

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATIONS NO. 55, 56, 57 & 58 OF 2022

(REVIEW OF THE ORDER IN
REPRESENTATIONS NO. 10,11,12 & 13 OF 2022)

In the matter of change of tariff category

- | | | |
|------------------------------------|---------------------|-------------------------|
| 1. Rubina Mohammedali Merchant | (Rep.No.55 of 2022) | Review Applicants |
| 2. Rubina M. & R.M. Merchant | (Rep.No.56 of 2022) | |
| 3. Raj. M. Merchant | (Rep.No.57 of 2022) | |
| 4. S. M. Merchant & M. T. Merchant | (Rep.No.58 of 2022) | |

V/s.

Brihanmumbai Electric Supply and Transport Undertaking 'C' Ward... Respondent
(BEST Undertaking)

Appearances:

Applicant : 1. Rubina M. Merchant
2. Raj. M. Merchant

Respondent : 1. Mangesh Kharote, Divisional Engineer, C Ward
2. Satish M. Inchanalkar, Supdt. BEST Undertaking

Coram: Vandana Krishna (Retd. IAS)

Date of hearing: 25th May 2022

Date of Order: 6th June 2022

ORDER

These Review Applications are filed on 12th April 2022 under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &



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Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 5th April 2022 in Representations No.10,11,12 and 13 of 2022 passed by the Electricity Ombudsman (Mumbai).

2. The Electricity Ombudsman, Mumbai, by its common order dated 05.04.2022 has rejected the Representations No. 10,11,12 and 13 of 2022.

3. Aggrieved by the common order, the Applicants have filed these Review Applications by letters dated 12.04.2022, stating in brief as under: -

- (i) There are some mistakes or error in the order apparent from the face of record which are as below.
- (ii) The Applicants assume that the Electricity Ombudsman is not aware that inspection on 24.03.2022 was never carried out by the Respondent. The Hon'ble Electricity Ombudsman has relied on the inspection report of 24.03.2022 and passed the order. It was noted that the inspection report dated 24.03.2022 was submitted to the office of the Electricity Ombudsman by the Respondent on 30.03.2022 which was after the hearing on 29.03.2022. Since the report was submitted after the hearing before the Hon'ble Electricity Ombudsman, the Applicants assume that it was with malicious intent. The inspection was carried out by the Respondent only on 31.03.2022 as per directions.
- (iii) The Applicants reside at 4th Floor of Shirin Manzil, S.P. Road, Chira Bazar, Mumbai. They have one vacant flat on 1st floor, one vacant flat on 2nd floor and two vacant flats on 3rd floor. All these vacant flats are let out on rent on Leave and License Agreement as per Maharashtra Rent Control Act, but the Respondent had considered the flats as being used as hostel and changed the tariff category from LT-I (B) Residential to LT IV (B): Public Services and Others. However, their flats come under the category of Private Residential Premises and not category of Public Services and Others.

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- (iv) The Hon'ble Electricity Ombudsman in order dated 05.04.2022 stated in the Analysis and Ruling that the Applicants reside on the 4th floor of the same building and the 1st, 2nd & 3rd floors of the building are given on Paying Guest (PG) basis. The Section 5(6-A) of the Bombay Rent Act defines-

Paying Guest: Paying Guest: a person not being a member of the family, who is given a part of the premises in which the licensor resides, on license.

The Maharashtra Act No XVII of 1973 introduced Section 5(4-A) in the Act which defines

Licensee: a person who is in occupation of the premises.....under a subsisting agreement of license.

This definition has the following elements: -

- (a) He is not the member of the family.
 - (b) He is given a part of the premises
 - (c) Licensor resides in the remaining part of the premises
 - (d) He is "given" a part of the premises on license.
- (v) Hence as per definition of "Licensee and Paying Guest" their premises are not being used as a paying guest since the licensees reside in Flat No. 101 of 1st floor, Flat No. 201 of 2nd floor and Flat No. 301 and Flat No 302 of third floor. The licensors reside on 4th floor which cannot be considered as same premises as flats on 1st floor, 2nd floor, and 3rd floor. The vacant flats of the Applicants are not given for paying guest purpose as stated in the order.
- (vi) The Applicants referred the Judgement of the Supreme Court of India dated 03.12.2002 in Appeal (Civil) 4659 of 1997 in case of Feroze Dhotivala V/s P.M. Wadhawani & Ors., for support of their say and clarification of Paying Guest concept. The relevant portion of the Judgment is reproduced as below:

"It was argued for the Applicant that even if the words "premises, in which



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the licensor resides" "would not mean the very room, still the licensor must be using the remaining part of the premises for actual residence and that in this case the remaining portion of the ground floor was not so occupied for residence because the owner was living in the first floor. In our view this contention cannot be accepted. If the ground floor and the first floor of this building are to be treated as "premises" then the occupation of the owner of the first floor for "residence" would satisfy the requirement of Section 5 (6-A)."

.....

"No such compelling reason has been indicated to us by reason of which some more ingredients may be read in the term "paying guest", other than which simply flow from the definition as provided. In the case in hand the definition of the word 'paying guest' begins with "it means". It is to be read and understood in the manner defined. There would be no justification to expand or to further restrict it by including or super-imposing some ingredients or elements which otherwise do not admit of such inclusion and to give a different colour and meaning to the defined word. A person answering the description of 'paying guest' in accordance with Section 5(6A) of the Act is to be treated as such without requiring fulfilment of any other condition."

.....

"The Applicant has acquired the status of a deemed tenant under Section 15-A or not will be dependent upon the fact as to whether he is to be treated as a 'licensee' or a 'paying guest'.

The three ingredients of the expression 'paying guest,' as defined, have been indicated above. If the three conditions are fulfilled i.e. the person concerned is not a member of the family; but has been given a part of the premises in which the licensor resides, under the law, it would mean that such a person is a paying guest. Nothing more is required or envisaged in the meaning of the word 'paying guest.' The trial court and the Applicant court have imported the ingredients of a unity of a residence in the premises with the licensor and dominion and superior kind of possession of the licensor over the subordinate nature of occupation of a paying guest."



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The Applicants also referred the Judgement of Bombay High Court dated 09.02.1988. in Case of Dinoo F. Byramji V/s Dolly Jahangir Ranji for meaning of Paying Guest, Licensee etc.

- (vii) The Hon'ble Electricity Ombudsman in the order dated 05.04.2022 mentions in Analysis and Ruling in Point No. 15 that *"it is established that the Applicants have given their premises to students and working needy persons. The issue under contention is whether this amounts to running a hostel or conducting commercial activity or not."* It would like to inform that the above letter was intended to inform that the premises was being used as residential and not commercial since the licensees are student and working needy persons who are not conducting any commercial activity in the flats. This was merely a communication/language error.
- (viii) Also, at Point No.16 of the impugned order it is stated that the *"Applicants have advertised digitally for Paying Guest facility on Magic brics.com, Nobroker.com, Housing.com, Nicelocal.com etc. which are property web sites for PG accommodation."* It is to state that no such inspection was carried out on 24.03.2022. The inspection was carried out only on 31.03.2022 as per directions and order received from the Hon'ble Electricity Ombudsman after the hearing on 29.03. 2022. Hence the report mentioning of the number of beds and number of persons cannot be relied upon to come to conclusion whether the premises are used as paying guest as mentioned in their reports. It is to be noted, this inspection report dated 24.03.2022 was submitted on 30.03.2022 after the hearing on 29.03.2022.
- (ix) The Applicants were shocked to know that there are advertisements on different websites pertaining to their premises. The Applicants say that no such advertisements have been posted by them and hence should not be taken as evidence.



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- (x) As mentioned earlier, since the Applicants reside in different flat on different floor and the licensees reside in different flats on different floors; hence their flats are not being used for paying guest purpose.
- (xi) The Hon'ble Electricity Ombudsman, at Point No.19 of the impugned order mentions that *the rent is not a fixed amount per flat but varies, depending upon the number of licensees living there. In another words, rent is collected on an individual basis. The premises are advertised on various PG websites and there seems to be a continuous flow of new individual residents.*
- (xii) It would like to inform that the rent is not decided as per the number of licensees living in the room but as per the square feet of the flats, unfurnished flat and nature and structure of building. The Applicants have never advertised on any websites. Their flats are genuinely rented out on long term on Leave and License Agreement. The premises are used for residential purpose.
- (xiii) The Applicants pray that the present Review Applications be allowed as per Regulation 22 of CGRF & EO Regulations 2020. The impugned order be set aside. Hence, the Respondent be directed to bill the Applicants under Residential Tariff Category.

4. The Respondent vide its letter dated 11.05.2022 has submitted its reply stating in brief as below: -

- (i) The Applicants filed grievances in IGRC on 25.01.2019 for change of tariff category from Commercial to Residential. The Applicant stated in IGRC application which is reproduced as below: -

*“I am giving my vacant rooms on leave license agreement bases temporarily strictly for residential purposes to all **student and working needy persons**. As per your law available on **MERC site page no 292 and 293 of 350 states that all student and working needy person can be give on Live license purpose reference attaching the Xerox copy of the same**” (Emphasis added)*



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- (ii) As per grievance filed with IGRC, and as per Tariff Order of the Maharashtra Electricity Regulatory Commission (the Commission) in Case No. 203 of 2016, the category “All students working Men/Women’s Hostel” was classified under LT-I (B) Residential Tariff Category from 01.10.2016 to 31.03.2020. Accordingly, the Applicants were billed under LT-I (B) Residential Tariff Category.
- (iii) As per Tariff Order of the Maharashtra Electricity Regulatory Commission (the Commission) dated 30.03.2020 in Case No.324 of 2019, the same category of “*All other students’ or working Men/Women’s Hostel*” is classified under LT IV (B): Public Services and Others from 01.04.2020 and valid up to 31.03.2025. Hence, the Tariff Category of the Applicants were changed from LT-I (B) Residential to LT IV (B): Public Services and Others Tariff Category.
- (iv) This is surprised to note that the Applicants have mentioned that no inspection was carried out of the said premises on 24.03.2022. The Respondent strongly deny the same. The inspection of the premises was carried out on 24.03.2022 prior to hearing along with Vigilance Department Officers, Mr. Nalage, Dye (Vigilance), Mr. Parab Dye (Vigilance) along with Woman Police Constable (WPC) Smt. Bile, so as to know the latest status of premises for the purpose of being utilized. The Lady Police Officer along with their Officer Smt. Shilpa Mainkar were comprehended in the team for inspecting the premises where working Girls/Women are accommodated.
- (v) In order to carry out the inspection, Green Memo No T12422/G/C/P was generated for job allocation to Officers and Staff. The copy of Green Memo T12422/G/C/P and Inspection Report were already submitted on 29.03.2022 as ‘Additional Submission’ at the time of hearing, vide its letter CC-C/CRM/Electric Ombudsman/345,346,347,348/ 2021-22 dated 28.03.2022. At the instance, the same record was also handed over to the Applicants. Copy of Booking register of Customer Care C ward and Vigilance Department for inspection of premises is kept on record for perusal.



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- (vi) The rest of points mentioned in Review Application by the Applicants are nothing but interpretations on the order given by the Hon`ble Electric Ombudsman and the Judgments of Hon`ble Supreme Court and High Court are in general in nature and the Respondent did not want to comment on it.
- (vii) The Review Application filed by the Applicants do not disclose discovery of any such new or important matter or any mistake or error apparent from the face of the record. There is no mistake that could constitute a legally valid ground for filing the present Review Application.
- (viii) In view of the above-mentioned facts, the Respondent prayed that the Review Application be rejected.

5. E-hearing was held on 25.05.2022 through Video Conference. The representative of the Applicant argued that no advertisement was given on any websites for PG accommodation. Also, that the rent is not decided as per the number of licensees living in the room but as per the square feet of the flats, unfurnished flat and nature and structure of building. Their flats are rented out on long term on Leave and License Agreement. The premises are used for residential purpose. The Applicants also stated that they have no control on their licensees. The Applicants pray that the present Review Application be allowed as per Regulation 22 of CGRF & EO Regulations 2020. The impugned order be set aside. Hence, the Respondent be directed to bill the Applicants under Residential Tariff Category.

6. The Respondent reiterated its written reply dated 11.05.2022. The Respondent argued that the inspection of the premises was conducted by the Respondent on 24.03.2022 prior to hearing along with Vigilance Department Officers and police force, as the Applicants never cooperated for inspection. The Inspection Report are already put on record for perusal before issuing the original order.

7. As per grievance filed with IGRC, and as per Tariff Order of the Commission in Case No. 203 of 2016, the category “All students working Men/Women’s Hostel” was classified under LT-I (B) Residential Tariff Category from 01.10.2016 to 31.03.2020. Accordingly, the Applicants



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were earlier billed under LT-I (B) Residential Tariff Category. As per Tariff Order of the Commission dated 30.03.2020 in Case No.324 of 2019, the same category of “All students working Men/Women’s Hostel” was reclassified under LT IV (B): Public Services and Others from 01.04.2020 and valid up to 31.03.2025. Hence, the Tariff Category of the Applicants was changed from LT-I (B) Residential to LT IV (B): Public Services and Others Tariff Category.

8. The Respondent argued that the points raised for review by the Applicant were already on record for perusal while deciding the original Representation. This is not a fit case for Review as the Applicant has not pointed out any new discovery in the matter. The Applicant has failed to show any error on the face of record. As such the present review is not maintainable considering the provision of Regulation 22 of the CGRF & EO Regulations 2020.

Analysis and Ruling

9. Heard both the parties and perused the documents on record. After careful reading of the Review Applications, it is seen that the Review Applicants have repeated what it has already brought on record of order in the original Representations No. 10, 11, 12 & 13 of 2022 which is under review. The Review Applicants have not brought out any new issue which they were not knowing at the time of filing the original Representations. The Applicants referred to the Judgment of the Supreme Court of India dated 03.12.2002 in Appeal (Civil) 4659 of 1997 in case of Feoroze Dhotivala V/s P.M. Wadhawani & Ors., and Judgment of the Bombay High Court dated 09.02.1988 in Case of Dinoo F. Byramji V/s. Dolly Jahangir Ranji for determining the meaning of “Paying Guest”, Licensee etc. The Applicants have spent considerable time in contesting that the premises are not used as “Paying Guests.” Even if it is admitted that this is so, and that the premises are not used for ‘Commercial’ purposes, the main issue regarding the reclassification of this use under a new ‘Public Services & Others’ tariff category remains valid. In other words, even if, for the sake of argument, the premises are not considered as rented for “Paying Guests,” it is still undisputable that the premises are rented for individual students / working Men/Women, which is closer to the activity of a “Hostel.”

The Applicants, in their own IGRC application, have used the following words: -



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*“I am giving my vacant rooms on leave license agreement bases temporarily strictly for residential purposes to all **student and working needy persons.**”*

Thus, they admit that the premises are given for students and working needy persons, but they have deliberately avoided using the word ‘hostel’ and have used the words ‘residential purposes.’ However, this does not change the fact that premises used for students and working needy persons, irrespective of whether categorized as hostel or residential, used to be classified under ‘Residential tariff category’ earlier, which was later changed to ‘Public Services and Others’ tariff category. Whether or not it is termed as ‘Paying Guest,’ ‘hostel,’ or ‘residential’ is irrelevant. The fact is that if it is used for students/ working needy persons, it is now classified under ‘Public Services and Others’ tariff category.

Also, the issue has been raised whether the said use should be interpreted as ‘residential’ or ‘commercial.’ However, under the new regulations, this use is neither residential nor commercial; it is now ‘Public Services and Others.’ The mere use of the words ‘residential’ by the Applicants in their agreements does not change this fact. Thus, I am of the firm opinion that this activity is covered under LT IV (B): Public Services and Others as per Tariff Order of the Commission in force.

10. The Applicants have raised an issue about the date of inspection that the inspection was done on 31.03.2022 and not on 24.03.2022, which the Respondent is denying. This issue need not be gone into in depth, as the date of inspection, whether 24th or 31st March, does not make any difference to the main issue, which is the use of the premises by individual working persons.

11. The Applicants have also raised the issue that the rent is determined not on ‘per head’ or ‘per bed’ basis, but rather on per sq. ft basis. They also argued that there are not sharing the same premises and have no control over the premises; therefore, it cannot be termed as “Paying Guest.” In fact, both these arguments are repeated. However, even considering them afresh, these arguments are irrelevant. We need not go into the definition of “Paying Guest” V/s. “Residential,” because now a new category has been created vide Tariff Order dated 30.03.2020 of the Commission in Case No.324 of 2019 which is effective from 01.04.2020. As stated earlier, the



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earlier use for students and working persons was categorized as 'Residential' but is now categorized as "Public Services and Others."

12. The scope of Review under the Regulation 22 of the CGRF & EO Regulations 2020 is very limited. The said Regulation is quoted below: -

"22 Review of Order of Electricity Ombudsman

22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:

(a) Where no appeal has been preferred;

(b) on account of some mistake or error apparent from the face of the record;

(c) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.

22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.

22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for."

13. I am of the opinion, that all important issues in sum and substance have been covered in the original order. The review applications are nothing but a repetition of the original representations barring a few exceptions. The Applicants are trying to seek appeal under the guise of review which is not permitted. The scope of review is very limited. The alleged mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. The undersigned has power to review its ruling to correct a patent



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error and not a minor mistake of inconsequential import. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below: -

(a) *Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -*

“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”

(b) *In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -*

“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

14. In view of the above, I am of the considered view that there is no substance in these Review Applications, and therefore rejected and disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)

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