

**CONSUMER GRIEVANCE REDRESSAL FORUM**  
**AURANGABAD ZONE, AURANGABAD**

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**Case No. CGRF/AZ/AUR/U/ 2005/09.**

**Date of Filing: 26/09/2005.**

**Date of decision: 11 / 11 /2005**

**Shri Shashikant Dattatray Acharya                      The Consumer**  
**r/o Plot No.A/3, DeshpandePuram                      complainant**  
**Shahanoorwadi, Aurangabad.**

V/s

**MAHARASHTRA STATE ELECTRICITY BOARD,**  
**( Now known as Maharashtra State Electricity**  
**Distribution Co. Ltd)**  
**The Distribution Licensee.**

Sub: Grievance under the Maharashtra Electricity Regulatory Commission, (Consumer Grievance Redressal Forum and Ombudsman) Regulation 2003.( hereinafter referred to as The Regulations, 2003).

1. The consumer complainant Shri Shashikant Dattatray Acharya, ( Con.No490012142991 ) has filed his grievance in Annexure " A " before this Forum on 22.09.05 under regulation No. 6.5 of The Regulations 2003. A copy of the grievance was forwarded on 26.09.05 to the Nodal officer and Executive Engineer (Adm) in the office of the Superintending Engineer, Urban Aurangabad with a request to furnish his response on the grievance within fifteen days and hearing in the matter was fixed on 17.10.05.
2. The grievance of the consumer in brief is as stated below.The consumer has purchased a flat bearing No.A-3 at Prabhat Nagari, Shahanoorwadi, Aurangabad in June 2003 and has let out the same

to one shri Duggal who is residing there even now. The contention of the complainant is that till July 2004 ,he was paying the electricity bill regularly. On 22.07.2004, after inspection of his meter he was charged Rs. 40192/ and compounding charges Rs.8000/ on ground that his meter was found to be slow.

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3. The bill was given to him 05.08.2004. The bill was not acceptable to him, so he requested the Chief Engineer ,MSEDCo. to look into the matter. His old meter bearing No. 9000113146 was replaced by new meter bearing No. 9000059022, and he was given to understand that after testing of old meter he will be informed .The consumer thereafter met the Dy.Ex.Engineer & Executive Engineer and requested to correct the bill after testing of old meter but every time he was given to understand that it can not be done till the time the report of testing of the old meter is received , and he was permitted to make part payment against the bill. It is further contended that since he is residing at Jalna, and the tenant should not be put to inconvenience, he was making part payment of the bill every time but no report of the meter testing was given to him. Since he was required to pay additional amount and interest , he met the Chief Engineer, who instructed the concerned not to disconnect supply and informed him that meter testing report will be made available shortly and thereafter bill will be rectified. The consumer contended that he was not given corrected bill and he has paid Rs. 38000/ and interest amount against the incorrect bill. On 8.8.05, his supply was cutoff, irrespective of the fact that he was requesting the concerned officers of the D.L. to give him correct bill after testing the old meter. Thereafter on 9.8.05 he met S.E. who instructed the concerned EE to reconnect the supply and to give correct bill. His request to test his old meter at Govt .Engineering college at his cost was not given any heed. The consumer therefore approached the Forum for justice in the matter.
- 4 No response was filed by the Nodal Officer on behalf of DL till the date of hearing i.e. 17.10.05.The response was not filed even on the date of hearing. The hearing in the matter was adjourned to 21.10.05 at the request of Nodal Officer

- 5 On 21.10.05, the Nodal Officer filed his response to the grievance. In the response it was stated by the NO that Flying squad, Aurangabad on 22.7.04 inspected the premises of the consumer and found that the meter is tampered and is 76.19 % slow. The fact was brought to the notice of the tenant. The spot inspection report is signed by the consumer's representative ( tenant ) & Dy.Executive Engineer Flying squad, Aurangabad .As per joint inspection report bill for Rs. 40091/ against the energy charges and Rs. 8000/ as compounding amount was issued to the consumer.

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6. It is further contended that the case is one of theft of energy under section 135 of Electricity Act 2003 ( hereinafter referred to as The Act) and consumer has paid Rs. 37711/against the total bill of Rs.48091/ which means that consumer has committed theft and paid accordingly. Dy Ex.Engineer Flying squad Aurangabad vide letter No. 442 dt. 25.7.04 informed the consumer to be present at the time of testing of the meter on 26.7.04. On that date the meter was tested in testing lab of testing unit of MSEB Urban Aurangabad and the meter was found to be slow by 63.76%.
7. It is further contended that the consumer never raised any grievance to the office in the matter. The NO further mentioned in the report that the theft case was detected on 22.7.04, the consumer never raised any grievance to the D.L. but appealed to the Forum on 22.9.05 i.e. after a period of more than one year and hence the appeal is not maintainable under section 127 of The Act which says that the appeal should be made within 30 days. Since the NO did not file copies of any of the documents referred to in response dt.21.10.05, he was directed to file the copies of the same and the matter was kept for hearing on 26.10.05 on the point of tenability in view of the contention that the case is of one of theft of electricity under section 135 of The Act.
8. The NO subsequently filed following documents.

1. Letter No.459 dt. 3.8.04 from Dy.Ex.Engg Flying squad to Dy.Ex.Engg Urban Garkheda regarding issue of assessment bill
2. Assessment sheet bearing No. 151 dt. 22.7.04 from Dy.Ex.Engg Flying squad.
3. Spot inspection report dt. 22.7.04 of Flying squad.
4. Meter testing report dt.26.7.04 of testing unit (U) MSEB,A'bad.
5. Joint inspection report dt. 26.07.04
6. Letter dt. 442 dt. 26.7.04 addressed to consumer from Dy.Ex.Engg Flying squad Aurangabad regarding presence of consumer for testing of the meter.

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9. On 26.10.05, the NO stated that the case is one of theft ,the consumer & D.L. authorities have compounded the offence and consumer has paid Rs. 37711/ against the bill of Rs. 48091/. and therefore the grievance is not tenable before the Forum.
10. The representative of the consumer on 26.10.05 stated that he was never informed that the case is one of theft of electricity and on the contrary he was informed that his meter was faulty and on being asked he was given to understand that he will be called at the time testing of the meter, which was not done.
11. On 26.10.05 the Nodal Officer , when asked about the designation etc of the persons who have signed the joint inspection report dt. 26.7.04 ( as designation / any other description is not written) , stated that Ramesh Kawathekar is Dy.Ex.Engineer. The Nodal Officer was

not able to tell in respect of four other signatories on the joint inspection report dt. 26.7.04.

12. The spot inspection report dt.22.7.04 of the Flying squad appears to be signed by Shri Raut A.G., who has put his designation as J.E.. On being asked the Nodal Officer states that the Dy.Ex.Engg.may be on leave and JE may be working as Dy.Ex.Engg. The Nodal Officer was sufficiently reprimanded not to give justification unless he knows the facts. The Nodal Officer was also directed to produce copies of notifications /orders issued by State Govt. under sub section 6 (a) of section 126 & 135 of The Act. The case was therefore adjourned to 11.00 hrs on 31.10.05.
13. On 31.10.05, since the Nodal Officer was not present , after waiting for an hour case was taken up for hearing. The representative of consumer was present. Neither NO nor any body was present on behalf of DL. Since the copies of notification under section 126 & 135 of The Act were not filed by the Nodal Officer, the member secretary was directed to procure the same and the matter was adjourned to 8.11.05. for decision on the point of tenability after copies are made available to the Forum .

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14. On 8.11.05 the consumer nor his representative was present, the NO was present. The NO has filed (1) copy of notification dt.24.10.03 under section 126 of The Act issued by the State Govt. and (2) copy of order dt.11.2.04 signed by secretary of the DL authorizing MSEB officers to make written complaint for offences under section 151 of The Act, on 31.10.05 after the hearing in the matter on 31.10.05 was over. The D.L. did not file the copies of the

notification asked for. The member secretary personally went to the office of the CE and obtained copies of some circulars/notifications. However the notification under section 135 (2) of The Act was not filed by the DL nor was available to the member secretary., The same was obtained by the member of the Forum at his personal level.

15. Since a point about tenability of the present grievance before the Forum has been raised , the matter has been heard and decision of the Forum on the point of tenability under Maharashtra Electricity Regulatory Commission ( Consumer Grievance Redressal Forum & Ombudsman) Regulations 2003.is being given.

16. Regulation 6.4 of The Regulation 2003 stipulates as follows:.  
“ Grievance falling within the purview of any of the following provision of the act are excluded from the Jurisdiction of the Forum

- a) Unauthorized use of electricity as provided under section 126 of The Act
- b) Offences & penalties as provided under section 135 to 139 of The Act.
- c) \*\*\*
- d) \*\*\* ”

Though argument to the effect that the case is one of theft is made & as such is excluded from the jurisdiction of the Forum, we are of the view that it will be pertinent to consider the relevant provisions such as section 126, section 135 and other provisions under which the DL claims or states to have taken action.

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17. The N.O. in his response dt.21.10.05 though has stated the case to be one under section 135 of The Act, in the last para of his response

he has stated ' that the consumer has appealed to the Forum after a period of more than one year and hence the appeal is not maintainable as per section 127 of The Act which says that an appeal should be made within 30 days to an appellat authority ' .As a matter of fact if contention of the NO that the present case is one of theft of electricity, for the sake of argument , is accepted., Section 127 has absolutely no role in the case . Section 127 provides for appeal against a final assessment order made under section 126 to an appellat authority as may be prescribed. Section 126 is concerned with assessment when an assessing officer comes to the conclusion that the consumer is indulging in unauthorized use of electricity. The section further provides that in such a case the AO shall serve a provisional assessment order on such person/consumer , hear & consider his objections to the provisional assessment order & pass a final order of assessment. It is against this final order of assessment , an appeal has been provided for under section 127 of The Act. Section 126 also stipulates that an AO means an officer of the state Govt/or board/or Licensee as the case may be designated as such by the State Govt.

- 18 Section 135 of The Act deals with theft of electricity as provided therein. Sub section 2 of section 135 stipulates that an officer authorized in this behalf by the state Govt. may take action as mentioned in clause (a),(b) & (c) thereof.
19. The contention of theft of electricity is solely based on spot inspection report dt.22.7.04 of the Flying squad.. The spot inspection report appears to have been signed by one Raut A.G. who has mentioned his designation as J.E.. The report is also signed by the tenant of the consumer .On going through the notification dt. 24.06.04 issued by the State Govt, we find that officers not below the rank of Executive Engineer & Deputy Ex.Engineer incase of Flying squad of MSEB have been authorized by the State Govt. under sub section 2 of section 135 of the The Act, so far as present DL ( MSEDco.) is concerned .Therefore it is quite clear that for action to be taken under section 135 of The Act , the officer taking such action must necessarily have been authorized by the State . Govt. under sub section 2 of section 135

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20. The officers authorized are Ex.Engineer & Deputy Ex.Engg. as mentioned above. However the spot inspection report dt. 22.7.04 of the Flying squad is signed by Junior Engineer. Needless to say the spot inspection report of the Junior Engineer can not be a valid base for argument that the case is one of theft of electricity. On 26.10.05 , when the NO was questioned in this regard he appears to have given evasive and non committal statement that the Dy.Ex.Engineer may be on leave and JE might be working as Dy.Ex.Engineer. That is why during the hearing he was reprimanded and asked to state the factual position. Secondly it would not be out of place to mention here that on going through the spot inspection report we find that the theft of electricity in the present case is in fact a case of slow meter.
- 21 On going through the copies of the documents mentioned in para No.8 of page 3 above, we find that none of the documents reveal that the present case is under section 135 of the Act. Not only that the bills given to the consumer do not anyway indicate the section under which he has been charged . However one bill dt.9.8.04 for Rs. 8000/ does indicate that it is a compounding charges bill . Section 152 of the Act deals with compounding of the offences and specifies the rate at which sum of money for compounding is chargeable. Part XIV relates to offences and penalties and contains section 135 to 152. On going through the assessment sheet bearing No. 151 dt.22.7.04 ,we find that the bill for Rs. 48091/ has been raised against the consumer considering the fact the meter was slow by 76.19 % and the assessment period has been taken to be of twelve months The electricity charges have been levied at a rate of two times of the rate applicable On going through the assessment sheet we find that assessment is done under section 154/ 5 of The Act. Here we would like to observe that part XV of the Act relates to Special Courts and contains sections 153 to 157 .
22. Section 154 of the Act lays down the procedure & power of the special court in trying offences punishable under section 135 to 139 of The Act. On going through the assessment sheet ----- which mentions assessment as per The Act under section 154/5-----, we find that the Dy.Ex.Engineer has assumed to himself the powers of the Special Courts mentioned in section 154 of The Act.

23. As observed above the assessment has been done considering the meter to be slow by 76.19%. On going through the spot inspection report dt.22.7.04 we find that the slowness of the meter i.e. 76.19% was detected on the spot by the help of Accucheck meter, however on testing of the same meter in the testing unit of Urban ,Aurangabad on 26.7.04 it was found to be slow by 63.76% But the testing report of the testing lab does not appear to have been considered , which ostensibly is not correct. Secondly we would like to observe that the NO has tried to mislead the Forum when he mentioned in para 6 of his response dt.21.10.05 that the Dy.Ex.,Engg vide letter No. 442 dt. 25.7.04 has asked the consumer to be present at the time of testing of the meter on 26.7.04. On going through he copy of the letter No. 442 we find that the letter bears date 26.7.04 and not 25.7.04 as mentioned by the NO in para 6 of his response dt. 21.10.04. It is likely that an excuse of typing mistake may be taken so far as dt. 25.7.04 therein is mentioned . But the fact that typed date in the letter on which the consumer has been asked to be present is 2/8/04 . This date i.e. 2/8/04 is struck off by drawing horizontal lines over it and date 26.7.04 is written by pen and the same is initialed by the NO. The letter No. 442 did not bear dt. 25.7.04 as mentioned in para 6 of the response dt.21.10.04 , is also evident from the fact that list of enclosures at Sr.No.3 mentions letter No. 442 dt 26.7.04. On going through the letter No. 442 dt.26.7.04 we find that the initially the date scheduled for testing of the meter was mentioned as 26.7.04 at two places in the body of the letter. However at both these places the date 26.7.04 is struck off by drawing horizontal lines and date 2/8/04 has been mentioned above that. The letter dt. 26.7.04 does appear to be served on th`e tenant however the date on which it is served is 31.07.04. The testing of meter has actually been done on 26.7.04 . In other words the testing of the meter was done behind the back of the consumer or his representative. No intimation of the proposed testing of the meter was given to the consumer , however when the matter came before

the Forum and considering the fact the intimation served on the tenant is of 31.7.04, the scheduled date viz. 26.7.04 has been struck off and date 2.8.04 appears to have been written. No reason has been given by the DL in ignoring the testing report of the testing lab of D.L .itself Here it would not be out of place to mention that the consume has contended that he has several times requested the authorities of DL to get the meter tested .

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This contention of the consumer is corroborated by his letter 1) dt.14.9.04 & 2) dt. 25.4.05.addressed to the Chief Engineer.

24. In both these letters , he has requested to get his meter tested at Govt.Engg. college and in letter dt. 14.9.04 he has also shown willingness to bear the expenses of the testing .At no point of time the consumer appears to have been informed about the testing report of the meter. All these facts go to display utter lack of transparency in the matter.
25. Considering all the facts stated above we are of the opinion that the contention that this is a case of theft of electricity under section 135 of the Act deserves to be considered in light of the course of action taken by the DL & whether is in consonance with the relevant provision of The Act . As a matter of fact if it was a theft the logical action would have been to file a complaint to be tried by the court. Secondly the consumer has been consistently representing to the DL that his old meter should be tested . The consumer in the hearing also has denief the meter that he was ever informed that It is a case of theft of electricity. Therefore the contention of the Nodal Officer that the case has been compounded does not appear to be correct .The compounding presupposes that the terms of the compounding are acceptable to the consumer . The fact that consumer has paid some amount against the bill

charged cannot be held to have given his consent The fact the consumer resides at Jalna and he has paid the amount to avoid inconvenience to the tenant residing therein appears to be more acceptable in understanding the fact as to why did he make the payment. It will also have to be taken into consideration that every time he paid the bill in part he was given to understand that the bill will be rectified after receipt of testing report. Though as contended by the Nodal Officer the meter is tested on 26.7.04 the consumer does not appear to have been informed about the meter having been tested even though he has on 14.9.04 & 25.4.05 requested by separate letter to the Chief Engineer for testing of the meter.

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26. Considering the above facts and legal position in this regard we are of the view that the action on the part of the DL is unilateral ,arbitrary, high handed & totally unjustified so far the provisions of The Act are concerned . On going through the spot inspection report dt.22.7.04 case appears to be falling under part XIV of The Act. As mentioned above regulation 6.4. excludes grievances falling within the perview of section 135 to 139 of the act , we reluctantly hold the grievance is not tenable before the Forum, though action of the DL observed as above is not justified having regard to the provisions of the law in the matter. The consumer ,however is at liberty to seek redressal of his grievance before court.  
of competent jurisdiction.

It is therefore ordered that the grievance of the consumer is rejected as it is not tenable before this Forum in view of the regulation 6.4. of the Regulations 2003.

**Inform the parties and close the case.**

**(H.A.KAPADIA)**

**V.G.JOSHI**

**( R.K.PINGLE)**

**MEMBER**

**MEMBER SECRETARY**

**CHAIRMAN**