



BEFORE THE OMBUDSMAN

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

606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051
Tel. / Telefax: 022-2659 2965

REPRESENTATION NO. 40 OF 2005

In the matter of tariff for the premises of Doctor's residence
cum dispensary

Dr. A. T. Wagle,
Office Building no. 4,
Gandhinagar, Bandra (E),
Mumbai – 400 051.....

Appellant

Versus

M/s. Reliance Energy Limited,
Reliance Energy Centre,
Santacruz (E), Mumbai – 400 055.....

Respondent

Present:

1. Mr. W. G. Gorde, Ombudsman

On behalf of the Appellant:

1. Dr. A.T. Wagle

On behalf of the Respondent:

1. Mrs. Anuradha Shetye, Additional Manager (Legal), REL

Date: 23rd November, 2005

1. Dr. A. T. Wagle, the Appellant in the present case, has filed the representation on 27th October, 2005 against the order passed by the Consumer Grievance Redressal Forum of Reliance Energy Limited, through the minutes of the meeting dated 27th August, 2005. The Appellant is located at the office building no. 4, Gandhi Nagar, Bandra (E), Mumbai – 400 051 and is a consumer of M/s. Reliance Energy Limited (hereinafter referred to as Respondent). The Forum in its order has concluded that the Appellant was unable to produce any evidence to show that the disputed premises are used for residence. Therefore, the Forum did not accept the contention that he is liable to be charged on the basis of domestic tariff and not the commercial tariff.

2. The Appellant, in the representation, states that the order of the Forum is unjust, wrongful, based on totally incorrect premises as were presented by the Reliance Energy Limited's officials and incorrect recording of his argument. It is alleged that the Forum has ignored the evidence and arguments presented by him. He relies on the letter of Maharashtra Housing & Area Development Authority, dated 16th April, 1981 stating the

residential use of the premises and also permitting closure of dispensary to continue residential use of the premises. The Appellant alleged harrasment by the Respondent and claims compensation of Rs. 5000/- in this behalf.

3. Notice was issued to the Respondent on 28th October, 2005 calling upon to file its written statement of defence and the documents on which it intends to rely upon. Both the parties were advised to consider whether they could work out any proposal to facilitate a settlement through conciliation or mediation. However, there was no response to this suggestion from either of the parties.

4. The Respondent filed its reply on 18th November, 2005. M/s. Reliance Energy Limited states in the reply that the order of the Forum is totally fair and proper and the Appellant has unnecessarily challenged it. The Respondent denies the allegations that the Forum was unjust, wrongful and based its order on incorrect premises as alleged by the Appellant. It also denies that the Appellant is using the premises for residential purpose and states that the Appellant should be put to strict proof of rent receipts and other proofs to show that the premises are used for residential purposes. The Forum had also sought a documentary proof from the present Appellant during the hearing but no such proof was submitted to the Forum. The Respondent, under these circumstances, prayed that the Representation should be rejected without any relief.

5. The matter was heard on 21st November, 2005. The Appellant reiterated his arguments that he uses part of the premises for residential purposes and the part for his dispensary. He quoted the letter dated 16th April, 1981 issued by the Maharashtra Housing & Area Development Authority to prove his point that the residential use along with the dispensary use, was allowed by the Maharashtra Housing & Area Development Authority. The Appellant denied that he admitted before the Forum that he is not residing in the premises. He stated that he was incorrectly quoted in the order of the Forum. On the contrary, he maintained before the Forum that he used the premises both for residential as well as dispensary purposes.

6. Mrs. Shetye, the Nodal Officer on behalf of the Respondent stated during the hearing that the Forum had considered all the material on record and concluded that the Appellant does not stay in the premises as claimed but operates only dispensary. No proof whatsoever was submitted by the Appellant despite suggestion from the Forum. Merely claiming that he resides in the premises, does not prove his point and should not be accepted without any substantial proof in this behalf. Mrs. Shetye conceded that the Respondent was not aware of the fact that the premises is being fully used as a dispensary until recently when the inspection was carried out. She relied on the inspection by the Respondents' officials and reiterated that the entire premises are used for dispensary only and not for residence. The appropriate tariff category in this case is commercial and not domestic. Therefore, the Respondent corrected the tariff category from domestic to the commercial (LF1 to LF2) in accordance with the tariff order.

7. Dr. Wagle, the Appellant conceded that he did not have a ration card for his premises at Bandra East but argued that the ration card cannot be cited as a proof of the

residence and therefore it should not be insisted and relied upon as an essential proof for his stay in the premises. Without going into the legality or correctness of this argument, it is not only the ration card which provides the address of residence there could be host of other proofs too, to drive home the point. Upon this, he was asked to produce any other proof such as pan card, driving license or some other document to accept the proof of his stay in the premises as claimed. The Appellant did not furnish any such evidence in his submission or during the hearing. The Forum had also deliberated on this issue and sought some sort of clear proof to indicate his residential use. The Respondent has produced the telephone bill, the letter of MHADA and the bill from Reliance Energy Limited to support his point and prayed that it should be taken as acceptable evidence of residence.

8. After going through the submissions and arguments, the issue for decision arises as to whether the Appellant has made out the case to prove that he resides in the disputed premises apart from operating the dispensary. He could not produce any proof such as ration card, driving license, pan card, school records of the family members or any other document to indicate that he resides over there. Mere claim of residence on the basis of MHADA's letter or the telephone bill or bill from Reliance Energy Limited cannot be taken as a conclusive proof of residence. The letter from MHADA issued in the year 1981 is an allotment letter permitting Dr. Wagle to carry out the work of dispensary as well as to use the premises as residence. This letter only shows that the MHADA had permitted to use the premises as residence cum dispensary but it does not, in a way, prove that the said premises was actually being used as such. As regards telephone bill, it does not at all indicate or prove whether telephone is installed at the residence or dispensary. On Reliance Energy Limited bills, the Respondent had conceded during the hearing that there are two meters in the premises, one for each portion of the premises. She agreed that one bill on residential tariff (LF1) and the other on commercial tariff (LF2) were being issued. Recently, their inspection official discovered that the premises were not being used for residence at all but it was exclusively used as a dispensary. This has resulted into changing of tariff from LF1 to LF2, which is meant for commercial purpose.

9. Dr. Wagle, Appellant relied on the provisions contained in the tariff order in this behalf. The paragraph on page 45 of the tariff order for Reliance Energy Limited issued in case no. 18 of 2005 is reproduced below.

“The Commission clarifies that the domestic tariffs will be applicable to residential premises used by professionals like Lawyers, Doctors, Chartered Accountants, etc. except for nursing homes and surgical wards / clinics, in furtherance of their professional activity in their residences.”

Plain reading of the above paragraph shows that the domestic tariff is applicable to the residential premises used by professionals like lawyers, doctors, C.As, in furtherance of their professional activity in their residences. Here, the point in focus is that professional activities are also carried out in their residences. This means that the premises have to be primarily used as residence and then the professional activities such as dispensary, etc are being carried out there in addition to residential user. However, in the present case it does not seem so. The Appellant uses the premises primarily as a dispensary. There is nothing on record to indicate that it is used as a residence. It is also

on record that Dr. Wagle has a residence elsewhere in Bandra west area. Although there is no restriction on having more than one residence by any one, for the purpose of entitling him the benefit of domestic tariff provided, the condition mentioned in the 'Commission's Clarification' referred to above, is fulfilled. But the fact remains that the Appellant could not prove that he also stays in the disputed premises at Gandhinagar, Bandra (east) in addition to his residence in Bandra (west). In absence of any creditable evidence to this effect, I am unable to agree with the contention of the Appellant. I do not find any reason to deviate from the views expressed by the Forum.

ORDER

The Appellant did not produce any evidence to show that he uses the disputed premises as his residence, in addition to his carrying out the professional work as dispensary. He is, therefore, not entitled to the domestic tariff for his dispensary in the premises as observed in the preceding paragraphs. The Respondent is correct in charging commercial tariff for the electricity supply to this premise. The Forum has taken a correct view in the matter, which is in consonance with the clarification given by the Commission in the tariff order. I do not find it necessary to interfere with the order of the Forum. The Representation stands disposed off with this order.

Sd/
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary