

|   |                        | Date    | Month | Year |
|---|------------------------|---------|-------|------|
| 1 | Date of Receipt        | 07      | 10    | 2022 |
| 2 | Date of Registration   | 07      | 10    | 2022 |
| 3 | Decided on             | 05      | 12    | 2022 |
| 4 | Duration of proceeding | 59 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-469/2022 dtd. 07/10/2022**

1. Mr. Mohammed Ali T. Merchant
2. Mrs. Shamim M. 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 V.K.Ade

On behalf of the Complainant : 1. Shri Raj Merchant

Date of Hearing : 18/11/2022

Date of Order : 05.12.2022



*(Signature)*  
(Milind Karanjkar)  
Secretary  
CGRF BEST

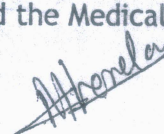
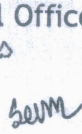
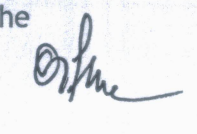
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### Judgment

- 1.0 The grievance mentioned in this complaint/grievance-application before this Forum is about change of tariff from "LT-I(B)" to "LT-IV(B)" about the electric connection given under a/c No.338-073-158 to complainant's premises situated at flat-premises No.13, 3<sup>rd</sup> floor, Parda House, Dr. Cawsji Hormasji Lane, Fish Market, Dhobi Talao, Kalbadevi, Mumbai-400002, as described in the electric bill.
- 2.0 The case of the complainant may be stated as under:
- The complainants are consumers of a/c no. 338-073-158. They submit that the Respondent has wrongly and illegally changed the tariff from LT-I(B) to LT-IV(B) about the electric connection pertaining to their account. It is submitted that their premises is used neither as guest house, nor lodge nor hostel. This was observed even in the order dtd. 28/02/2019, passed by the Internal Grievance Redressal Cell of the Respondent, in IGR case [CC-C/IGR-01 to 07 OF 2019/244/2019], in which the Inspection Report dtd. 06<sup>th</sup> Sept. 2017 was challenged by the complainants. The Representative of the complainants has produced copy of said order of IGRC and referred the passage from it, which says that in the inspection report dated 06<sup>th</sup> Sept. 2017 it was observed that there were no signs indicating, due to which the premises can be termed as guest house or lodge viz. Guest House sign board, Cash Counter, consumer registers, Room Key board, Receptionist, Room Service Staff etc. The Representative of the complainants has also submitted that in the said order of IGRC, it was further observed that all the premises are used for residential purpose i.e. either for personal use or sub-letted on leave and license agreement as per Maharashtra Rent Control Act, 1999.
  - The representative of the complainants has produced copy of IGR Customer Care C-Ward's letter [CC-C/CRM/IGR-01 to IGR-07 OF 2019/402/2019], dtd. 29/03/2019 and relying on the same he has further submitted that in this letter, the respondent has observed that "during our consequent inspections of these premises it was observed that there was no evidence on which it can be termed as Guest House, Lodge or Hostel."
  - The representative of the complainants has submitted that hence as per both the IGR letters, there is no evidence of guest house, lodge or hostel. Therefore, he submits that it should be held that the premises of the complainants fall under the category of Private Residential Premises as it has been given on leave and license basis under section 24 of The Maharashtra Rent Control Act 1999 and the same has been the observation of the IGRC of the respondent in their order dt.06/03/2019 and also in the letter issued by it to the Assessor and Collector C-Ward, Assessment and Collection Department of MCGM.
  - The representative of the complainants has further submitted that following to the complaint of James D'Costa regarding illegal lodging boarding activity at the premises Room No.13, in the building No.220-230, Pardawala Building, the said premises was inspected by the Assessment and Collection Department and the Medical Officer of the



  
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Municipal Corporation Greater Mumbai (MCGM). After such inspection being made the MCGM gave reply on 18/06/2022 to the complainant James D'Costa. It was to the effect that the rooms/flats given on rent basis do not fall under section 394 of Mumbai Municipal Act (MMC Act), because no lodging and boarding is run there and therefore room No. 13 cannot be converted from residential category to non-residential category.

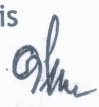
- e) The representative of the complainants has further submitted that the respondent in its reply has stated that the premises are used as "guest-house", which the complainant deny. He submits that under section 5(6-A) of the Bombay Rent Act "paying guest" is defined as "a person not being a member of the family, who is given a part of the premises in which the licensee resides, on license". The complainants' representative has submitted that section 5(4-A) of the Bombay Rent Act (Maharashtra Act No.XVII of 1973) defines "licensee" as "a person who is in occupation of the premises .....under a subsisting agreement of license." With reference to the meanings and definitions of these terms of "paying guest" and "licensee", the representative of the complainants has relied on the decision of the Hon'ble Supreme Court in "Firose N Dotiwala versus P.M. Wadhwani and others" (Appeal (civil)4659 of 1997) dated 03/12/2002. In this regard he has also referred to the decision of the Hon'ble Bombay High Court in the case of "Dinoo F Byramji vs Dolly Jahangir Ranji (Mrs.)" dtd. 9<sup>th</sup> February, 1988 (1998 (1) BomCR 587). Relying on these decisions the representative of the complainants has submitted that these rulings have laid down that for saying that a person occupying any premises is a "paying guest", it is also required to be proved that the landlord also resides in the premises with such person. It is submitted that in the instant case the complainants do not reside in the premises in question i.e. building No. 220/230 Pardawala House, Dhobitalao, but they reside in the building No. 33, Shirin Manzil, Chira Bazar. It is submitted that in the instant case, the complainants have given the premises on leave and license basis for residential use under three agreements of leave and license to three different groups of persons. The complainants have produced the copies of these three agreements. They show that the premises have been given for period comprising on months and not for shorter period of days. The respondent's recent inspection is not on record to say that they found any symptom of hostel, lodging and boarding business being run in the premises so as it can be said that it is not used for residential use or purpose. The representative of the complainant has submitted that complainants have produced receipt of cooking-gas connection in the premises, which shows that the occupiers of the premises do cook their food in the premises itself and thus residential activity exists in the premises. Merely because there exist partitions in the room or rooms or there are lying multi number of beds, it cannot be said that non-residential activities are done in the premises describing it as hostel, as alleged by the respondent.
- f) The representative of the complainants has further submitted that the Respondent / Licensee has held that the premises is used as Student's and Working Men / Women's Hostels or for occupation of paying guests. The respondent has held that the law regarding rates of electric charges applicable to LT-IV (B) category-user is applicable to the premises of the complainant. The impugned decision of the respondent to change the tariff from LT-I (B) (residential) to LT-IV (B) (public services-others) is



  
(Milind Karanjkar)  
Secretary  
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illegal and wrong and it is causing injustice to the complainants. Hence it is submitted that the impugned decision of the respondent is liable to be quashed and set aside and tariff of LT-I(B) is required to be restored.

- g) For all the aforesaid reasons, the complainants have requested to set aside the Respondent's order dtd. 08/10/2021 about change of tariff from LT-I(B) to LT-IV(B) about the electric connection given under a/c No.338-073-158 to complainant's premises situated at flat-premises No.13, 3<sup>rd</sup> floor, in Parda House, Dr. Cawsji Hormasji Lane, Fish Market, Dhobi Talao, Kalbadevi, Mumbai-400002S, and the tariff of LT-I(B) is requested to be restored.

3.0 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 residential 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 residential use, but they run paying guest house/guest house in the premises in question by giving accommodation to the students or working men / women. The representative of the respondent has submitted that to avoid to come under the commercial category to avoid the higher tariff, the modus operandi used by the complainants is that they get leave and license agreements executed from the guests or customers who are generally students, working men/working women. It is submitted that this was found during the visits of officials of the Respondent on various occasions. Moreover, earlier the officials of MCGM also found during their visits from time to time that the complainants are running guest house in the premises without license of Municipal Corporation of Greater Mumbai (for short MCGM) and in contravention of the provisions of Mumbai Municipal Corporation Act (for short MMC Act). On all these facts, the Respondent had imposed penalty u/s 126 of Electricity Act, 2003 against the complainants for misusing the residential electric connection for commercial use by running the guest house for students and working Men/working Women in the premises. Therefore, tariff was also changed from LT-I(B) to LT-II(A) under the MERC Tariff Order dated 17.11.2016. However, the complainant had challenged the said action of the Respondent before IGRC (Internal Grievance Redressal Cell) of the Respondent. The said authorities of the Respondent/Distribution-Licensee, ultimately held that the complainants run "hostel for students or working men / women", and this category of user fell under residential category (LT-I(B)), under the MERC Tariff Order MERC Tariff Order dated 17.11.2016. Therefore, the IGRC of the Respondent had held that the above action of the Respondent/licensee about imposition of penalty for misusing residential category connection for commercial use, 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 LT-I(B) to commercial/ LT-IIA . The Respondent has referred to the order dtd. 05/03/2019 passed by the IGRC in the said matter of challenge to change of tariff from residential to commercial. It is submitted



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(Milind Karanjikar)  
Secretary  
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that as per the said order of the IGRC dt. 05/03/2019, the tariff of LT-I(B)/residential category was restored.

- 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 of MERC issued vide case no. 203 of 2016 was 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 current 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 Services-others" 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 effective for the period from 01/04/2020 upto 31/03/2025, the premises used for running "guest-house" for students, working men/working women are required to be charged by applying the commercial tariff category (i.e. LT-IV (B)). As in the instant case, the complainants run guest house/hostel by giving premises to students and Working Men / Women, they are liable to pay the electric charges on the rates as applicable to LT-IV (B)/public-service-others (commercial category of consumers). In view of this, the Respondent has passed the impugned order dtd. 10/08/2021 for converting the consumer-category of the complainants from LT-I (B) to LT-IV (B) in respect of the premises in question.
- c) For all the above said reasons, the Respondent has urged to dismiss the complaint.

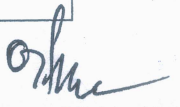
4.0 Considering the rival contentions of the parties, the following points arise for determination, on which we record our findings as under, for the reasons to follow.

| Sr. No. | Points for determination   | Findings  |
|---------|--|---|
| 1       | Whether the complainant's premises is used as guest house or hostel for Students or Working Men / Women as alleged by the Respondent ?   | It is not used as "guest house" but it is used as "Students Hostel or Working Men/Women's Hostel" |
| 2       | Whether the above said user of the electric connection given to the complainant's premises falls under the category of consumer within the meaning of category-LT-IV(B) public-service-others, as provided in the provisions of MERC directions / Order dtd. 30/03/2020 in case no. 324 of 2019 in force | In affirmative  |



  
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|   | w.e.f. 01/04/2020 to 31/03/2025 ?  |   |
| 3 | Whether the action/order dt.10/08/2021 of the Respondent to convert the electric connection given to the premises of the complainants from LT-I (B) i.e. residential user to LT-IV (B) i.e. public service-others category with effect from 23/08/2021 is correct and legal? | In affirmative  |
| 4 | Whether the complainant is entitled for any relief and what order is required by this Forum to dispose of this complaint?  | The complainant is not entitled for any relief from this forum, and therefore, the instant grievance-application is liable to be dismissed. |

**7.0 We record reasons for aforesaid findings, on points No. 1 to 4 as under:**

- a) From the pleadings and contentions raised as well as the documents produced by the parties, we find that the contention of the complainant in the complaint/grievance application is that the Respondent has passed an order dated 10/08/2021 and thereby the Respondent has admittedly changed the category of tariff, pertaining to the complainants, from "LT-I (B)-residential" category to "LT-IV (B)-public service-others" category with effect from 23/08/2021. Copy of this order contained in the form of computerized format titled as "Work-Flow-Step", pertaining to complainants' a/c No.338-073-158, is produced by the respondent with its reply and marked as Ex-D. The entry dt.10/08/2021 in it is in these words: "IN THE CASE NO 324 OF 2019, AS PER THE ORDER GIVEN BY THE MERC DATED 30.03.2020 FOR ALL OTHER STUDENT OR WORKING MEN/WOMEN'S HOSTEL ARE COME UNDER LTIVB TARIFF. HENCE THE TARIFF OF THIS ACCOUNT TO BE CHANGED FROM LTI TO LTIV (B). This was approved on 23/08/2021. Under this order, the Respondent has changed the residential tariff category of the account to the "public service-others" tariff category with immediate effect from 23/08/2021.
- b) According to the respondent, the said order dtd. 10/08/2021 has been passed, relying on the reports of its officials and also the earlier proceedings in the representation No. C-01-2019 before the IGRC (Internal Grievances Redressal Cell) of Respondent as noted herein earlier. The Respondent has produced the copy of the order dtd.05/03/2019, passed in that Representation/case of the complainant about challenge to the earlier order of change of tariff from Residential to Commercial. In the said order dtd. 05/03/2019 the IGRC has observed that the complainant had submitted before the IGRC that the respondent has wrongly changed the tariff from residential to commercial. In this order of the IGRC dtd. 05/03/2019, in clause 1.0, 1.1,1.2, 1.3 and 1.4, the IGRC has made following observations:

"1.0 Points raised by complaints in C-01-2019 dated 25/01/2019, are as under:

1.1 Tariff of A/C No. 343-215-025 and 338-073-158 is changed from residential to commercial on false and bogus complaints of Mr. James D'costa and



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Mrs. Zainab M. Dhullawala (Zainab H. Rassiwala) due to several years of enimity with complainant.

- 1.2 Vacant rooms are given on Leave and License Agreement basis to all students and Working needy persons temporary and strictly for residential purpose.
- 1.3 Complainants have enclosed the copy of pg.no. 292 and 293 of MERC Mid term review Order for 3<sup>rd</sup> Control period BEST wherein in part "D" it is stated that residential activities in the premises where "All students or Working Men/Women's' Hostel" falls under LTI(B):LT-Residential category.
- 1.4 The complainant requested that she wants to know "On what basis the tariff of A/c No.343-215-025 and 338-073-158 is changed from residential to commercial when activities in All students or Working Men/Women's Hostels' category in which premises of said accounts qualifies for as per pg.no.292 and 293 of MERC Midterm review Order for 3<sup>rd</sup> control period for BEST as mentioned in part "d" under head of LTI(B): LT Residential tariff."

c) In the said order of the IGRC dtd. 05/03/2019, in clause 1.5, 1.5.1, 1.5.2, the IGRC has made following observations:

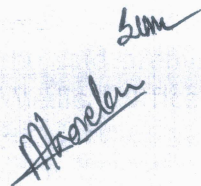
- "1.5 As per Tariff Schedule of The B.E.S.&T. Undertaking based on MERC's Order in case No. 26 of 2013 w.e.f.01/09-2013 upto 28-09-2016 L.T.I: LT - Residential Tariff was applicable for-  
All Students Hostels affiliated to educational Institutions and All Ladies Hostels, such as students (Girl's) Hostels, Working women Hostels etc.
- 1.5.1 However, as per the Tariff Schedule of The B.E.S. & T. Undertaking based on MERC'S Order in case No. 33 of 2016 & consequently Corregendum thereof w.e.f. 1-10-2016 upto 31-03-2020.  
LT.I:Residential Tariff is applicable for-  
All Students or Working Men/Womens Hostels'
- 1.5.2 In view of para 1.5.1 above, undersigned as an Assessing Officer is convinced that the activity for A/C No.343-215-025 and 338-073-158 Falls under category/premises-  
All Students or Workding Men/Womens' Hostels and LT-Residential Tariff is applicable to these accounts."

d) In the said order of the IGRC dt. 05/03/2019, in clause 1.5.3.2 and 1.5.3.3, the IGRC has made following observations:

- "1.5.3.2 Undersigned as an Assessing Officer is convinced that the activity for A/c 343-251-025 falls under LT-Residential Tariff based on MERC's Order in Case No. 33 of 2016 & consequent corrigendum. The opinion of Asst. General Manager ( Legal) had been sought regarding whether decision of reverting Commercial Tariff of A/c No.343-215-039 to Residential tariff can be taken as per discretion of/as as an Assessing Officer.



  
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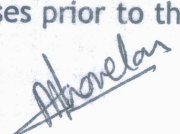
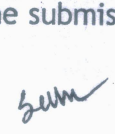
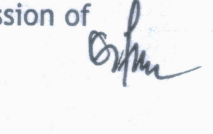


1.5.3.3 Asst. General Manager ( Legal) has opined that as no any restraining order is passed against The B.E.S.T. Undertaking, neither Undertaking is Party in case No. 4102371/53/18 and status of the premises of A/c No. 343-215-025 is same as that of A/c No. 338-073-158, for maintaining the uniformity of the tariff of A/c 343-215-039 can be reverted from Commercial Tariff to Residential Tarif."

- e) It is seen that in the above said order dtd. 05/03/2019, it is observed that it was an undisputed fact that in the premises in question there were activities known in the Tariff Order as "All students or Working Men/Women's Hostels' category" and in this category the premises of said accounts qualifies for the category of LTI (B): LT Residential tariff, as per pg.no.292 and 293 of MERC Midterm review Order for 3<sup>rd</sup> control period for BEST as mentioned in part "d" under head of LTI(B): LT Residential tariff. Thus, it was admitted fact that during the said proceeding before IGRC that the premises in question was used as "All students or Working Men/Women's Hostels' category" and this category fell under the category of residential tariff category-LT-I(B) as per the said earlier Tariff Order which was in force up to 31/03/2020. Therefore the IGRC set aside the then disputed order of change of tariff from residential to commercial tariff. Therefore, by the said order dtd. 05/03/2019, the IGRC directed the respondent to restore the status of residential tariff of the complainants account.
- f) After the said order dtd.05/03/2019 having been passed, admittedly the New Tariff Order has been introduced and brought in to force with effect from 01/04/2020 and it shall remain in force up to 31/03/2025. The respondent has relied upon the Book-let of Schedule of Electricity Tariff determined by the Maharashtra Electricity Regulatory Commission (MERC) by its Multi Year Tariff Order dated 30/03/2020 in case No. 324 of 2019 for the Tariff for the supply of electricity by the distribution licensee BEST Undertaking Mumbai to various classes of consumers with effect from 01/04/2020. On going through this book-let of new Tariff Schedule, it is seen that now the category of consumers falling under the description of "All students or Working Men/Women's Hostels" with effect from 01/04/2020 are to be charged under the tariff applicable to "public service-others i.e. LT-IV(B)." In view of this, now the Respondent has changed the tariff category of the complainant's account from LT-I(B) (Residential) to LT-IV(B) (Public Services-others) category. For this the respondent has relied on the aforesaid observation of IGRC in its order dtd. 03/05/2019 that the complaint's premises falls under the category of consumer doing activity of "hostel for students or Working Men/Women".
- The Representative of the complainants has strongly opposed the order of change on the grounds referred to herein earlier. He has referred to copy of provisional reply-letter dt.28/02/2019, issued by Asst. Administrative officer (IGRC) of Customer care C ward addressed to the complainant Shamim Merchant with ref. to representation of the complainant against the change of the tariff from residential to commercial in respect of 13 accounts of the complainant, including the present a/c No.338-216-158 as per inspection report dtd. 06/09/2017. In this letter, in clause 2.0 it is mentioned that staff of Customer Care C Ward inspected the premises prior to the submission of



  
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the grievance to IGRC. The representative of the complainants has relied on clause 2.1 and 2.2 and 4.0 of the letter dtd. 28/02/2019. Clause 2.1 is that "It was observed that there were no signs indicating due to which the premises can be termed as Guest House or Lodge viz. Guest House Sign board, Cash Counter, Consumer Register, Room Key boards, Receptionist, Room service staff etc." In clause 2.2 of this reply-letter dt.28/02/2019, it is stated that "It was observed that all the premises are used as residential purpose i.e. either personal use or sub-letted on leave and license agreement as per Maharashtra Rent Control Act, 1999....." In clause 4.0 of this reply-letter dt.28/02/2019, it is stated that "In view of above commercial tariff of all above referred accounts will be reverted back to Residential tariff....." However, on perusal of clause 2.3 of this letter it is seen that therein it is said that "Further as per Tariff Schedule of The B.E.S.&T. Undertaking based on MERC's Order Case No.33 of 2016 and consequent corrigendum thereof w.e.f.01/10/2016 up to 31/03/2020 premises referred in 4.1 above falls under the category of-All Students, Working Men/Women's Hostel' or Private Residential Premises for which LT-II-Residential Tariff applicable." In view of what is stated in clause 2.3 of this reply-letter dtd.28/02/2019, it can be said the premises in question was held to be falling under the category of "All Students, Working Men/Women's Hostel" or Private Residential Premises. It means the category of "All Students, Working Men/Women's Hostel" was not altogether refused to be applicable. Hence this reply-letter does not support the complaints' contention that tariff LT-IV(B) is not applicable, but it supports the case of respondent that the premises are used as "All Students, Working Men/Women's Hostel" and therefore, tariff category of "LT-IV (B)-Public service-others" is applicable. Therefore, the said reply letter dtd.29/03/2019 and order dtd. 05/03/2019 do not support the contention that it supports complainants' case that premises is not used as 'All Students, Working Men/Women's Hostel' and that tariff change as per new tariff order is illegal.

- h) Complainant's Representative has also referred to the copy of reply letter dtd. 29/03/2019, issued by the Supdt. of Customer Care C ward addressed to complainant James D'Costa with reference to his complaint about alleged unauthorized use of electricity in the premises in question and other premises of the present complainants. This is by way of intimation of order dtd. 05/03/2019 of IGRC. We have already scrutinized the said order dtd. 05/03/2019 and we have held herein earlier that the said order dtd. 05/03/2019 of IGRC holds that premises in question was used as a category termed as "Students or Working Men/Womens' Hostels" and it was considered in tariff order of 2016 as residential-category.
- i) What we find is that, to oppose the aforesaid decision of the respondent, with the grievance application, the complainants have produced copies of three agreements of Leave and License. Their representative has submitted that the licensees of the complainants are using the premises for residential purposes and they have been given license to use it for months period and not for shorter periods of one or two days. He therefore, submits that for these reasons, they cannot be treated as guests nor the premises can be treated as hostel for students or working men/women for holding that activity of public services is done there to attract the LT-IV(B) category of tariff. He



*(Milind Karanjkar)*  
Secretary  
CGRF BEST

*M. Karanjkar*

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has also produced the reports of officials of MCGM to the effect that no non-residential activity is found in the premises in question.

j) We have examined the aforesaid contentions of the Complainants and their representative about leave and license agreements and receipt of cooking-gas receipt of the address of Parada house in the name of complainant No.1. On perusal of the copies of three agreements of Leave and License, we have noticed that the first agreement is executed in Sept.2022 for the period of 9 months from 01/09/2022 to 31/05/2023. Four licensees are named in this agreement. The second agreement is executed in Sept.2022 for the period of 9 months from 01/09/2022 to 31/05/2023. Four licensees are named in this agreement also. The third agreement is executed in Sept.2022 for the period of 9 months from 01/09/2022 to 31/05/2023. Four licensees are named in this agreement also. It appears that the licensees as per first agreement are given room described as 1/13, the licensees as per second agreement are given room described as 2/13 and the licensees as per third agreement are given room described as 3/13. It appears that one room to each of the aforesaid groups is given for joint accommodation. It is also seen from the surnames of all the 12 persons mentioned in these three leave and license agreements that they are from different families, which means they are not a family to infer that genuinely a family is residing on leave and license basis to discard the case of non-residential activity falling under the category of students or working Men/women Hostel falling under tariff category of LT-IV (B). Such a large number of people are generally accommodated only by way of hostel. Therefore, these documents of leave and license agreements do not support the case of the complainants. On the contrary, the above circumstances noted from these agreements, raise strong assumptions that the activity of hostel goes in the premises. This corroborates the case of the respondent that what has been observed by the IGRC in its order dtd. 03/05/2019 in the earlier proceeding about activity of running of activity of providing accommodation to students or Working Men/Women is still going in the premises. Therefore, if the change is carried out from the category of tariff "LT-I(B)- Residential", as defined in the earlier Tariff order of year 2016, to the category of "LT-IV(B) -Public Services-others", as defined in the Current Tariff Order effective from 1.4.2020, then we find no factual or legal infirmity in the impugned order of change of Tariff Category in respect of the account of the complainant.

k) The complainants have produced copy of cooking-gas connection-receipt (cylinder purchase-receipt) in the name of Mohammed Ali Merchant/complainant No.1. It has mention of his address of premises in question i.e. No.13, third floor, Parada house, as described above. Pointing out this gas-cylinder-purchase receipt the representative of the complainants has submitted that this receipt shows that at the said address, activity of cooking is also done and, therefore, the occupiers mentioned in the three leave and license agreements can be said to be using the premises for residential purpose and not for commercial purpose. This contention cannot be accepted to hold that the premises is not used as "Students or Working Men/Women's Hostel" as strong inference can be drawn about running of hostel from the circumstance that near about 12 persons from different families and places are occupying the premises as per the said three leave and license agreements. Mere gas-cylinder purchase receipt does not dislodge the above said inference. Hence we hold that this document also is not of any



  
(Milind Karanjkar)  
Secretary  
CGRF BEST

  
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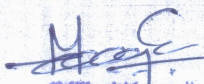





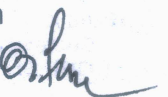
substantial support to the case of the complainant that no hostel activity about students or working men/women goes on in the premises.

- l) The other document produced by the complainant is copy of reply-letter dtd. 18th June 2021, issued by the Assessment Department of MCGM addressed to James D'Costa, with reference to his complaint about Room No. 13, 3<sup>rd</sup> floor, Parda house Building. In this letter, it is mentioned that on the inspection done by the said department of MCGM, the MCGM has found that there is no difference between the MCGM record and facts noticed on the spot inspection of the premises. It is further stated in the said letter that from the copy of report of Medical Officer/C-Ward that the rooms/flats given on rent basis do not fall within the provisions of sec. 394 of Mumbai Municipal Corporation Act (MMC Act), because no lodging or Boarding activity go on there. It is further stated in the said letter that room No. 13 cannot be changed from residential to non-residential. We have examined the submissions of the representative of the complainants in respect of this letter. We find that what is stated in this letter is that no lodging and boarding as referred to u/s 394 of MMC Act was found. It may be noted firstly that the matter regarding applicability of electric tariff is to be decided in the light of the provisions of Electricity Act and Rules and Regulations framed there under and section 394 of MMC Act has little relevance thereto. We are concerned to the terminology "Students Hostel and Working Men/Women's Hostels" as used in the Schedule of Tariff for consumption of electricity to be applied by the distribution licensee/BEST undertaking as approved by the MERC with effect from 01/04/2020 to 31/03/2025. The activity meant by the phrase of "Lodging and Boarding" used in sec.394 of MMC Act may not be the same as the activity meant by the phrase "Students Hostel and Working Men/Women's Hostels" used in the Schedule of Tariff for consumption of electricity to be applied by the distribution licensee/BEST undertaking approved by the MERC with effect from 01/04/2020 to 31/03/2025. Secondly it is seen from the order dtd. 05/03/2019 passed by the IGRC that the complainant had admitted that the premises were used as "Students Hostel and Working Men/Women's Hostels." In view of this, more probable is the fact that the complainants use the premises as "Students Hostel and Working Men/Women's Hostels", as observed in the IGRC order dtd. 05/03/2020. Therefore, the above letter of MCGM is not sufficient to dislodge the said inference.
- m) The representative of the complainants has referred to the aforesaid two decisions namely- 1) the decision of Supreme Court in "Firoze N Dotiwala versus P.M. Wadhvani and others" (Appeal (civil)4659 of 1997) and 2) the decision of Hon'ble Bombay High Court in the case of "Dinoo F Byramji vs Dolly Jahangir Ranji (Mrs.)" dt. 9<sup>th</sup> February, 1988 (1998 (1) Bom CR 587). He has referred to these decisions to explain the meaning of the terms "licensee" and "paying guest", in view of the contention of the respondent in their reply filed in response to the present grievance application. In the case of "Firoze N Dotiwala" supra it is observed that in the year 1959 the respondent/owner of the premises gave advertisement in these words- "Accommodation available for two rooms self-contained apartment with sea-view, telephone optional, ideal for executive, couples, reasonable terms." There upon the appellant before the Hon'ble Supreme Court approached the Respondent in response to the said advertisement and he was given the accommodation on payment of certain



  
(M. Karanjkar)  
Secretary  
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amount as compensation for the same. In the year 1975 the dispute arose about status of the occupation of premises by the appellant i.e. whether the appellant was "licensee" of "paying guest". Appellant filed suit for declaration that he is deemed tenant and injunction restraining the respondent from disturbing possession of the appellant. The Small Cause court decreed the suit and then respondent's appeal was dismissed by the appellate bench of Small Cause Court. However the Hon'ble Bombay High Court allowed writ petition of the respondent. Appellant filed appeal in the Hon'ble Supreme Court. In that appeal, the Hon'ble Supreme Court referred to the definitions of "licensee" and "paying guest" given in the Bombay Rents, Hotel and Lodging House Rates Act 1974. It is observed that ".....A perusal of the definitions of the terms indicated above shows that licensee is the one who is in occupation of the premises or a part thereof under any subsisting agreement or license but this definition specifically excludes "paying guest" who but for this exclusion otherwise would also have been covered by the said definition." The term "paying guest" in turn is defined as "a person: (1) who is not a member of the family; (2) is given a part of the premises; (3) in which the licensor resides." In the facts of that case, the appellant was held to be paying guest and the appeal was dismissed by the Hon'ble Supreme Court. In the case of "Dinoo F Byramji vs Dolly Jahangir Ranji (Mrs.)" (supra) the Hon'ble Bombay High Court has also interpreted the terms "Licensee" and "paying guest" in the same way as above. In this context it has been held that "11.....The parties have used the words "paying guest" and "leave and license". The use of such words is not conclusive, for, parties use them in the belief that this might have some effect on relationship between them..... 12.....Now, therefore, the licensee occupies the premises, a part of which is in the occupation of the paying guest. There can be relationship of "licensee" in respect of the "part of the premises". There can also be a relationship of paying guest in respect of the "part of the premises." The distinguishing feature brought out by definition is that the paying guest should not be a member of the family and the licensor resides in the same house....."

n) The representative of the complainant has referred to definitions as above in the light of the aforesaid decisions, in response to the contention of the respondent in its reply that "At prima-facie, it appeared that the said premises is being used as paying guest purpose by various persons sharing multiple beds by dividing the room making partition....." However, the impugned order of the respondent says that the premises is used as "Student's Hostel and Working Men/Women's Hostel" Therefore, what is stated in the impugned order is preferable and not what is said in the reply as above about "paying guest". Therefore the above decisions about the meaning and interpretation of the phrase "Paying guest" is not relevant to the issue involved, in this case before us.

o) For the above reasons, 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 "Student's Hostel and Working Men/Women's Hostel" for accommodating people of aforesaid description to attract Tariff category of "LT-IV (B)-public services-others". Therefore, we hold that the premises are used as



*(M)ilind Karanjkar*  
Secretary  
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"Student's Hostel and Working Men/Women's Hostel" and hence, we have recorded our finding at point (1) accordingly.

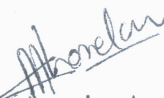
- p) In view of the above findings on point No.1, we also hold that the above said user of the electric connection given to the complainant's premises falls under the category of consumer within the meaning of category "LT-IV (B) public-service-others" as described in the provisions of MERC directions / Order dtd. 30/03/2020 in case no. 324 of 2019 in force w.e.f. 01/04/2020 to 31/03/2025. Accordingly we have recorded affirmative findings on point No.2.
- q) In view of the affirmative findings on point No.2, we also hold that the action/order dt.10/08/2021 of the Respondent to convert the electric connection given to the premises of the complainants from LT-I (B) i.e. residential user to "LT-IV (B) i.e. public service-others" category with effect from 23/08/2021 is correct and legal. Accordingly we have recorded affirmative findings on point No.3.
- r) In view of our findings on point No.1 that the premises is used as "Student's Hostel and Working Men/Women's Hostel" for accommodating people of aforesaid description to attract Tariff category of "LT-IV (B)-public services-others," and the affirmative findings recorded by us on point No. (2) & (3) as above, the grievance of the complainants is found unfounded and the complainants are held to be not entitled for any relief from this forum. Therefore, the complaint/grievance application 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-469-2022 dated 07/10/2022 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  
CGRF BEST

(Milind Karanjkar)  
Secretary  
CGRF BEST



