

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 120 OF 2022

In the matter of new connection and change of service provider

Rambhujharat Sarjuprasad Yadav.Appellant

V/s.

Tata Power Company Ltd., (TPCL) Respondent – 1

Adani Electricity Mumbai Ltd. (AEML) Respondent - 2

Appearances:

Appellant : Rambhujharat Sarjuprasad Yadav

Respondent 1 : 1. Prashant Kumar, Group Head Regulatory, TPCL
2. Tushar Shelke, Head (Revenue Recovery) TPCL

Respondent 2 : 1. Mritunjay Jha, Nodal Officer & DGM, AEML
2. Shrikant Phatak, Asst. AVP, AEML


Coram: Vandana Krishna [I.A.S. (Retd.)]

Date of hearing: 28th December 2022

Date of Order: 14th February 2023

ORDER

This Representation was filed on 12th August 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &


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Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 31st May 2022 passed by the Consumer Grievance Redressal Forum, TPCL (the Forum).


2. The Forum, by its Order dated 31.05.2022 has disposed of the grievance application in Case No.1 of 2022 with the following observations: -

“Based on the deliberations with complainant and representatives of Tata Power, forum concludes that Tata Power has followed the due process as per MERC guidelines for interim changeover order dated 15th October 2009 for changeover of supply from one utility to another. Also, the forum does not have jurisdiction to call upon Adani electricity representatives for a Tata Power CGRF hearing.

Forum comes to conclusion that Tata Power cannot revoke the application processed for change of supply for the reasons stated above. Change of Name may be processed by following the due regulatory guidelines of MERC.”

3. The Appellant, being aggrieved by the order dated 31.05.2022 of the Forum, has filed this representation. The grievance relates to the period of making a changeover of the Appellant’s electricity connection from AEML to TPCL; hence the distribution licensee AEML was also made a party in the present Representation. An e-hearing was held on 28.12.2022 by video conferencing. All the parties were heard at length. The Appellant’s written submission and arguments during the hearing in brief is as below:

- (i) The Appellant is the landlord and owner of Sarjuprasad Yadav Chawl, R.S. Marg, Shivaji Nagar, Pathan Wadi, Malad (East), Mumbai. The Appellant derived the title of landlord from his father Mr. Sarjuprasad Yadav (expired) who is the original landlord of the said chawl.
- (ii) Smt. Indradevi Indrabahadur Singh is a Tenant at Shop No. 1, Suryakala S. Yadav Chawl, Shivaji Nagar opp. Noorani Masjid Pathan Wadi, Malad (East) where a Flour Mill is working. Mr. Mohamemd Tayyab Khan was/is working in the said flour Mill. Both mutually altered the area of Shop No.1 and encroached/unauthorisedly occupied the adjacent open space, creating a new room. Mrs. Saleha Khatun Mohamemd Tayyab Khan, wife of Mr. Mohamemd Tayyab


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Khan has made forged and fabricated documents like ration card etc. to get an illegal electricity connection in that room in 2017. She is an illegal occupant in the alleged room without the consent / no objection of owner / landlord.

- (iii) Later she applied for changeover of Service Provider from R-Infra to TPCL in the year 2021. TPCL had also accepted this changeover of Service Provider without a 'No Objection Certificate' from the Landlord. The Appellant suspects foul play from the Respondent No.1 (TPCL) for this changeover without following due process of law.
- (iv) The Appellant filed a grievance before the Forum for cancellation of the new connection and to take appropriate action against the Respondent No. 1(TPCL). The Forum, by its Order dated 31.05.2022 has disposed of the grievance application protecting the stand of Respondent No.1. The Forum failed to understand that this is not just a change of name, but an illegal new connection for the new room no.1 without the consent of the owner/landlord.
- (v) In view of the above, the Appellant prays that
 - (a) the Respondent No. 1 (TPCL) be directed to disconnect the electric connection of new Room No. 1 immediately.
 - (b) an enquiry be conducted for illegal change of service provider without no objection certificate of owner.

4. The Respondent No. 1 (TPCL) by its letter dated 29.11.2022 has submitted its written reply. The written submission along with its arguments is stated in brief as below: -

- (i) On 30th August 2021, Mrs. Saleha Khatun Mohd. Tayyab Khan, as the occupant of the new room no. 1, applied for changeover of power supply from AEML to Tata Power along with requisite documents. Mrs. Saleha Khatun Mohd. Tayyab Khan was originally a consumer of Respondent No. 2 (AEML) (erstwhile R-infra) having account number 152497129.



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- (ii) The aforementioned application seeking changeover was processed, continuing with the name present on the AEML bill i.e. Mrs. Saleha Khatun Mohd.Tayyab Khan, and accordingly Consumer No. 900001104268 was assigned.
- (iii) Maharashtra Electricity Regulatory Commission (the Commission) has defined the procedure for Changeover of Service Provider in Case No. 50 of 2009 dated 15th October 2009 (Commission's Changeover Order). The said procedure categorically states the list of activities to be completed before changeover as follows

"1.3 Pre-Changeover Activities

- (i) *The New Distribution Licensee shall inform the Existing Distribution Licensee on a daily basis (in the agreed format) information regarding completed application forms received.*
- (ii) *The Existing Distribution Licensee shall share with the New Distribution Licensee information relating to any arrears/disputes/court cases, etc. for consumers proposing to Changeover within 3 days of receipt of information from the New Distribution Licensee.*
- (iii) ***The New Distribution Licensee shall inspect the consumer premises to confirm classification, connected load, technical issues, if any, etc. within the timeframe as stipulated under SOP.***
- (iv) *The New Distribution Licensee shall estimate the security deposit to be provided by consumer as per ESC and intimate the same to the Consumer.*
- (v) *The Consumer shall pay such security deposit amount to the New Distribution Licensee.*
- (vi) *In case of sanctioned load equal to or higher than 50 KW, the Consumer shall have to enter into an agreement with the New Distribution Licensee at the time of Changeover. ".....(emphasis added)*
- (iv) In compliance with the aforementioned Order, Respondent No.1 processed the changeover application based on the relevant documents such as identity proof and occupancy proof. **In any case, the Appellant has admitted that the new connection of the consumer had already taken place in 2017 before the**


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changeover of power supply which took place on 8th September, 2021, and evidently, Respondent No.1 was not approached for that purpose.

- (v) Thus, any grievance of the Appellant ought to have been raised with AEML at the time when the new connection was granted for the new Room No. 1 the name of Mrs. Saleha Khatun Mohd. Tayyab Khan in Oct. 2017. Therefore, Respondent No.1 cannot be held responsible. The Appellant's apprehension of foul play by Respondent No.1 is completely baseless and devoid of any merits.
- (vi) The Forum, by its Order dated 31.05.2022 has rightly disposed of the grievance application with observation mentioned in Para 2. In view of the above facts and submissions, the Respondent No. 1 prays that the Representation of the Appellant be dismissed.

5. The Respondent No. 2 (AEML) by its letter dated 05.09.2022 submitted its written reply. The hearing was held on 28.12.2022. The written submission along with its arguments are stated in brief as below: -

- (i) The Respondent No. 2 was neither a party as a Respondent before the Forum (TPCL), nor were any details pertaining to the said consumer prior to change over called by the Respondent No. 1.
- (ii) The present Appellant is claiming to be the owner of the premises, however no documents have been submitted by him on record before this Hon'ble Authority.
- (iii) **The Section 43 of the Electricity Act, 2003 (the Act) obligates the licensee to provide electricity supply to a premises upon application by the Owner / Occupier of the premises.**
- (iv) In the instant case, on 6th October 2017, Mrs. Saleha Khatun Mohd. Tayyab Khan applied for a new electricity connection under Commercial LF-2 category for the premises situated at Room No. 1, Suryakala S Yadav Chawl, Shivaji Nagar opp. Noorani Masjid Pathan Wadi, Malad (East) along with documents viz. Ration


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card, Shop and Establishment Certificate (Ghumasta License -Form D). During the hearing, it was mentioned that Mrs. Saleha Khan had applied to carry out a business of making imitation jewellery in that room, and had obtained MCGM's Ghumasta licence for that purpose. Relying upon the documents, the application for a new electricity connection was processed as a routine practice. The connection was sanctioned and after payment of statutory charges, meter was installed on 14th October 2017 vide CA No. 152497129 under LF-2 category.

- (v) Thereafter in month of September 2021, the consumer applied for change over to Respondent No. 1(TPCL) and as per the process, the consumer shifted to TPCL.
- (vi) The Respondent No. 2 (AEML) did not receive any objection against the new connection of the said consumer which was done in Oct. 2017. **The cause of action occurred in Oct. 2017, hence the grievance is time barred**, considering Regulation 7.8 of CGRF & EO Regulations 2020 wherein the period from cause of action is limited to two years from the date of filing the grievance in the Forum. In this case, the grievance was filed in TPCL on 24.03.2022.
- (vii) The registered consumer is now being supplied electricity by Respondent No.1 and she is no more a consumer of Respondent No.2.
- (viii) The Respondent No. 2 has cited the Judgment of High Court, Calcutta, (Constitutional Writ Jurisdiction Circuit Bench at Port Blair) dated 11th February, 2011 in WP No.423 of 2010 in Case of Abhimanyu Mazumdar V/s the Superintending Engineer and Another in support of release of connection to the occupier. The High Court in the said Judgment held that

“When the Rules of 2006 were introduced, the legislatures had in their mind the aforesaid concept of settled possession which was capable of being defended against any threat of dispossession, even at the instance of the owner, except by due process of law as laid down by the Supreme Court and consequently, introduced the definition of the word ‘occupier’ as lawful occupier without further defining the word “lawful” therein. Therefore, in the absence of any definition of the word “lawful” in the Rules of 2006, we should apply the principle of “settled possession” laid down by the Supreme Court to the phrase “lawful occupier” appearing in the Rules for implementation of the object of the



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Electricity Act, 2003 to construe the same as a person in “settled possession” whose possession can be defended against the threat of dispossession otherwise than due process of law even by the lawful owner.”

It is not obligatory to take NOC of the Owner while releasing a new connection to an occupant who is in settled possession of the premises. If there is a property dispute, the Appellant may approach the Competent Court for removing the alleged unauthorized occupancy.

- (ix) Under the circumstances, the present Representation is untenable against this Respondent No. 2, and ought to be dismissed.

6. During the course of the hearing, the parties were directed to conduct a Joint Inspection of the Site and to submit an Inspection Report to this office. A Joint Inspection was carried out on 3rd January 2023. The Appellant, Respondent No.1 Respondent No.2 and Mr. Mohammed Tayyab Khan (Husband of Mrs. Saleha Khatun Mohd.Tayyab Khan) were present for the Joint Site Visit. The Respondent No. 1 and No. 2 have sent the Site Visit Report immediately.

The abstract of Site Report is tabulated as below: -

Description	Name of Consumer	Consumer No.	Area	Power Supply fed	Remark
Shop/Gala No. 1	IndraDevi Singh (upto 17.07.2019)	CA No. 101918934	120 (12 X 10) sq. feet	AEML	Connection is of AEML. Change of name from IndraDevi Singh to Mohd. Tayyab Khan was done on 17.07.2019 for industrial purpose.
	Mohd. Tayyab Khan (after 17.07.2019 till date)	CA No.152816987			
New Room No. 1	Saleha Khatun Mohd.Tayyab Khan	AEML (CA No. 152497129)	50 (5 X 10) sq. feet	TPCL	Change Over Consumer from AEML (CA No. 152497129) to TPCL (CA No. 900001104268) for commercial purpose for imitation jewellery. However, no physical activity of jewellery was found.
		TPCL (CA No. 900001104268)			



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The alleged Room No. 1 is separated by a single brick wall from Gala No.1. The Roof is covered by an asbestos sheet. Photographs were also taken which are kept on record.

7. A notice was also served to Mrs. Saleha Khatun Mohd.Tayyab Khan on 12.01.2023 for submission in the subject matter. This office has also requested her telephonically a couple of times; however, neither she nor her husband has submitted any written reply till date.

8. From the site visit report, it is seen that the new room no. 1, the subject matter of the current dispute was apparently unauthorizedly constructed on or before 2017. AEML seems to have transferred the connection of the original shop / gala no. 1 from the name of Indradevi, the earlier tenant, to the name of Mohd. Tayyab Khan, the husband of Saleha Khan in July 2019. It is not clear if this was done without the NOC of the landlord, the Appellant. However, we shall not go into this issue here, since the original shop / gala no. 1 is not the subject matter of the current representation. However, we would like to record our displeasure at the action of AEML in granting 2 electricity connections for Room No. 1 (the original CA No. 101918934, and the new CA No. 152497129), with the same address i.e. Room No. 1.

Analysis and Ruling

9. The Appellant is the landlord and owner of Sarjuprasad Yadav Chawl, R.S. Marg, Shivaji Nagar, Pathan Wadi, Malad (East), Mumbai. The Appellant contended that Smt. Indradevi Indrabahadur Singh was a Tenant at Shop No.1 of the said Chawl, where a Flour Mill is or was working. Mr. Mohamemd Tayyab Khan was working in the said Shop No.1 in the flour Mill. Both seem to have mutually altered the area of Shop No.1 and encroached/unauthorisedly occupied the adjacent open space and set up a new Room No.1. Mrs. Saleha Khatun Mohd. Tayyab Khan, wife of Mr. Mohamemd Tayyab Khan allegedly made forged and fabricated documents like ration card etc. and has taken an illegal connection in her name at the alleged new Room No.1. She is an illegal occupant in the alleged room without the consent / no objection of


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owner / landlord. There was illegal changeover of Service Provider from R-Infra to TPCL without NOC of landlord.


10. The Respondent No. 2 (AEML) contended that Mrs. Saleha Khatun Mohd. Tayyab Khan, as the undisputed occupant, applied for electricity connection under commercial tariff category at Room no 1, Suryakala S. Yadav Chawl, along with documents viz Ration card, Shop and Establishment certificate (Ghumasta license -Form D). From the site inspection report, it is seen that this was not the original room / Shop No. 1 where a flour mill existed, but a newly created room, which has also been numbered as “New Room No. 1” in the site visit report. The new connection was seemingly sanctioned on the strength of these documents as per routine process. After payment of statutory charges, the connection was released on 14th October 2017 vide CA No. 152497129 under LF-2 tariff category. Thereafter in the month of September 2021, the consumer applied for change over to Respondent No. 1(TPCL) and as per the due process, the consumer shifted to TPCL.

11. The Commission has defined the procedure for Changeover of Service Provider in Case No. 50 of 2009 dated 15th October 2009. The Respondent No. 1(TPCL) has followed the changeover procedure. It is not necessary to take permission of the owner for change over cases.

12. In the instant case, the Appellant approached the Forum on 24.03.2022. The cause of action arose in Oct. 2017. It is seen that the real grievance relates to encroachment of the new Room No.1 and grant of a new connection which happened in Oct. 2017. The Appellant approached the Forum only on 24.03.2022, after about four and a half years, which is time barred as per Section 7.8 of CGRF & EO Regulations 2020 which is reproduced as below: -

“7.8 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”


Further, a new connection was given to Mrs. Saleha Khan by AEML for the new Room No. 1 in 2017 based on the fact that she was the occupier. In these circumstances, the NOC of the landlord was not necessary.


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13. In view of the above, the instant representation is rejected, and disposed of accordingly. The Appellant is free to approach the concerned Civil Court to settle the dispute regarding unauthorized or illegal possession of the said premises.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

