

		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

Grievance No. S-C-448-2021 dtd. 18/10/2021

Rubina Mohammed Ali 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 : 05/01/2022

Date of Order : 31/01/2022

Judgment

- 1.0 This complaint 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 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 45 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 about the electric connection given to the premises of the complainant's flat-premises, situated at 2nd floor, in Shirin Manzil-building, as described in the electric bill.
- 3.0 The case of the complainant may be stated as under:
 - a) The complainant is consumer of a/c no. 343-215-006. It appears that earlier consumer was Mohmed Ali Merchant under the old a/c no. 343-215-035. The complainant submits that she along with other five consumers / account holders are occupiers / owners / landlords of their respective flats / rooms in 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 of lower rates than the charges pertaining to LT-IV(B) and therefore the complainant and other account holders have got grievance about such change in the tariff. The Respondent / Licensee has alleged in these letters that the premises is used as Student's and Working Men / Women's Hostels and therefore the law regarding rates of electric charges applicable to LT-IV (B) category-user is applicable to the case of the complainant and the other account holders in the said building.
 - b) However, the complainant's contention is that she has 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 falls 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. It is further submitted that in the year 2018, the Municipal Corporation of Greater Mumbai (for short MCGM) had instituted criminal case bearing number 4102371/SS/2018 u/s 394 of Mumbai Municipal Corporation Act regarding the same subject/allegations of illegal running of lodging and boarding/guest house/hostel against Shamim Merchant, who one of the consumer-account holders in the said Shirin Manzil-building. The said case was instituted in the court of the Metropolitan Magistrate, Mumbai. The learned Metropolitan Magistrate, Mumbai has recently decided that case and has held that from the facts of the case, the complainant has not proved that the accused is found carrying the trade of lodging house i.e. activity of illegal use of residential premises for lodging activity without license on the date of inspection. It has been held by the learned Magistrate that in the result, the accused is entitled for the acquittal. The complainant has produced and relied upon copy of the said order of the learned Metropolitan Magistrate.
- d) For all the aforesaid reasons, the complainant has requested to set aside the Respondent's order dtd. 21/10/2020 pertaining to her a/c no. 343-215-006 (old a/c no. 343-215-035), 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 complaint 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 complainant did not use this connection for their own private domestic use, but she runs 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 complainant has 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 complainant runs 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 Services" and this is w.e.f. 01/04/2021 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. The complainant has produced and relied upon copy of the said order of the learned Metropolitan Magistrate. Referring to it, he has submitted that the learned Magistrate has held that the Municipal Corporation has failed to prove that the premises is used for business of lodging and boarding or hostel in contravention of the provisions of MMC Act. 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 Sechdev - 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. 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 provide 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. The case of the respondent is also corroborated by the document produced by the representative of the complainant during the course of hearing of arguments. This document is communication of official of the MCGM to the respondent/licensee that assessment of the premises for property taxes is being done treating the premises as commercial premises used as guest house for "all students and working men and women."

Therefore, it is submitted by the representative of the respondent that the aforesaid documents of agreement of leave and license and the order of learned Metropolitan Magistrate, produced by the complainants, do not affect the inference, that can be drawn from the documents of respondent, that the consumer-premises is used as guest/hostel for the students and working men/women. Hence, the action taken by the Respondent for converting the user from residential to commercial category cannot be found illegal. Therefore, the representative of 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 w.e.f. 01/04/2020 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. Copy of this order, dtd. 21/10/2020 is produced by complainant 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 the aforesaid order dtd. 21/10/2020.

- b) The order dtd. 21/10/2020 is said to have been passed by the respondent, 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 complainant pertaining to a/c no. 343-215-006 is situated. All these documents produced 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 the above inference, which is required to be drawn in view of the aforesaid reasons and from the aforesaid documents and record, the complainant has contended that he has given his premises on Leave & License Agreement to Students and Working Men / Women on temporary basis but for longer period of more than 11 months. The representative of the complainant has pointed out one document of agreement of leave and license, dt. 01.12.2020, which is filed with their complaint and another document of agreement of leave and license, dt. 23.12.2021, which is produced in the course of hearing of submissions of the parties. As far as the document of agreement of leave and license, dt. 01.12.2020 is concerned it does appear to be about one Mohammed Ali Taher Ali Merchant as licensor and (1) Singh Rajabhau Pancham (2) Anil Kumar and (3) Pardawala Aamir S Husain on the other part as licensees. This document is not about the complainant Rubina Mohammed Ali Merchant. Hence this is not of

much importance. The other document of leave and licence agreement is dt.04.12.2020 between the complainant Rubina Mohammed Ali Merchant on one part as licensor and (1) Pardawala Aamir S Husain, (2) Anil Kumar and (3) Meheta Hiren Devendrabhai on the other part as licensees. This document shows that there are three different licensees, who are allowed to use the premises of complainant for 11 months from 23.12.2021. This appears to be about the premises of concerned electric connection of the complainant. On examination thereof, it appears that even this document cannot rebut the aforesaid inference drawn herein earlier by this forum about user of premises as hostel for working men/women. This document shows that there are three licensees, in this agreement, who are allowed to use the premises for 11 months from 23.12.2021. All the three 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 agreement is 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. Therefore the document of leave and license does not rebut the inference, which can be drawn from the documents produced by the respondent on record, that the premises in question is used as hostel.

- e) The complainant has produced and relied upon copy of order dt. 23.09.2021 passed by the Metropolitan Magistrate, Mumbai, in case NO.4102371/SS2018. As far as this document 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 different consumer account holders in the said building and her premises is different than that of the complainant herein. The said complaint was about contravention of provisions of law made for maintenance of hygiene and sanitization etc in the matters of public health. This order of Metropolitan Magistrate, Mumbai, in case NO.4102371/SS2018, cannot be relevant on the issue of taxability about property tax or about charging for consumption of electricity.
- f) The case of the respondent is also corroborated by the document produced by the representative of the complainant during the course of hearing of arguments. This document is communication of official of the MCGM to the respondent/licensee that assessment of the premises for property taxes is being done treating the premises as commercial premises used as guest house for "all students and working men and women." Therefore, it is rightly submitted by the representative of the respondent that the aforesaid documents of agreement of leave and license and the order of learned Metropolitan Magistrate, produced by the complainants, do not affect the inference, that can be drawn from the documents of respondent, that the consumer-

premises is used as guest/hostel for the students and working men/women. Hence, the action taken by the Respondent for converting the user from residential to commercial category cannot be found illegal.

- g) 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 complainant to contend that the premises is not used as hostel or guest house for accommodating people and therefore it's user does not fall within the category of commercial user. For all these reasons, we have recorded our finding at point (1) in affirmative.
- h) 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. 343-215-006 w.e.f. 01/04/2020 from LT-I B/domestic-residential to commercial/LT-IV (B) category under the provisions of 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-448-2021 dtd. 18/10/2021 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