

	Date	Month	Year
1	Date of Receipt	08	10 2021
2	Date of Registration	18	10 2021
3	Decided on	31	01 2022
4	Duration of proceeding	105 days	
5	Delay, if any.	45 days	

**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

**Review Application to review the order dt. 28.09.2021 in**  
**Grievance No. S-C-429-2021 (Review no. R-S-C-429-2021 dtd. 18/10/2021)**

S.M. Merchant and M.T. Merchant

.....Review-Applicants/Complainants

V/S

B.E.S.&T. Undertaking

.....Non-applicant/Respondent

**Present**

Chairman

Coram :

Shri S.A. Quazi, Chairman

Members

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 : 05/01/2022

Date of Order : 31/01/2022

## Judgment

- 1.0 This Review-application was received on 08/10/2021 and registered on 18/10/2021 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 05/01/2022. Accordingly, the matter was heard on 05/01/2022. 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 45 days has occurred in deciding this complaint.
- 2.0 In this application, the applicants have requested to review the judgment dt. 28.09.2021 (wrongly mentioned in Review Application as dt. 30/09/2021), passed by this forum in the Grievance No. S-C-429-2021, whereby the Grievance Application of the applicants/complainants came to be dismissed.
- 3.0 The grievance mentioned in the said Grievance No. S-C-429-2021 was about change of tariff from LT (I)-B to LT(IV)-B about the electric connection given to the premises of the complainants. The case of the complainants mentioned in the said Grievance No. S-C-429-2021, 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 continuous 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) It is further contended by the complainant that the medical officer of health department of MCGM has 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.
- d) For all the aforesaid reasons, the complainants had requested in the said Grievance No. S-C-429-2021 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 had requested that the Respondent be directed to treat the complainant within the category of domestic user to whom LT-I (B) tariff is applicable.

4.0 On hearing both the parties, this Forum has decided the said Grievance No. S-C-429-2021, by its reasoned order dt. 28.09.2021. Thereby this Forum has dismissed the Grievance No. S-C-429-2021, for the reasons recorded in the said order.

5.0 In the instant review application the applicants/complainants have requested to review the said order dt. 28.09.2021. According the complainants/applicants, they could not produce some relevant documents earlier before this Forum. Those documents are : (1) copy of order dated 23.09.2021 passed the learned Metropolitan Magistrate, Mumbai and (2) copy of leave and license about the consumer-premises. According to the applicants/complainants these documents show that the premises is not used for hostel for working men/women to attract LT-IV-B tariff. The representative of the applicants/complainants has submitted if leave license agreement is executed between the owner and the occupants of the premises, the premises cannot be treated as hostel. According to him, for treating a premises as hostel, it is necessary to prove that there exists a counter of manager in the premises and also that a register and other record of the visiting guests are maintained. It is submitted that no such evidence is brought by the licensee/respondent in the instant case. It is also submitted that the Metropolitan Magistrate has rejected the case of the Municipal Corporation that the premises is used for commercial purpose without seeking required license for it and thereby complainants have contravened any provision of Mumbai Municipal Corporation Act and committed any offence there under.

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 documents now produced by the complainant make out a case for reviewing the order dt. 28.09.2021 passed by this Forum?	In negative
2.	What order should be passed on the Review application?	The Review Application is rejected.

**7.0 We record reasons for aforesaid findings as under:**

- a) It may be noted that in the order dt. 28.09.2021, this forum has recorded affirmative findings on the point “whether the complainant’s premises is used as guest-house or hostel for students or working Men/Women as alleged by the Respondent”. Similarly this Forum has held in the said order that the said user falls under the category of commercial consumer within the meaning of the provisions of MERC directions/order dtd.30.3.2020 in case No. 324 of 2019 for the period w.e.f. 01.04.2020 to 31.03.2025. In the said order dt.30.03.2021, this forum has held that the action of the Respondent to convert the electric connection given to the premises of complainants from domestic user i.e. LT-I (B) category to commercial user i.e.LT-IV (B) category by the letter dt. 21.10.2020, is correct and legal. The gist of the reasons recorded for the above said findings include (i) that the officials of the two departments i.e. the department of the Respondent and the department of the Municipal Corporation of Greater Mumbai (MCGM) have consistently observed and held that the premises is used to accommodate Students or working men/women with an intention to run hostel or guest house, (ii) that the observation of the medical officer of MCGM is not of any importance that it is not used as hostel or guest house, because the said observation of medical officer is not from the point of view of taxability, whereas other officials of Respondent and the MCGM have made their said observations taking into consideration respectively the taxability for consumption of electricity under the Electricity Act 2003 and taxability for use of property about with municipal amenities under the Mumbai Municipal Corporation Act (iii) that the above evidence gives inference that the premises is used as hostel for students and working men/women and (iv) that the documents of leave and license agreements, relied upon by the complainant to rebut the above inference are not pertaining to the premises of the complainant and therefore they do not rebut the above said inference.
- b) In the light of the above findings and reasons recorded in the order dt. 28.09.2021, the documents now produced by the complainant in the review application do not appear to be of the nature that on the basis of them the aforesaid findings can be changed in any way. As far as copy of order dt. 23.09.2021 passed by the Metropolitan Magistrate, Mumbai, in case NO.4102371/SS2018, is concerned, it is about the contravention of the provisions of section 394 (1) (e) (i) r/w sec. 471 of the Mumbai Municipal Corporation Act. The said case was instituted on the complaint of the official i.e. Medical officer of

the MCGM against one Shamim Merchant, who is one of the complainants herein. The said complaint is about contravention of provisions of law made for maintenance of public health and sanitization etc. This order of Metropolitan Magistrate, Mumbai, in case NO.4102371/SS2018, cannot be relevant on the issue of taxability about property tax or about consumption of electricity.

- c) The other document produced in this review application is the copy of agreement for leave and license, dt.04.12.2020 between Complainant Shamim on one part as licensor and (1) Pritam Kumar, (2) Surekar Prashant Prabhakar and (3) Jayswal Mithlesh Kumar on the other part as licensees. This document shows that there are three different licensees, who are allowed to use the premises for 11 months from 1.11.2020. This appears to be about the premises of concerned electric connection of the complainant. In the course of hearing the complainant has produced copy of another agreement of leave and license dt.23.12.2021. It is between Complainant Shamim on one part as licensor and (1) Pritam Kumar, (2) Mohammad Abdul Jaleel, (3) Jayswal Mithlesh Kumar and (4) Kothiyal Jayant Kumar on the other part as licensees. This document also shows that there are four different licensees, who are allowed to use the premises for 11 months from 1.12.2021. This also appears to be about the premises of concerned electric connection of the complainant. On examination of these documents, even these documents cannot rebut the aforesaid inference drawn in the order dt. 28.09.2021 by this forum about user of premises as hostel for working men/women. These documents show that there are three licensees, in the former agreement and four are in the later agreement, who are allowed to use the premises for 11 months from 01.11.2020 and 01.12.2021 respectively. All these three licensees and four licensees, do not appear to be from one and same family nor does it appear that they are relatives of each other. This shows that this is not the case of leave and license which ordinarily is given for residential/domestic use where a family or friends collectively live, cook and dine. Even if the leave and license agreements are for longer period of eleven months, the other circumstances do not show that the premises is used for ordinary domestic purpose. It seems to be a case of stay of different persons, not related to each other as family or members of a friendly group, in a premises from whom the licensor collects license fees of their respective share, but to avoid the payment of taxes or electric charges, a leave and license agreement is collectively executed in collusion with each other. This inference is corroborated by the document produced by the representative of the Respondent during the course of hearing of this review application about assessment of the premises for property taxes treating as commercial premises used as guest house for “all students and working men and women.” Therefore, the aforesaid documents of agreement of leave and license and the order of learned Metropolitan Magistrate, produced by the complainants in the review application, do not affect the findings arrived at by the forum in its order dt. 28.09.2021. Hence we have recorded negative findings on point No. 1.

- d) For all the above reasons, we hold that the review application is liable to be rejected. Accordingly we have answered point No.2. Hence, we pass the following order.

**ORDER**

- 1.0 The review application filed by complainant in Grievance No.S-C-429-2021 is rejected.
- 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**