

		Date	Month	Year
1	Date of Receipt	10	11	2022
2	Date of Registration	14	11	2022
3	Decided on	11	01	2023
4	Duration of proceeding	58 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. C-472-2022 dtd. 14/11/2022

Mohammed Ali T. Rassiwalla Merchant
Late Leo Martin (Registered Consumer)

.....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. Smt. Shamim Merchant

Date of Hearing : 02/01/2023

Date of Order : 11/01/2023



(Signature)
(Mihind Karanjkar)
Secretary
CGRF BEST

(Signature)

(Signature)
(Signature)

Judgment

- 1.0 The complainant is Shri Mohd. Ali T. Merchant. Registered consumer is still Shri Leo Martin, though he has died. However, according to the complainant, he is presently occupying the premises and therefore he is entitled to file this complaint against the action of the Respondent. The complainant has filed this complaint in respect of his grievance about the change of tariff effected by the Respondent / BEST Undertaking vide its notice dtd. 01/08/2022 issued u/s 126 of Electricity Act, 2003 regarding alleged unauthorized use of electric supply and change of tariff.
- 2.0 The case of the complainant may be stated as under:
- a) There is an electric connection given by the Respondent to the premises situated at Room no. 1, plot 42/44 3rd floor, Rassiwala building, Marine 2nd street, Dhobi Talao, Kalbadevi, Mumbai 400002. This electric connection was initially given in the name of Shri Leo Martin under consumer No. 335-257-041. The said consumer has died in the year 2008. Thereafter, his successors surrendered the premises to the complainant Shri Mohd. Ali T. Merchant allegedly being landlord, vide Surrender Deed dtd. 16/02/2021. Thus, according to the complainant, he is present consumer of the said electric connection and therefore he has filed present grievance application.
- b) According to the complainant, his son Shri Raj Merchant collected a notice dtd. 01/08/2022 issued by the Respondent. It is further case of the complainant that after receiving false complaint from Shri James D'costa, Dr. Pradeep Kashale, Medical Health Officer of 'C' Ward of Municipal Corporation Greater Mumbai (MCGM) inspected the site. It has been mentioned in his inspection report that the site is inspected on 03/06/2022 in the said Rassiwala Building and he has found that 1st, 2nd and 3rd floor of said Rassiwala Building are used for residential activities and on 4th floor two girls are residing on leave and license basis. The complainant further submits that in the said report of Dr. Pradeep Kashale, he has mentioned that no lodging and boarding activity is found and rented flats do not come under lodging activity u/s 394 of MMC Act. The complainant has produced a copy of said report of Medical Officer of Health Dept. dtd. 17/05/2022. It is further submitted by the complainant that as per the building and property taxation (Assessment record) the above premises also falls under residential tariff and the complainant has produced zerox copy of the detail annexure of property and assessment and taxation mentioning the same. The complainant submits that the change of tariff effected by the impugned notice dtd. 01/08/2022 by the Respondent / Distribution Licensee is illegal and incorrect. Therefore the complainant has requested to this Forum to change the tariff from LT-IV(B) to LT-I(B) as it was earlier.



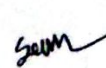

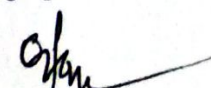

(Milind Karanjkar)
Secretary
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3.0 The Respondent / Licensee has filed reply and opposed the aforesaid complaint of the complainant. The case of the Respondent may be stated as under:

- a) Earlier the electric connection for the consumer no. 335-257-041 was given under the category of domestic use and residential purpose under LT-I tariff. However, during site inspection by Vigilance Dept. of the Respondent and its Customer Care 'C' ward, it was found that the premises in question was being used for students / working men and women unauthorizedly. It is further case of the Respondent that as per their record the said meter was installed at the said premises for LT-I (Residential) purpose only. However, at the time of inspection dtd. 14/12/2021, 17/01/2022 and 23/08/2022, it was found that the premises were being used for students / working men and women. Because of this reason the case u/s 126 of Electricity Act, 2003 regarding unauthorized use of electricity was registered by the Respondent and after serving the notice u/s 126 E.A., 2003 the tariff was changed from LT-IB to LT-IVB (Public Service - Others).
- b) The Respondent has further submitted that Shri James D'costa sent complaint letter dtd. 22/11/2021 to the General Manager as well as Vigilance Department of the Respondent about unauthorized use of electric supply at 42/44, Rassiwala Building stating that the consumer is using electric supply to provide supply to guest of illegal lodging boarding from the residential meter and further mentioned to take an action against the said consumer u/s 126 and 135 of E.A. 2003. The Respondent has produced a copy of the said complaint sent by Shri James D'costa with their reply at Exhibit 'B'.
- c) Accordingly, the case against the consumer was initiated by the Respondent as per the complaint letter of Shri James D'costa. The Vigilance Dept. of the Respondent has carried out the inspection on 14/12/2021 at the said site, namely, 42/44, Rassiwala Building and it is found that on 3rd floor, there are five rooms out of which in two rooms bearing No. 1 & 19, having electric supply respectively under a/c no. 335-257-041 & 335-257-005, the premises are found to be used for students' hostel. In the said inspection, on 4th floor, which is fully occupied by said consumer, electric supply for the premises was also found being used for students' hostel.
- d) The Respondent has further submitted in its reply that the Vigilance Dept. in its report mentioned that at the time of the inspection, Shri Raj, son of one of the Landlord was arguing with the staff of BEST Undertaking. The copy of Vigilance Dept's report is annexed by the Respondent with their reply. On receiving the report dtd. 15/12/2021 from Vigilance Dept., the Customer Care 'C' Ward of the Respondent investigated the matter in respect of the unauthorized use of electricity at the said site. In accordance with the note of Vigilance Dept., site inspection was carried out by Customer Care 'C'




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e) Considering the above facts and findings of the Vigilance Dept. as well as Customer Care 'C' ward, the Respondent served a notice u/s 126 of E.A., 2003 regarding unauthorized use of electric supply - change of tariff. This notice was served to all above referred three consumers on 01/08/2022. In response to the said notice, the complainant Shri Mohd. Ali T. Rassiwala (Merchant), submitted a letter to stop the notice issued u/s 126 of E.A., 2003. With reference to the letter dtd. 05/08/2022 of the complainant, it is submitted by the Respondent that site was reinvestigated on 23/08/2022 and as per site report, it was confirmed that all the three premises are being used for working Men / Women and Students' hostel. The report of Dy. E. CRM of respondent is also annexed by the Respondent with their reply as Exhibit-H.

f) According to the Respondent, as per the MERC tariff schedule for F.Y. 2020-2021 to 2024-2025 w.e.f. 01/04/2020, the tariff determination for such premises comes under category of LT-IVB (Public Services & Others). Accordingly, the tariff of all the above referred premises have been changed from LT-I(B) to LT-IV(B) in August 2022 as per the tariff order. The extract of which is produced by the Respondent with their reply at Exhibit 'I' in which it is said that LT-IVB - Public Services - Others is applicable to the users as listed in this document from 'a' to 'r'. In this list at Clause 'c', the category of All Students' or Working Men / Women's Hostels is mentioned.

g) Considering all the aforesaid contentions, the representative of the Respondent has submitted that the present complaint is liable to be dismissed particularly in view of the fact that the impugned notice was issued in respect of the unauthorized use of electricity and consequently in respect of the change of tariff u/ s 126 of E.A., 2003. The representative of the Respondent has relied on the provisions of Clause 7.9 of Maharashtra Electricity Regulatory Commission (CGRF & EO), 2020, this Forum has no jurisdiction to entertain, hear and decide the instant complaint. Hence, it is submitted by the representative of the Respondent that the present complaint may be dismissed.


Milind Karanjkar
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- 4.0 We have heard the submissions 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 this Forum has jurisdiction to entertain and decide the instant grievance application ?	In negative
2	What order is required to be passed by this forum for disposal of this Grievance Application?	The 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 and 2 as under:

- a) We have examined the submissions of the parties and it has become clear from the pleadings, documents and submissions of the parties that the main grievance of the complainant in this grievance application is about the notice dtd. 01/08/2022 issued by the Respondent to the complainant. On perusal of this complaint and the notice, it is seen that this notice is addressed by the Respondent to Shri Leo Martin, who is registered consumer in the record of the Respondent. It is said that Shri Leo Martin was the original registered consumer and was licensee of the premises under question. The complainant has submitted that Shri Leo Martin is dead and his successors have surrendered the premises to the complainant being landlord. Without disputing the fact of surrendering the occupation etc. to the complainant, what appears to be relevant is that this notice is issued to state that in the course of inspection of officials of the Respondent, they have found that the electric connection given to this premises was for the category of LT-I(B) i.e. for residential purpose and they further found that at the said premises the electricity was being used actually for the category of LT-IV(B) which is for public services - others as described in the tariff order of 2020. The said notice further says that at the premises situated at first three floors, the electricity was being used un-authorizedly and therefore as per tariff order, the Respondent has taken the steps to charge the consumer u/s 126 of E.A., 2003. Thus it is clear that the aforesaid change of tariff was affected by the notice dtd.01/08/2022 by invoking the provision of section 126 of E.A., 2003. The relevant portion contained in that notice is quoted for ready reference, as under :

"As per our record for the above referred a/c no. 335-257-041 meter no. D167616 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



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(M. Karanjkar)
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observed that the supply was being used for LT-IVB PUBLIC SERVICE (LT IVB) purpose.

In view of the above, your existing tariff for the said account will be changed from LT-I to LT-IVB (LT Public Service) w.e.f. August 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 had taken place or to a period of 12 months immediately preceding from the date of inspection.

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

- b) Thus it is clear that the grievance of the complainant put before this Forum is completely in respect of the action taken by the Respondent u/s 126 of E.A., 2003. The provision of MERC (CGRF & EO) Regulations, 2020 has provided in its clause 7.9 that this Forum shall not entertain and decide any complaint or grievance against any action of the Distribution Licensee by invoking section 126 of Electricity Act, 2003. We are of the opinion that the said provisions of 7.9 of MERC (CGRF & EO) Regulations, 2020 are completely attracted in the aforesaid facts and circumstances of the instant case and in view of the same we hold that this forum has no jurisdiction to decide and entertain the instant grievance application, which involves challenge to the notice issued by invoking the provisions u/s 126 of the Electricity Act, 2003. Therefore, we have recorded negative finding on point No.1.
- h) In view of the negative findings recorded by us on point (1) as above, we hold that the instant complaint is liable to be dismissed and accordingly we have answered point (2). Hence, we pass the following order.

ORDER

- 1.0 The Grievance No.C-472-2022 dtd. 14/11/2022 is hereby dismissed.
- 2.0 Copies of this order be provided to all the concerned parties.

Ssm
(Shri. S.S. Bansode)
Technical Member

Anagha A. Acharekar
(Smt. Anagha A. Acharekar)
Independent Member

Shri S.A. Quazi
(Shri S.A. Quazi)
Chairman



Milind Karanjkar
(Milind Karanjkar)
Secretary
CGRF BEST