According to the respondent, the complainant runs guest house/hostel by giving premises to students and Working Men / Women. This was also held by the IGRC in the earlier proceeding vide their order dtd. 05/03/2019, referred to herein earlier. Therefore, now under the new tariff order of the MERC, the complainant is liable to pay the electric charges on the rates as applicable to LT-IV (B) category of consumers. In view of this, the Respondent has passed the order dtd. 21/10/2020 for converting the consumer-category of the

complainant from LT-I (B) to LT-IV (B) in respect of the premises used in the aforesaid building called Shirin Manzil.

c) For all the above said reasons the Respondent has urged to dismiss the complaint.

5.0 We have heard the submissions of the representatives of the parties. Their respective submissions may be stated as under:

a) The representative of the complainant has submitted that the Respondent has no evidence or documents or record in support of their case that the complainant runs hostel or guest house by giving the premises to the Students or Working Men / Women. It is submitted that the Respondent has wrongly relied on proceedings of officials of the Municipal Corporation who allegedly observed that the premises is used by the complainant to run guest house for Students or Working Men / Women and therefore the premises is used for commercial purpose etc. The complainant submits that the Municipal Corporation's Medical Officer has number of times reported that there is no evidence to hold that the premises is being used as guest house. The officials did not find at any time any register being maintained in the premises for recording visits or stay of alleged temporary guests or any cash counter existing there to collect daily charges from the visitors. The complainant's representative has further submitted that the Respondent has also wrongly relied on earlier proceedings of the Respondent/ licensee and their authorities regarding the change of tariff. The representative of the complainant has submitted that the observation of IGRC about complainant giving the premises to Students or Working Men / Women is interpreted by the Respondent on wrong footings. The IGRC has not made any observation to mean that the premises is used for running guest-house or hostel by giving it to persons for stay of short period of a day or two. The representative of the complainant submits that there is no material produced by the Distribution Licensee which can be treated as cogent or conclusive evidence to hold that the premises is used as hostel or guest house for temporary stay of customers. The case of the Respondent in this regard is based only on inspection reports of their officials which is not supported by any document or record or evidence. Merely the report of the inspecting officer does not prove that the premises is used as guest house or hostel. It is submitted that the premises is given by the complainant on Leave & License basis for continuous and longer period than period of 1-2 days. It is also submitted that the premises given on Leave & License basis for longer period and not merely for a period of 1-2 days stay, cannot be treated as guest house or hostel. In support of these submissions, the representative of the complainant has placed reliance on the observations made in the following decisions:

- i) Prof. Ram Prakash v/s BSES Rajdhani Power Ltd. W.P. (C) No. 10821/2009
- ii) N.D.M.C. v/s Sohan Lal Sachdev - SCALE 492, (2000) 2 SC
- iii) MCGM v/s Mafatlal Industries And Others - AIR 1996 SC 1541

In the case of Prof. Ram Prakash v/s BSES Rajdhani Power Ltd. (supra), Hon'ble Delhi High Court has observed that letting out the premises on month to month tenancy is not commercial use under the provisions of tariff rules and regulations which are in force in the state of Delhi. This was observed so while holding that the Distribution Licensee had not given opportunity of hearing to the consumer before imposing penalty for misuse of domestic electric connection for commercial use and ultimately the matter was remanded back to the Distribution Licensee for fresh decision. In the case of N.D.M.C. v/s Sohan Lal Sachdev (supra), the Hon'ble Supreme Court was dealing with a question as to whether use of premises for the purpose of guest house can be termed as domestic use for the purpose of electric charges. The Hon'ble Supreme Court answered this question in negative in the facts of the said case. The Hon'ble Supreme Court also referred to its earlier decision given in the case of MCGM v/s Mafatlal Industries and others in respect of the interpretation of the expression "exclusively used as a private residential purpose" as used in the Bombay Electricity Duty Act, 1958. The observations were to the effect that the said expression means the premises which is used by any person privately for his own residence for sufficient continuous period and not a premises where a person came and spent a day or night and then go back. The third decision relied upon by the representative of the complainant is in the same case of MCGM v/s Mafatlal Ind. as referred above in which the interpretation to the aforesaid expression "exclusively used as private residential purpose" was laid down as noted herein earlier.

- b) On the other hand, the representative of the Respondent has submitted that the MCGM officials have visited the premises of the complainant on number of times and found that it was used for running guest house and hostel to give accommodation to Students or Working Men / Women. Based on these officials' reports, the MCGM has filed complaint to the Magisterial Court alleging that by running guest house in the said premises without registering the same with MCGM, the complainant has contravened the provision of MMC Act and thus has committed offence punishable under the said Act. The representative of the Respondent has submitted that such complaint is pending before the Magisterial Court and it is yet to be finally decided. Moreover, the MCGM has assessed that premises of the complainant for tax on commercial basis as it is used for commercial purpose of running guest house or hostel. The representative of the Respondent has also submitted that the officials of the Respondent/distribution-licensee have also visited the premises on number of occasions and found that the premises was used as guest house by giving beds lying in the premises to the Student or Working Men / Women. Therefore, the Respondent had earlier imposed penalty on the complainant u/s 126 of E.A. 2003 for misuse of domestic connection into the commercial category. However, the complainant had challenged the said action before IGRC and other higher authorities of the respondent. By the order dtd. 05/03/2019, IGRC has held that as letting out of the premises to the Students or Working Men / Women does not come under the commercial category of tariff under the MERC directions then applicable, hence the said action of conversion of the connection or imposing of penalty was set aside by IGRC. The representative of the Respondent submits that now after the said order of IGRC dtd. 05/03/2019, the

MERC has issued fresh directions about tariff w.e.f. 01/04/2020 to 31/03/2025 which provides that the letting of premises to Students or Working Men / Women comes under the commercial category and not under the domestic category. In the earlier proceeding before IGRC, the complainant had admitted that the premises is used as hostel for Students or Working Men / Women. Therefore, now the complainant cannot deny that fact. In view of this, the representative of the Respondent has submitted that the complainant is liable to be charged with electricity charges as commercial category consumer. Hence, the action taken by the Respondent for converting the user from residential to commercial cannot be found illegal. Hence the Respondent has submitted that the complaint is liable to be dismissed.

6.0 Considering the rival contentions of the parties the following **points arise for determination**, on which we record our findings as under, for the reasons to follow.

Sr. No.	Points for determination	Findings
1	Whether the complainant's premises is used as guest house or hostel for Students or Working Men / Women as alleged by the Respondent ?	In affirmative
2	Whether the above said user of the electric connection given to the complainant's premises falls under the category of commercial consumer within the meaning of the provisions of MERC directions / order dtd. 30/03/2020 in case no. 324 of 2019 for the period w.e.f. 01/04/2020 to 31/03/2025 ?	In affirmative
3	Whether the action of the Respondent to convert the electric connection given to the premises of the complainants from domestic user i.e. LT-I (B) category to commercial user i.e. LT-IV (B) category by the letter dtd. 21/10/2020 is correct and legal?	In affirmative
4	What order should be passed?	Complaint is dismissed

7.0 We record reasons for aforesaid findings as under:

- a) From the pleadings and contentions as well as the documents produced by the parties, we find that the contention of the complainant in the complaint is that the Respondent has passed an order dtd. 21/10/2020 and thereby the Respondent has allegedly changed the category of tariff, pertaining to the complainants, from residential to commercial category. Whatever orders have been produced by the complainants along with the complaint are in respect of consumer a/c nos. 343-215-023, 343-215-035, 343-215-039 & 338-073-158. These four accounts are (1)

pertaining to the premises situated at 3rd floor belonging to Rubina M. & R.M. Merchant, (2) pertaining to the premises situated at 2nd floor and belonging to Mohamad ali Taher, (3) pertaining to the premises situated at 3rd floor to and belonging to M.T. & S.M. Merchant, (4) pertaining to the premises situated at 3rd floor and belonging to Raj Merchant. All these four orders as produced by the complainant are dtd. 21/10/2020 under which the Respondent has changed the residential tariff category of these accounts to the commercial tariff category with immediate effect from the aforesaid order dtd. 21/10/2020. However, the present complaint is not treated as the complaint pertaining to any of these four accounts, for the reasons mentioned herein earlier. This complaint is treated to be a complaint in respect of only consumer-a/c no. 343-215-025, the electric bill pertaining to which shows that this premises is situated on the 1st floor of the aforesaid building called Shirin Manzil and it is belonging to S.M. Merchant and M.T. Merchant who are named as complainants in the complaint application under Schedule 'A' filed before this Forum.

- b) As far as point (1) is concerned, it may be noted that the Respondent is relying on the reports of its officials and also the earlier proceedings before the IGRC and also the reports of MCGM officials and their proceedings as noted herein earlier. The Respondent has filed documents in this regard and on the basis of these documents it can be said that the MCGM officials have been visiting the premises called Shirin Manzil in which the premises of the complainants pertaining to a/c no. 343-215-025 is situated. All these documents provided by the Respondent show that the officials have reported that the premises is used in the said building for running the hostel or guest house to accommodate Students or Work Men / Women. The officials of two departments i.e. department of the Respondent/distribution-licensee as well as the department of MCGM have consistently observed and held that the premises is used to accommodate Students or Work Men / Women with an intention to run hostel or guest house.
- c) No doubt, the medical officer of the MCGM has given certain report, on which the complainant has placed reliance, to the effect that there was no evidence of existence of hostel or guest house. However, such report of medical officer cannot be preferred over the other officials of the MCGM and the Respondent, who have from time to time visited the premises and have given report that the premises is used to accommodate Students or Working Men / Women so as to run hostel or guest house. Moreover, the visits of medical officer could have been only with view to see whether hygienic conditions are maintained properly or not. Medical officer's visits to the premises could not have been from the point of view of applicability of rules of taxes and revenue collection, but such points could have been in the minds of other officials of MCGM and the officials of the Distribution licensee as part of their jobs and duties. Therefore, in absence of other material supporting the above findings of medical officer that guest house or hostel is not run in the premises in question, the said findings of medical officer cannot be given preference over the aforesaid findings of the other officials of MCGM and the officials of the Distribution-licensee that the premises is used to accommodate Students and Working Men / Women so as to run hostel or guest house.

From these documents on record, prima-facie it appears that the premises in question is used as hostel.

- d) To rebut this inference, which is required to be drawn in view of the aforesaid reasons and from the aforesaid documents and record, the complainants have contended that they have given their premises on Leave & License Agreement to Students and Working Men / Women on temporary basis but for longer period of more than 10 months or 11 months. The representative of the complainant has pointed out three documents of agreements of leave and license filed with their complaint. On perusal of these documents, we find that the first one is the agreement of leave and license between Merchant Mohammedali Taherbhai on one part as licensor and three persons by name Singh Rajababu Pancham, Pardawala Hussain & Anil Kumar, on the other part as licensees. This agreement of Leave & License is registered and it is for the tenure of (11) months i.e. from 01/11/2020 to 30/09/2021. However, the schedule of property mentioned in this agreement describes the premises given under this agreement as being situated at 2nd floor of Shirin Manzil building. It means that this agreement is not pertaining to the consumer a/c no. 343-215-025, which is situated on the 1st floor of the building as per electricity bill pertaining to this account, with which alone this complaint is concerned. Therefore, this Leave & License is not relevant for the purpose of instant complaint which is only in respect of a/c no. 343-215-025. The second agreement for Leave & License is between Merchant Mohammedali Taherbhai on one part as licensor and three persons by name Tawse Jyotiram Govind, Jadhav Praneel, Senjit Shelar, on the other part as licensees. This agreement of Leave & License is also registered and it is for the tenure of (11) months i.e. from 01/11/2020 to 30/09/2021. In the schedule of property mentioned in this agreement, the premises let out under it is situated on 2nd floor. Again, this is not pertaining to the a/c no. 343-215-025, relevant to the instant complaint. The 3rd Leave & License agreement produced by the complainant is between Merchant Mohammedali Taherbhai on one part as licensor and four persons by name Chavan Mukund Madhukar, Chandel Surendra, Porwal Mohan, Singh Rahul Kumar, on the other part as licensees. In this 3rd Leave & License Agreement the premises which is let out under this agreement is described in the schedule of property as situated at ground floor in the said building. Again, this agreement does not appear to be pertaining to a/c no. 343-215-025 and therefore, it is not relevant to the instant case. Thus, there is no Leave & License Agreement produced by the complainants in respect of the premises situated on first floor and to which the connection of consumer a/c No. 343-215-025 given and about which, this complaint is filed. The premises pertaining to aforesaid a/c no. 343-215-025 is situated on 1st floor of the Shirin Manzil building. We do not find any document of agreement of leave and license on record before us to hold that first floor premises of a/c No.343-215-025 is given on Leave & License for longer period of months together, as contended by the representative of the complainants. In absence of such document of leave and license agreement, the inference, that is drawn on the basis of the documents of various reports of the MCGM officials and of the officials of Distribution licensee, would prevail. Considering these circumstances, we hold that the premises situated on 1st floor, in which the electricity connection is given under the a/c no. 343-215-025, is used as hostel or guest house for

accommodating Students and Working Men / Women on temporary basis. Hence, the observations made in the aforesaid decisions, as relied upon by the representative of the complainant, are not helpful to the complainants to contend that the premises is not used as hostel or guest house for accommodating people for short time period and therefore its user does not fall within the category of commercial user. For all these reasons, we have recorded our finding at point (1) in affirmative.

- e) As far as point (2) is concerned, we hold that the MERC has issued tariff order dtd. 30/03/2020 for the period from 01/04/2020 to 31/03/2025. In this tariff order, it has been laid down that the premises used as guest-house or hostel for Students or Working Men/Women, shall be treated as falling under commercial LT-IV (B) category. In view of such provisions in the said MERC Tariff order, the Respondent has rightly changed the category of the complainant in respect of a/c no. 343-215-025 w.e.f. 01/04/2020 from LT-I B/domestic-residential to commercial/LT-IV (B) category under the provisions new tariff order. Therefore, we have recorded findings on point (2) & (3) in affirmative. In view of the affirmative findings recorded by us on point (1), (2) & (3) as above, the complaint will have to be dismissed and accordingly we have answered point (4). Hence, we pass the following order.

ORDER

- 1.0 The grievance no. S-C-429-2021 dtd. 29/04/2021 stands dismissed.
- 2.0 Copies of this order be given to all the concerned parties.

Sd/-
(Shri. S.S. Bansode)
Technical Member

Sd/-
(Smt. Anagha A. Acharekar)
Independent Member

Sd/-
(Shri S.A. Quazi)
Chairman