

Medicos Legal Action Group

1184, Sector 21-B Chandigarh 160022, ph 4633735

To
Mr Vivek Pratap Singh
Commissioner Municipal Corporation
UT Chandigarh

Re Unjust levy of commercial / non residential charges on Doctors for supply of electricity & water in city of Chandigarh.

Dear Sir,

Our attention has been drawn to this matter by various doctors who have objected to the undue charges for electricity & water being charged by UT from Doctors. In reply to one of them vide memo No SEE/OP/C1-2013/155/obj.7/1148 dt 12-03-2013 the SE Electricity has mentioned that where a portion of dwelling unit is used for mixed load purpose (residential plus non residential / commercial), the connection will be billed for tariff which is higher (commercial).

I am surprised at this order because this means that doctors who mostly use a portion of their residence as a clinic / consulting chamber are being billed for the entire connection on tariff which is higher than the commercial / non residential rate. Sir you would be aware that professional activity is an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction therefore between a professional activity and an activity of a commercial character and unless the profession carried on by user also partakes of the character of a commercial nature he cannot be billed on commercial rates. UT administration vide its orders has also permitted Doctors to use part of their residence i.e. 25 % of covered area or 500 sq ft whichever is less for clinic / consultation chamber. To charge commercial rates in itself for this 25 % area is against the established law on the matter but to charge commercial tariff even on the portion being used as residence is gross violation and in contempt of court orders on the issue. To elaborate on this issue I am giving a few of the many judgments as reference on the matter;

- 1) Bombay High Court in case of Rajendra G. Shah vs Maharashtra State Electricity ... on 4 August, 2011 has clearly considered the question as to :
What is the rate applicable for use of electric power consumed by professionals like doctors, lawyers, professional engineers and chartered accountants as per

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*the tariff fixed by the MERC? It is not open to the respondent (Maharashtra State Electricity Distribution Company Ltd) to bifurcate and determine which part of the residence is used for the purpose of residence and which part is used for the purpose of office or determine what proportion of electric power consumed be attributed to use for residence and what part can be attributed to professional use. **It would not be necessary for such professionals to have separate meters or submeters, one to be used for measuring domestic consumption of power and another for measuring consumption for professional activity. In respect of the premises which are used by the professionals like lawyers and doctors for their own residence, the tariff for the electricity supplied to the premises would be charged on the basis of domestic use irrespective of the fact that the premises are used for whole or part of the day also for the purpose of carrying on their professional activity in the whole or part of the premises.***

- 2) In another case Madhya Pradesh Electricity Board vs Shiv Narain the three judge bench of honourable supreme court has held that “ ***exclusively running office of advocate or doctors clinic was clearly a non domestic use***”. The stress in this judgment is on the word ‘exclusive’ use of premises. Most of the doctors affected by high handedness of your officials use only 25 % or 500 sq ft of their residential premises (whichever is less) for professional use.
- 3) MERC in its order dated 17th August 2009 applicable for the financial year 2009-2010 has categorized *LT 1 users from a-g. LT1 (g) category includes Residential premises used by professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants, etc. in furtherance of their professional activity in their residences but shall not include Nursing Homes and any Surgical Wards or Hospitals. **It has clearly been said that the residential premises used by the professionals like lawyers, doctors, professional engineers, chartered accountants, etc. in furtherance of their professional activity in their residences, shall be charged at the residential tariff.*** Why JERC Gurgaon / Chandigarh has not considered it appropriate to apply the same to Chandigarh.
- 4) High Court Delhi in its judgement in Dr D V Chug vs State delivered on 2nd July 2012 stated that *the professional establishment of a doctor cannot come within the definition of commercial activity. Commerce is that activity where a capital is put into; work and risk run of profit or loss. If the activities are undertaken for production or distribution of goods or for rendering material services, then it comes under the definition of commerce.*

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The word 'profession' used to be confined to the three learned professions; the Church, Medicine and Law. There is a fundamental distinction between the professional activities and commercial activities. Arbitrary penalty by the authorities for doctors running clinics in their residential premises is against the spirit of this judgment.

- 5) Delhi High Court in the case of Parivar Seva Sansthan & Ors v. The State wherein vide order dated 20.10.2009 it has been observed that *running of 'Nursing Home' in residential premises does not come under the commercial activity.*
- 6) MPERC order dated 30/11/2012 in petition 264/02 has given rate schedule for doctors using part of their residential building for professional work as LV-1 ie Domestic. The lawyers chambers, even outside their residence, shall also be covered under domestic tariff in view of M P High Court decision in Shiv Narain & another v/s MPEB and others (AIR 1999 Madhya Pradesh 246).
- 7) Under Article 14 of the constitution Doctors have a right to equality. Despite repeated protests and representations Doctors are forced to pay commercial / non residential tariff for water and electricity by UT Chandigarh Administration even for portion of premises being used for residence. Doctors also pay Property Tax which is supposed to be levied only on commercial premises. No other professional be it advocates, chartered accountants, architects is forced to pay these despite multiple high court and supreme court rulings that professional activity of a doctor , chartered accountant and lawyer are equitable, similar and are not commercial in character. This is gross violation of the rights of doctors as Indian Citizens to be treated equally with other professionals.

Under the circumstances we request you to kindly reconsidered the autocratic and discriminatory approach of the UT Administration towards doctors who practice their profession in a portion of their residential premises in the city. We respect the JERC's authority and decisions to increase the or decrease power tariffs but our humble submission is that doctors are already being unfairly charged exorbitant rates for electricity as also for water and are over and above paying property Tax. Whatever your decision regarding rates to be charged it is imperative that doctors should be treated at par with other professionals and a discriminatory approach should not be adopted in this matter .

Yours sincerely

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