

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.

Case No. CGRF / AZ / AUR / R / 577 / 2016 / 08

Date of Admission 15.03.2016

Date of Decision 04.05.2016

M/s. Harman Fino Chem
Pvt. Ltd. Plot No. E-100/1 MIDC , Shendra ,
Tq. Aurangabad Dist. Aurangabad 431 201

COMPLAINANT

VERSUS.

1. Superintending Engineer,
Rural Circle, Nodal Officer,
MSEDCL, Aurangabad. RESPONDENT
2. The Additional Executive Engineer,
Flying Squad, Aurangabad Rural,
Aurangabad

CORAM:

Shri Dr.Bhaskar G. Palwe Chairman
Shri Uttam M.Urkude, Member/Secretary
Shri Vilaschandra S.Kabra Member.

REDRESSAL DECISION

The Complainant , M/s. Harman Finochem Ltd. at E/100/1 five star , MIDC, Shendra, Aurangabad is a HT consumer of the Respondent Superintending Engineer , Rural Circle, MSEDCL, Aurangabad with consumer No. 490539009950 having CD-2355 KVA & CL-3207 KW, from dated 29.03.2015. Complainant has filed application in Annexure " A " of the Maharashtra Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Electricity Ombudsman) Regulation 2006 .

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The brief details of the complaint are as under. The complainant initially obtained LT connection of 15 KW for construction of the factory building on 20.12.2013. The consumer No. 91470015598 was allotted. It is further submitted that 33 KV HT supply was released by the Respondent for industrial purpose on 29.03.2015, after observing all the technical formalities. At the time of releasing HT connection the LT connection / meter along with the service wires which was installed for construction purpose was removed by the Respondent on the date of release of HT connection i.e. on 29.03.2015.

It is submitted that after getting HT supply trial production of various pharmaceutical products was started. It is submitted that Respondent No. 2 , Additional Executive Engineer, Flying Squad visited the complainants factory on 01.10.2015 and carried inspection and handed over the inspection report to junior officer of the complainant. The complainant has further submitted that inspection report contains the following remarks.

“The consumer has taken supply for industrial purpose i.e. HT – I C where as actual use of electricity is for construction of building and commissioning of various equipments. Hence tariff applicable is HT – II commercial, according to MERC tariff order, issue bill to consumer u/s 126 of Electricity Act 2003 for entire recorded consumption on meter as per MERC order for HT-II category” Respondent No. 1, then sent Executive Engineer, Rural Division, Aurangabad for inspection of the premises of the complainant on 15.10.2015. The Executive Engineer in his report has mentioned that only the plastering, flowering activity was seen. About 80 % of the construction was completed. The manufacturing equipments were in operation.

The assessing officer issued provisional bill of Rs. 4,86,09,032/- (Rs. Four crore eighty six lacs nine hundred and thirty two only) on 02.01.2016 i.e. after three months from the date of inspection which is violation of provision No. 24.3.3 of MSEDCL's Conditions of Supply. The complainant therefore has prayed for

- 1) To admit and to allow the grievance of the complainant.
- 2) To direct the Respondents not to disconnect electricity supply of the complainant till the final disposal of the grievance.
- 3) To declare that the present grievance does not fall under the purview of the section 126 of Electricity Act 2003.
- 4) To direct the Respondent to withdraw the wrongly issued assessment bill under section 126 of the Electricity Act .
- 5) To direct the Respondent to produce copy of legal opinion submitted by legal department, MSEDCL, Aurangabad Zone and also copy of MSEDCL , Head office in this regards.

Say of Executive Engineer (Admn), Nodal Office, O&M Rural Circle, M.S.E.D.C.L. Aurangabad-Respondent

The Respondent No.1,vide Letter Dated 22.03.2016, submitted that the forum does not have jurisdiction to decide complaint as the bill is given to the consumer is under the Section 126 of the Electricity Act 2003. The Additional Executive Engineer, Flying Squad, also submitted video shooting from which it is clear that construction activities are going on in the premises of M/s. Harman Finochem Pvt. Ltd. and the construction activities is categorized under commercial tariff. The consumer has used the electricity for purpose other than for which it was authorized, therefore the case falls under section 126 of the Electricity Act 2003 and there upon the bill of assessment under section 126 was issued to the consumer.

Respondent therefore submitted that complaint is liable to be dismissed for want of jurisdiction.

Observation of the Consumer Grievance Redressal Forum.

- 1) The LT meter along with service wires of connection No 491470015598 which was installed for construction purpose having below 1000 units / months consumption was removed by respondent on its own on the date of release of HT connection No. 49053009950 i.e. on 29.03.2015 by verifying the actual use of electricity and to avoid two connections at the same premises for the same purpose. The Respondent vide letter dated 20.11.2015 by Executive Engineer, has submitted that as per guidelines of MSEDCL circular that there shall not be any other connection in the same premises of the same name for the same purpose . Considering the above facts, Respondent has not taken any application for making P.D. connection from consumer.
- 2) The complainant has submitted that all the pharmaceutical companies requires approval of products before it sales, from Food & Drugs Authorities and other related Government Departments. After receiving HT supply the complainant started trial production on various pharmaceuticals products in their factory along with installation, commissioning and testing of other ancillary machineries.

The details of the monthly consumptions in KWH Units and maximum demands are as below :-

Months	Units (KWH)	Maximum Demand (KVA)
March 2015	60	28
April 2015	375150	971
May 2015	413220	892
June 2015	442230	977
July 2015	501630	1001
August 2015	491970	1099
September 2015	538380	927
October 2015	91170	885
November 2015	9570	128
December 2015	582630	1301
January 2016	523230	1191
February 2016	605940	1255
March 2016	652380	1240

The above monthly consumptions of KWH units and maximum demands as compared to the consumptions of construction's Meter confirm that the electricity was being used for industrial purpose.

- 3) Respondent No. 1 granted exemption in payment of electricity duty for the period of 12.04.2015 to 31.03.2019 as per Bombay Electricity Duty Act 1958 Section 3 (2) – A (III) , by confirming the industrial use of electricity .

- 4) The Additional Executive Engineer, Flying Squad, Aurangabad i.e. Respondent No. 2 visited the factory on dtd. 01.10.2015 and carried inspection of the Complainant's installations and prepared the inspection report vide DVS2 No. 2821 Dt. 01.10.2015 in which it has been mentioned that,

Sr.No. 6 – The type of installation and nature of process / products - construction of building and commissioning of various equipments.

Sr.No. 14 – Details of connected load -MD observed on meter = 26.020 KVA.

Sr.No. 15 - Irregularities observed- while checking it is observed that Cons / User has taken supply for Industrial purpose i.e. HT-IC, whereas at actual, uses electrical supply for construction of building and commissioning of various equipments. Hence tariff applicable is HT – II Comm. according to MERC tariff order.

Sr.No. 16 -Remedial action proposed – Issue bill to consumer u/s 126 of EA 2003 for entire recorded consumption on meter as per MERC tariff order for HT – II Comm. Category.

The video shooting is only focused on the external part of the factory and not on the internal part where industrial activity is going on.

In this case Respondent No. 2 has not mentioned the details of connected load used for the construction purpose, commissioning purpose and industrial purpose, separately to establish the unauthorized use of electricity as per section 126 of EA 2003 and illogically mentioned the irregularities observed and remedial action proposed which are only based on guessing and preponderances of probabilities and not on real facts.

- 5) The Complainant is high tension (HT) consumer of electricity supplied by Respondent. As per condition Nos. 24.1.2 and 24.1.3 of the M.S.E.D.C.Ls conditions of supply, Superintending Engineer / Chief Engineer from Operation and Maintenance of concerned area is / are designated as Assessing Officers for H.T. consumers, in pursuance of the State Government notification No. IEA 2006 / C.R. 477 (I) NRG – 3 dated 26 th Sept. 2006.

The prima-facie record shows that the Complainant's premises was inspected on 01.10.2015, by the Additional Executive Engineer (F.S.) i.e. Respondent No. (2), who is not designated as Assessing Officer as per condition No. 24.1.3 of MSEDCL's conditions of supply and he failed to show/ Prove his authorization for the same, when asked by this Forum.

- 6) The Assessing officer i.e. Respondent No. 1 may not relied upon the inspection report submitted by the Respondent No.2,

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hence authorized to Executive Engineer Rural Division, Aurangabad vide letter No. 5171 Dtd. 09.10.2015 for inspection of the premises and accordingly Executive Engineer, Aurangabad Rural Division carried out the inspection on dtd. 15.10.2015. The contents of the spot inspection report related to use of electricity is reproduced as below .

"Deepa japeer meoj ef'keacCer Fceej le GYeej Ceedles keace pejeUheeme 80 škeleas heCe& Peeues Demetre meUee eileLes heakede huueej eje, huemšj eje, iefF d[ie FIUeeer keaces Ueeuet DemeuUeees efreoMeteeme Deeuas Uee keaceeme" er Jeehejele DemeuUee ceelMevmeuee efleoUeje Yeej 18 SÙe.heer DemeuUeees efreoMeteeme Deeuas (meeyele Ueeer pees[ueer Deers) "

Iemašle Deepa japeer meoj eue ef'keacCer ef Dees me& (10) S.Sve.Shea. [er (7) , meelUeees (2) , yues[me& (3) , efneve efume (6) , Shea.yeer. [er. (2) , S.SÙe.UegS. FIUeeer mehešle ceelMevme keaUeeUeele PeeuUee Dee{UuUee Je UeeUeer UeeUeCeer (Gihooe) Ueeuet DemeuUeees efreoMeteeme Deeuas . meoj eue ceelMevmeUeer Ueeer Je efleoUeje Yeej meeyele pees[uee Deers

" UeeUeelej ekele DeeKeCeer keaer Deelje ekele ceelMevme Goe. meelUeees efve efume, efmeašme&, Jnkeleje heeme FIUeeer ceelMevmeUeer GYeej Ceer kaj le DemeuUeees efreoMeteeme Deeuas "

As such it is reported by the Inspecting Officer i.e. Executive Engineer, Rural Division, Aurangabad that flooring and plastering work and trial production was going on and the industrial load connected was 2300 KW and the utility load connected nearby plastering work was 18 HP (13.4 KW) . This means the predominant use is for industrial purpose.

The plastering of walls does not need any electricity. The welding machines, cutting machines and bending machines are part of the industrial activity. Therefore the activity in the factory can not be considered as commercial activity. Therefore action under section 126 of Electricity Act 2003 does not attract.

- 7) The Assessing / Inspecting Officer has not recorded the inspections in a logbook to be maintained by the Assessing Officer of the MSEDCL along with the name of such officer and details of the visit to consumers premises . Moreover the visit and spot inspection report (**Annexure- J**) is not prepared by such officer as required according to the condition No. 24.2.1 of MSEDCLs condition of supply .
- 8) Even after the inspection on dtd. 15.10.2015 of the Executive Engineer, Rural Division, Aurangabad who was authorized by the Assessing Officer and its reports regarding predominant use of electricity for industrial purpose, the Assessing officer has issued the provisional / final bill of Rs. 4,86,09,032/- merely on the basis of inspection report of Additional Executive Engineer (FS) Aurangabad, who is not authorized for inspection of High Tension Consumers by condition No. 24.1.2 & 24.1.3 of MSEDCL's Conditions of Supply, without any application of mind under guise of section 126 of EA 2003,

only based on guessing and preponderances of probabilities and not on real facts.

Moreover the Assessing Officer issued provision bill on dtd. 02.01.2016 i.e. after 3 months from the date of inspection which is a violation of condition No. 24.3.3 of MSEDCL's conditions of supply . This should have been done within seven days from the date of inspection.

- 9) Consumer Grievance Redressal Forum has visited the premises of the factory along with the Complainant and Respondents . The CGRF observed that the company has installed plant and machinery & trials of the equipment and the process of production was being undertaken .
- 10) In the tariff order passed for the year 2008–09 and thereupon, the Hon. MERC has considered all activity like sales office, time office , administrative office, canteen, research and development centers etc. which are situated within industrial premises as part of industrial activity . It is further directed in the said order that for electrical consumption of all such activities, no separate meter is required to be installed and bills shall be issued as per industrial activity .
- 11) Hon. Electricity Ombudsman , Mumbai in Representation No. 63 / 71 / 86 / 2013 has quashed the bill wrongly issued u/s 126 of EA 2003.

- 12) Hon. Electricity Ombudsman, Nagpur has also passed an order and quashed the bill issued u/s 126 by MSEDCL (Case No. 04 / 2014) .
- 13) After going through the details of directives passed by Hon'ble MERC, order passed by Hon. Electricity Ombudsman , Mumbai and Nagpur, it is clear that the predominant use of electricity is required to be considered while applying section 126 of the Electricity Act 2003 and issuing assessment bills.

In view of the hearing conducted, visit to the factory premises by CGRF, submissions made by complainant as well as Respondents during the hearings orally and in writing in depth, this forum come to the conclusion that prima-facie ,the respondent has failed to establish that the complainant indulged in unauthorized use of electricity ,so as to bring the case within the purview of Section 126 of EA 2003.

Consequently the forum has every jurisdiction to entertain the grievance.

Therefore the forum issues following order.

ORDER

- 1) The grievance of the complainant is allowed.
- 2) M/s. MSEDCL shall not disconnect the electricity supply of the Complainant i.e. M/s . Harman Finochem Pvt. Ltd.

- 3) The present grievance does not fall under the purview of section 126 of the Electricity Act 2003 amendment 2007.
- 4) The Final Order issued by the Assessing Officer Dtd.11/02/2016 is hereby quashed and set aside.
- 5) The impugned final bill of Rs. 4,86,09,032/-issued without any application of mind under guise of section 126 of Electricity Act 2003, is therefore liable to be and is hereby quashed and set aside.
- 6) No Order as to Costs.
- 7) The Compliance Report shall be submitted within 30 days.

Sd/-
Dr.Bhaskar G. Palwe
Chairman

Sd/-
Uttam M. Urkude
Member / Secretary

Sd/-
Vilaschandra S.Kabra
Member