

ગુજરાત વિદ્યુત નિયંત્રક આયોગ  
વિદ્યુત લોકપાલ, ગુજરાત રાજ્ય,  
પોલીટેક્નીક કમ્પાઉન્ડ, બેરેક નં.૩, આંબાવાડી,  
અમદાવાદ-૩૮૦૦૧૫

સમક્ષ

કેસ નં. ૧૦૪/૨૦૧૮

અરજદાર : શ્રીમતી પ્રભાબેન કાનાભાઈ બાખલખિયા  
મું. ચિત્રોડ-૩૬૨૧૩૫. તા. તલાલા. જી. ગીર સોમનાથ.  
રજૂઆત કરનાર: શ્રી આશિષભાઈ ભીમભાઈ નંદાણીયા, અધિકૃત પ્રતિનિધિ  
શ્રી મેહુલભાઈ મનસુખભાઈ બાખલખિયા, અધિકૃત પ્રતિનિધિ

વિરૂધ્ધ

સામાવાળા : કાર્યપાલક ઈજનેર  
પશ્ચિમ ગુજરાત વીજ કંપની લિમિટેડ  
વિભાગીય કચેરી, વેરાવળ-૩૬૨૨૬૫. જી.જુનાગઢ.

રજૂઆત કરનાર: શ્રી ડી.વી.લાખાણી, કાર્યપાલક ઈજનેર, પીજીવીસીએલ, વેરાવળ.

::: રજૂઆત:::

- ૧.૦. અરજદારે, પશ્ચિમ ગુજરાત વીજ કંપની લિમિટેડ, રાજકોટના ગ્રાહક ફરિયાદ નિવારણ ફોરમની ફરિયાદ નં.૫૧/કવા.૦૨/૨૦૧૮-૧૯ અન્વયે અપાયેલ હુકમ ક્રમાંક ૯૪૫૨-૧ તા.૧૫.૧૦.૨૦૧૮ ના હુકમથી નારાજ થઈ અત્રે રજૂઆત કરેલ છે. જે રજૂઆતને આ કચેરીના કેસ રજીસ્ટરે દાખલ કરી કેસ નં.૧૦૪/૨૦૧૮ થી નોંધેલ છે. સદર કેસની સુનવણી તા.૨૦.૧૨.૨૦૧૮ ના રોજ રાખવામાં આવેલ.
- ૨.૦. સુનવણી દરમિયાન અરજદારે નીચે મુજબ રજૂઆત કરી.
- ૨.૧. અરજદારનો પુત્ર શ્રી આશિષભાઈ ભીમભાઈ નંદાણીયા અરજદારના વડિલોપાર્જિત મિલકતમાં રહે છે, જેમાં સરકારશ્રીના પ્રવાસન વિભાગ તરફથી હોમ-સ્ટે પોલીસી હેઠળ 6'x6' ની રૂમની મંજૂરી આપવામાં આવેલ છે, જેનો નોંધણી નંબર TCGL/ Homestay/2017/913 તથા TCGL/Homestay/2018/1084 છે. આ યોજના ખેડૂતોને પોતાની આવકમાં વધારો થાય અને ખેડૂત પ્રોત્સાહિત બને તે માટેની છે, જે યોજના અન્વયે ગેસ્ટને રહેવા અલગથી ૬ રૂમો હોવી જરૂરી છે. અરજદારે તેઓની માલિકીની જમીન બીનખેતી કરાવી બાર રૂમો 'હોમ સ્ટે' ના ગેસ્ટ માટે તેમજ ચાર રૂમો અરજદારના ઘરના સભ્યોને રહેવા માટે બનાવેલ છે, જે વર્ષ

૨૦૧૪થી સીલ લાગવાથી બંધ હાલતમાં છે, જેના બદલે અરજદારે રહેવા માટે અલગથી બે રૂમો બીનખેતી વિસ્તારમાં બનાવેલ છે.

- ૨.૨. સામાવાળા દ્વારા ગ્રાહક નં. ૮૧૪૫૧/૧૦૧૧૦/૪ થી 20 KW વીજભારનું વીજ જોડાણ 'RGPR' ટેરીફ હેઠળ તા.૧૯.૦૧.૨૦૧૪ થી અરજદારને આપવામાં આવેલ છે, જેને સામાવાળા વીજ કંપનીના અધિકારી દ્વારા અવાર-નવાર તપાસવામાં આવે છે. સામાવાળા વીજ કંપની દ્વારા આપવામાં આવતું વીજબિલ પણ અરજદાર નિયમિત રીતે ભરતા આવેલ છે, તેમજ કોઈ ગેરરીતી આચરવામાં આવેલ નથી.
- ૨.૩. 'હોમ સ્ટે' યોજના હેઠળ ખેડૂતને આપવામાં આવેલ વીજ જોડાણ 'ઘર વપરાશ' ની કેટેગરીમાં આપવામાં આવશે તેવું જણાવવામાં આવેલ છે, જેના Govt. of Gujarat ના GR ની નકલ અરજદારે રજૂ કરી.
- ૨.૪. અરજદાર એક ખેડૂત છે, તેમજ સામાવાળા વીજ કંપનીના ગ્રાહક છે. અરજદારને વર્ષ ૨૦૧૪ માં આપવામાં આવેલ વીજ જોડાણમાં સામાવાળા દ્વારા કોઈ પણ આગોતરી જાણ કર્યા વગર રૂ. ૨,૫૩,૫૧૪.૯૫ નું પુરવણી વીજબિલ અયોગ્ય રીતે આપવામાં આવેલ છે. તા.૦૭.૦૬.૨૦૧૮ ના રોજ સામાવાળા તરફે તપાસ કરતાં સદર વીજ જોડાણને વાણિજ્ય હેતુનું ગણીને વીજબિલ આપવામાં આવેલ છે જે કુદરતી ન્યાયના સિધ્ધાંત વિરુદ્ધનું લાગે છે.
- ૨.૫. સામાવાળા દ્વારા જે વીજ જોડાણ ઘરવપરાશના હેતુ તરીકે ચાલુ કરવામાં આવેલ હોય તેને ગ્રાહકને કોઈ પણ જાતની જાણ કર્યા વગર પૂર્વગ્રહ રાખીને ટેરીફ ચેઈજના બહાના હેઠળ વીજ જોડાણની કેટેગરી બદલી નાખવી યોગ્ય છે? તેવો સવાલ અરજદારે કરેલ. અરજદારને આપેલ પુરવણી વીજબિલ રદ બાતલ કરવા અરજદારે વિનંતી કરી.
- ૨.૬. અરજદારે બીનખેતીના હુકમની નકલ, હોમ સ્ટે નોંધણીપત્ર, હોમ સ્ટે ગાર્ડ લાઈન તથા ફોરમના ચુકાદાની નકલ રજૂ કરી. ગ્રાહક ફરિયાદ નિવારણ ફોરમ દ્વારા અરજદારના સદર કેસમા ન્યાયિક ચુકાદો આપવામાં આવેલ નથી તેમ જણાવી ન્યાય મેળવવા નામદાર અદાલતમાં જવા મંજૂરી આપવા વિનંતી કરી.

**3.0.** Respondent has represented the case as under.

- 3.1. Appellant is having 20 KW three phase commercial connection, bearing consumer No.81451/10110/4 at village Chitrod in survey No.66/5p, under RGPR category, since 19.01.2014. The connection of Appellant was checked on 07.06.2018 and supplementary bill of Rs. 2,53,514.95 was issued for tariff change, under Section 126 of Electricity Act,2003.
- 3.2. As per checking dated 07.06.2018, it was found that commercial load of 19.83 KW was used from RGPR meter, hence supplementary bill as

mentioned in Para No. 3.1 was issued. Site Rojkam was prepared by the team of Dy. Collector, Mamlatdar, RFO, Police staff and PGVCL staff in presence of consumer.

3.3. On 26.06.18 Appellant represented that permission has already been got in Gold category under Home stay policy from the tourism department of Government of Gujarat vide No.TCGL/Homestay/2017/913 dated 17.10.2017 for 6 rooms as per GR No. PVS/10-2014/753615/S dated 20.11.2014.

3.4. As per tariff order issued by GERC stating that, if the part of the residential premises is used for non-residential (commercial) purposes by the consumers located within 'Gram Panchayat' as defined in Gujarat Panchayat Act, entire consumption will be charged under this tariff. The said premises is not within the Gram Panchayat area. It is outside gamtal and land is NA for residential purpose.

It is submitted that as per the tariff schedule No.5 "Except in cases where the supply is used for purposes for which a lower tariff is provided in the tariff schedule, the power supplied to any consumer shall be utilized only for the purpose for which supply is taken and as provided for in the tariff". The above connection is released for residential purpose but was utilizing for commercial activities instead of residential purpose.

3.5. It is submitted that the said premises was again inspected by Deputy Engineer, Talala as per the directives of Liaison Office, Gandhinagar. It was found that at the said premises there were about 20 rooms and 2 shops, restaurant, kitchen, generator room, children play area, office, garden, swimming pool etc. All rooms were utilized for commercial purpose.

While going through Clause No. 12.2 of the Resolution dated 20.11.2014, it is stated that domestic rates for electricity would be charged from the registered home stay establishment. But till today no provision is made in tariff order, published by GERC.

- 3.6. It is submitted that Appellant had challenged the said bill before CGRF. After hearing on 15.10.2018, CGRF has issued order vide letter No. PGVCL/CGRF/51/Q.02/18-19/9452-1 in favour of Respondent and stated that the bill issued by Respondent is in order.
- 3.7. On 26.10.2018, as per directives of Collector, Gir Somnath, the said premises was again checked and Rojkam was prepared by the team of Dy. Collector, Mamlatdar, RFO, Police staff and PGVCL staff in presence of Appellant. As per the Rojkam said premises was NA for residential purpose but was utilizing for commercial purpose for the period of more than three years. Moreover, illegal additional construction was also found.
- 3.8. As there is no provision in the tariff and as said, Appellant was utilizing the premises outside the Gram Panchayat area purely for commercial acidity, the supplementary bill so issued is in order.
- 3.9. Respondent has submitted rejoinder vide letter No.45 dated 02.01.19 and stated as under:

- (1) As per the directives issued by District Magistrate on the basis of PIL lodged in Hon'ble High Court, Ahmedabad, team was formed headed by SDM having Mamlatdar, RFO, Police Department and PGVCL as a member. Accordingly, various farm houses/hotels were checked during 06.06.18 to 08.06.18 and 26.10.18 to 28.10.18. During the course of checking, certain irregularities were observed and necessary checking sheet prepared. Moreover, some of the farm houses also checked by Vigilance Team on different date and supplementary bills are issued to concern defaulters as under:

Sr. No.	Type of irregularity	No. of connections checked during 26 <sup>th</sup> Oct.2018 to 28 <sup>th</sup>	No. of connections checked during 29 <sup>th</sup> May to 15 <sup>th</sup> June,2018.
1	Tariff change-under Section 126	31	26
2	Load extension- under Sec.126	03	02
3	Theft bill under Sec.126	01	04
4	Theft bill issued under Sec.135	00	02
5	No. of irregularity found	11	02
6	Total amount of Suppl. Bill issued	Rs .9,13,618/-	Rs. 3486059.86

- (2) It is submitted that during both the drives, connection of Appellant was checked and supplementary bill of Rs.253514.95 was issued on account of purpose change in existing residential category connection.
- (3) It is true that Appellant is having registered under Home Stay and permission given for six rooms. Actually said connection was released on 19.01.2014 for residential purpose. Home Stay policy was not announced at that time. There is no provision in GERC tariff so far that Home Stay license holder's energy bill should be prepared under residential purpose.
- (4) It is submitted that looking to the above mentioned fact, supplementary bill issued by Respondent is in order.  
Further it is stated that supplementary bill is issued under Section 126 of Electricity Act, 2003 and Clause 7.41 of Supply Code Notification No.4 of 2015. Therefore, said issue is not in purview of Forum.

::: **ORDER** :::

- 4.0.** I have considered the contentions of the Appellant and the contentions of Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.
- 4.1. In the present representation, main two issues raised by Appellant are (1) to cancel the supplementary bill and (2) to give approval to file the case before court of law.
  - 4.2. On going through the submission made by parties, Appellant is a consumer of residential category of Respondent, having connection No.81451/10110/4 with 20 KW load. The connection was released on 19.01.2014 at Land Survey No. 66/5p of village Chitrod under NA land for residential purpose.
  - 4.3. The above three phase connection was checked by Respondent on 07.06.2018 vide sheet No.374 and it was found that electricity was

- utilized for commercial purpose from the said residential category connection. Respondent has noted that unauthorized use of energy by Appellant from said residential category connection.
- 4.4. On 12.06.2018 Respondent had issued supplementary bill under Section 126 of Electricity Act, 2003 for the amount of Rs.2,53,514.95 along with calculation sheet, with note that the amount of supplementary bill to be paid within seven days or to submit objection within seven days against the bill so issued.
- 4.5. Vide letter dated 22.06.2018, Appellant had intimated Respondent regarding registration made under Home Stay policy by him vide No.TCGL/HomeStay/017/913 dated 17.10.2017 and objected against the supplementary bill so issued by Respondent.
- 4.6. To deal with main issue as narrated by Appellant herein above, it is required to read the provisions of CGRF & Ombudsman Regulations No.2 of 2011, Clause 3.17, which says as under:

Clause 3.17:

A Representation may be entertained by the Ombudsman only if all of the following conditions are satisfied:

- i. It has been filed by the Complainant (aggrieved Consumer). For avoidance of doubt, a Licensee is not allowed to file a Representation before the Ombudsman against the order of the Forum.
- ii. The Complainant had, before making a Representation to the Ombudsman, approached the Forum constituted under sub-section (5) of section 42 of the Act for redressal of his/her Complaint/Grievance.
- iii. The Representation by the Complainant, in respect of the same Complaint/Grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has not been passed by Ombudsman, such court, tribunal, arbitrator or authority.
- iv. The Complainant is not satisfied with the redressal of his/her Complaint/Grievance by the Forum or the Forum has rejected the Complaint/ Grievance or has not passed the order within the time limit specified or Distribution Licensee has not implemented Forum's order within specified time limit.
- v. The Complainant has filed the Representation before the Ombudsman within 30 days from the date of receipt of the order of the Forum or date of expiry of the period within which the Forum was required to issue the order, or date of expiry of the period within which Distribution Licensee has to implement Forum's order, whichever is applicable:  
Provided that the Ombudsman may entertain an appeal after the expiry of the said period of 30 days if the Ombudsman is satisfied that there is sufficient cause for not filing it within that period.

- vi. The Representation does not fall under sections 126, 127, 135 to 139, 152 and 161 of the Act.
- vii. The Complainant who claims compensation from the Distribution Licensee has paid such fees as may be stipulated by the Commission from time to time.
- viii. The Complainant has deposited one third amount in terms of Forum's order, if required, with the Licensee and submit proof of payment made.

From the above provisions, Clause 3.17(vi) does not permit CGRF as well as Ombudsman to deal with above issue as it is related with Section 126 of Electricity Act,2003.

- 4.7. I further note the tariff rate and category under which the consumer is governed by the tariff schedules decided by Hon'ble GERC in its tariff order framed by the Commission. I note that the tariff schedules specified in the tariff order (1) dated 31.03.2018 in Petition No.1702/2018 (ii) dated 31.03.2017 in Petition No.1631/2017 (iii) dated 31.03.2016 in Petition No.1550/2017 provides that any consumer utilize the premises for commercial purpose, like the Appellant, is governed by commercial category and accordingly he is liable to pay the commercial tariff. The aforesaid tariff orders which are statutorily in nature are not recognized or specified that the consumers who are utilizing premises for commercial purpose are liable to pay the commercial tariff. As per the version advanced by Respondent PGVCL, the aforesaid orders not state the residential premises if any governed under home stay policy if utilize for commercial activities is not liable to pay commercial tariff.
- 4.8. On above observations, the representation filed by Appellant pertaining to Section 126 of Electricity Act,2003 not falls under the jurisdiction of Ombudsman to decide, hence it is dismissed without any direction.

- 4.9. Respondent is directed to guide the consumers in such type of grievances, which are related with Section 126 of Electricity Act, 2003 and competent authority, i.e. Electrical Inspector is empowered to deal with such type of issues as per provisions of Supply Code Regulations, 2015/ Electricity Act, 2003.
- 4.10. I order accordingly.
- 4.11. No order as to costs.
- 4.12. With this order, representation/Application stands disposed of.

(Dilip Raval)  
Electricity Ombudsman  
Gujarat State

Ahmedabad.  
Date: 11.02.2019.