

		Date	Month	Year
1	Date of Receipt	30	09	2022
2	Date of Registration	30	09	2022
3	Decided on	29	11	2022
4	Duration of proceeding	60 days		
5	Delay, if any.	—		

**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-467-2022 dtd. 30/09/2022**

- 1) Mohammed Ali T. Rassiwala Merchant  
2) Shamim Merchant .....Complainants

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 V.K. Ade

On behalf of the Complainant : 1. Shri Raj Merchant

Date of Hearing : 18/11/2022

Date of Order : 29/11/2022



*(Signature)*  
(Mr. V.K. Ade)  
Secretary  
CGRF, BEST

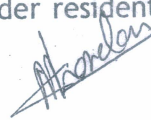
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### Judgment

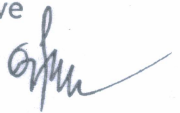
- 1.0 The grievance mentioned in this complaint application before this Forum is about two notices dtd. 01.08.2022, giving intimation of change of tariff from LT (I)-B to LT(IV)-B about the two electric connections given to the two premises, namely (1) premises, situated at 1, floor-3 plot -42/44 Rassiwala building Marine 2<sup>nd</sup> street Dhobi Talao Kalbadevi Mumbai 4000002) under consumer No. 335-257-041 and (2) premises, situated at 19 floor -3, plot 42/44, Rassiwala Building, Marine 2<sup>nd</sup> Street, Gol Masjid Dhobi Talao, Kalbadevi, Mumbai-400002, under consumer No. 335-257-005 as described in the electric bill.
- 2.0 The case of the complainant may be stated as under:
- a) Complainant No. 1 is husband of complainant No. 2. The complainant No.1/ Mohammed Ali T. Rassiwala Merchant is consumer of electric connection under consumer No. 335-257-041, given to the premises, situated at Room No. 17, and the complainant No.2/Shamim Merchant is consumer of electric connection, under consumer No. 335-257-005, given to the premises, situated at Room No. 19, both premises situated at 3<sup>rd</sup> Floor, Rassiwala Building, Marine 2<sup>nd</sup> Street, Gol Masjid Dhobi Talao, Kalbadevi, Mumbai - 400002.
- b) They submit that the registered consumer of electric connection under consumer No. 335-257-041, given to the premises, situated at Room No. 17, was one Sir Leo Martin, who has expired long back and his legal heirs have surrendered the tenancy to the complainant No.1 being landlord and the present consumer is the complainant No.1 in respect of that premises from 16<sup>th</sup> Feb. 2021. The complainants have further submitted that the registered consumer of electric connection under consumer No. 335-257-005, given to the premises, situated at Room No. 19, complainant No. 1's uncle, Yousuf Ali Bharmal, who has expired and after his death complainant No.2 is now lawful tenant of that premises and thus she is the present consumer of electric connection of this premises.
- c) The Complainants have been given electric connection for Residential use i.e. tariff category LT-I(B). Their son has given these premises on leave and license under the provisions of Rent Control Act. One Mr. James D'cousta has given false complaint about change of user of the premises. To enquire about it the medical officer of C-Ward of Mumbai Municipal Corporation of Greater Mumbai (MCGM) had visited the site/premises and he has mentioned in his inspection report that "the site was visited and inspected on dated 03/06/2022 at 32-34/42-44, Rassiwala building and found 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> floor residential and on 4<sup>th</sup> floor 2 girl is staying on leave and license basis. No lodging and boarding activity found. Rented flats/rooms does not come under lodging activity u/s. 394 of MMC Act." The complainants have produced copy of the said inspection report dt. 17.5.2022. It is submitted that as per the building and property taxation assessment record also the premises falls under residential tariff. They have



  
(Milind Karanjkar)  
Secretary  
CGRF BEST



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produced copy of detail annexure of property and assessment taxation mentioning the same.

- d) For all the aforesaid reasons, the complainants have requested to set aside the Respondent's order/notice dtd. 01/08/2022 issued by the Respondent u/s 126 of the Electricity Act 2003 pertaining to both the aforesaid accounts regarding conversion of the tariff category from residential to Public Service i.e. from LT-I (B) to LT-IV (B). The complainant has requested that the Respondent be directed to treat the complaint within the category of Residential user to whom LT-I (B) tariff is applicable.

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

- a) As regards the registered consumers being other than the present complainants is concerned, the respondent has submitted that till date the complainant No.1 has not got change of name of consumer in his favor. The complainant No.2 had applied and got changed consumer name in her favor regarding her premises on 11.11.2016, but subsequently other interest holders raised objections to it on 04.01.2017. In the course of the enquiry in the matter, it was revealed that complainant No.2 had used fake document of rent receipt. Hence the change in her favor was reverted to the name of old consumer Yusuf Ali Bharmal. It is submitted that thus it reveals her tendency to create nuisance and misguide officers wasting their time.
- b) It is submitted that the Respondent received complaint from one James D'Costa about unauthorized use of electricity in respect of premises at 42-44, Rassiwala Building, 4<sup>th</sup> floor, 2<sup>nd</sup> Marine Street, Dhobi Talao, Mumbai-400002, Accordingly the Vigilance Department officers of the respondent inspected the premises on 14.12.2021 and informed to James D'Costa that "No direct supply has been observed and meter testing is also found satisfactory". As regards the unauthorized use of electric supply, the complaint is being forwarded to respondent's Divisional Engineer, Customer Care, C-Ward for further investigation.
- c) As per the remarks of the Vigilance Department, the site inspection was carried by the officers of Customer Care Ward on 14.01.2022. During the inspection as such the officers found that the premises were occupied by students as paying guests and thus the premises is used non-residential activity i.e. occupation of the premises by working men/women, student Hostel. Hence as per the MERC tariff Order in case No. 324 of 2019, which is in force from 01.04.2020, LT-IV (B) tariff for the said premises was levied. With the reason a notice u/s 126 of Electricity Act 2003 was served upon the consumers of both the accounts for unauthorized use of load with necessary amendment.



  
  
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- d) With regard to the contentions of the complainants about the inspection and report of the Medical officer of MCGM that the occupiers are using the premises on leave and license and no activity of lodging and boarding activity u/s 393 of MMC Act was found, the respondent has submitted that the complainant Mohammed Ali T Merchant is already aware that for these categories, where premises given on rental basis for students hostel affiliated to Educational Institutions and all other students or Working Men/Women's Hostels come under the ambit of tariff LT-IV (B) as per the tariff Order approved by the MERC in case No. 324 of 2019, which is in force from 01.04.2020.
- e) In the course of hearing, the representative of the respondent has submitted that the instant grievance application challenges the notice issued u/s 126 of the Electricity act 2003 and under the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2020 bars such complaints to be entertained by this Forum. Hence it is submitted that the present grievance Application be dismissed.

4.0 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.

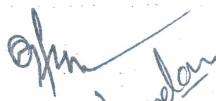
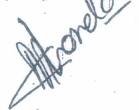
Sr. No.	Points for determination	Findings
1	Whether the present grievance application challenging the notice issued by the respondent u/s 126 of the Electricity Act, 2003, is tenable before this Forum?	In negative
2	Whether the complainant is entitled for any relief from this Forum?	In negative
3	What order is required to be passed by this forum for disposal of this Grievance Application?	Grievance Application is liable to be dismissed, as is being indicated in the operative order being passed herein below.


5.0 We record reasons for aforesaid findings on points No.1 to 3, 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 instant complaint is that the Respondent has passed an order/notice dtd. 01/08/2022 and thereby the Respondent has allegedly changed the category of tariff, pertaining to the complainants premises from residential to Public Service category. Copy of this order/notice dtd. 01/08/2022 is produced by complainants and the respondent has not denied it. Under this order, the Respondent has changed the residential tariff category of these accounts to the commercial tariff category with immediate effect from August 2022.



  
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b) According to the respondent, the order dtd. order/notice dtd. 01/08/2022 is issued by the respondent, on the basis of site inspection having been done by its officials, who found non-residential activity in the premises and hence the respondent has issued the impugned notice dt. 01.8.2022 relying on the reports of its officials based on local inspection. According to the respondent as it is a case about unauthorized use of electricity, the respondent has taken the steps to impose appropriated charges by changing tariff u/s 126 of the Electricity Act 2003.

c) On perusal of the impugned notice dt. 01.08.2022, about account no 335-257-005 it is seen that the contents of it are as under:

“.....

As per our record for the above referred account no 335-257-005, at meter no.D164656 at is installed for LT-I (RESIDENTIAL above 0.25) purpose. However, at the time of our routine inspection of your premises on 28/07/2022, it was observed that the supply was being used for LT PUBLIC SERVICE (LT-IVB) purpose.

In view of the above, your existing tariff for the said account will be changed from LT-I-TC-LT-IVB (LT PUBLIC SERVICE) w.e.f. AUG 2022.

Also, as per the section 126 of Indian Electricity Act 2003, the assessment for the unauthorized use of electricity is being worked on a rate equal to twice the tariff applicable for the relevant category of services for the period during which unauthorized use of electricity has taken place or to a period of 12 months immediately preceding from date of inspection.

After preparing the assessment, the same will be intimated to you in due course.

.....”

d) About account no 335-257-041, similar notice dt. 01.08.2022 appears to have been issued by the respondent as its copy is also produced by the parties.

e) From the above, it is clear that the respondent has initiated an action u/s 126 of the Electricity Act 2003 regarding alleged unauthorized use of electricity. Provisions of clause 7.9(b) of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2020 in unambiguous terms provide that this Forum shall not have powers to entertain complaints or grievances regarding actions taken by distribution licensee. Therefore we hold that the present grievance application involving dispute about action taken by the Respondent u/s 126 of the Electricity Act, 2003, is not tenable before this Forum. Therefore, we have recorded negative findings on point No.1.




*M. Karanjkar*  
(M. Karanjkar)  
Secretary  
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- f) As we have held that the present grievance application is not tenable before this Forum, we further hold that the complainant is not entitled for any relief from this Forum. Therefore, we have recorded negative findings on point No.2.
- h) In view of the negative findings recorded by us on point (1) and (2) as above, the complaint/grievance application will have to be dismissed and accordingly we have answered point (3). Hence, we pass the following order.

ORDER

- 1.0 The grievance no. S-C-467-2022 dtd. 30/09/2022 stands dismissed.
- 2.0 Copies of this order be given to all the concerned parties.

  
(Shri. S.S. Bansode)  
Technical Member

  
(Smt. Anagha A. Acharekar)  
Independent Member

  
(Shri S.A. Quazi)  
Chairman



  
(Milind Karanjkar)  
Secretary  
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