

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/AZ/AUR/R/670/2018/10
Registration No. 2018020078**

Date of Admission : 27.02.2018

Date of Decision : 15.05.2018

M/s. Sara Builders & Developers, : COMPLAINANT
Sawangi,
Tq. Dist. Aurangabad.
(Consumer No. 490090009939)

VERSUS

The Executive Engineer (Admn) : RESPONDENT
Nodal Officer, MSEDCL, Rural Circle,
Aurangabad.

Complainant Representative : Shri HA Kapadia
Respondent : Shri YB Nikam, EE (Admn),
Rural Circle, Aurangabad

CORAM

Smt. Shobha B. Varma, Chairperson
Shri Laxman M. Kakade, Tech. Member/Secretary (Dissenting)
Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

1) The applicant M/s. Sara Builders & Developers, Sawangi, Tq. Dist. Aurangabad is a consumer of Mahavitaran having Consumer No. 490090009939. The applicant has filed a complaint against the respondent, the Executive Engineer i.e. Nodal Officer, MSEDCL, Rural Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 27.02.2018.

Brief History of the case:

2) The petitioner is engaged in construction & development of residential as well as commercial complexes. The petitioner is presently carrying out the work of development of flats at Gut No. 234/1 & 2 village Sawangi, Tal & Dist. Aurangabad. The petitioner is sourcing electricity supply from Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as MSEDCL) and is therefore consumer of Respondent company.

3) Respondent is authorized and Responsible officer of MSEDCL company which is engaged in distribution of electricity in Aurangabad other parts of state of Maharashtra.

BRIEF HISTORY & FACTS RELATING TO THE GRIEVANCE:

4) The petitioner is engaged in development and construction of Residential & commercial complexes in the state of Maharashtra. The petitioner is presently carrying out the work of development and construction of flats and shops at Gut No. 234/1&2, village Sawangi, Tal.& Dist. Aurangabad.

5) The petitioner has submitted that at above mentioned location, the petitioner is constructing 1302 Nos. of flats under five schemes, details of which are as under.

Scheme A: 182 Nos. Scheme B: 378 Nos. Scheme C: 336 Nos.

Scheme D: 238 Nos. Scheme E : 168 Nos.

The petitioner has submitted that the work of construction of 742 Nos. of flats under scheme C,D & E are in completed and @ 500 Nos. of flats have been sold out to the flat owners who are residing in their respective flats.

6) The petitioner has stated that, he has submitted application for release of 10 Kw load for construction purpose in the concern office of Respondent company . After inspecting the premises and verifying the purpose of use of electricity , Respondent accorded its approval and issued demand note of Rs. 11650/ on 12.11.2012.

7) The Respondent after receipt of requisite amount , released three phase 10 KW connection to the premises on 01.01.2013 for construction purpose.

8) The petitioner has averred that, in order to speed up the construction work at site, after considering the additional load requirement, petitioner submitted application for release of additional load of 40 Kw. That, the Respondent, after processing the application, accorded its approval and asked the petitioner to pay Rs. 48800/.

9) That, after receipt of payment of Rs. 48800/ , Respondent released the additional load of 40 Kw ((Total 10+40=50Kw) to the premises of the petitioner in the month of March 2015.

10) That, the Respondent from the date of release of connection till today, issued all monthly bills as per commercial tariff which is in accordance with the tariff order passed by Hon'ble MERC.

11) The petitioner has paid all the monthly bills issued by the Respondent regularly and there was no dispute regarding payment nor regarding applicability

of tariff till the visit of Addl. Executive Engineer Flying squad, Aurangabad on 08.11.2017.

12) The petitioner has submitted that, Addl. Executive Engineer, Flying squad visited the premises of the petitioner on 08.11.2017 and prepared a spot inspection report.

13) That, during inspection ondt.08.11.2017, seal of the meter, (Sr. No. MSP 09018), its performance etc. were found in order. However in spite of above facts, the Addl. Ex. Engineer, put following remarks at para 17 & 18 of his inspection report which reads as under.

Para 17: Irregularities :

1. While checking it is observed that as per billing record of Oct.2017, current reading is 172820 kwh whereas actual reading on meter is 175625. i.e. accumulated reading 2805 units found.
2. Supply used for brick kiln and sewerage water treatment plant.

Para 18 : Remedial action proposed :

1. Issue bill to the consumer as per correct reading.
2. Assessment proposed u/s 126 of IEA 2003 for the total industrial load of 26.198 KW used by consumer from commercial meter connection.

14) That, after carrying out inspection on 08.11.2017, the Addl Executive Engineer, Flying squad , handed over the copy of spot inspection report to the representative of the at site.

15) The petitioner was shocked to receive a letter **which do not have outward No., date & seal of MSEDCL Company.** The said letter is signed by Assessing officer **(Name not disclosed), Deputy** Executive Engineer, Flying squad, Aurangabad.

16) The petitioner, on going through the contents of the said letter, noticed that it is final assessment order. The petitioner was asked to pay Rs.7,65,651/- within seven days i.e. before 25.12.2017.

17) The petitioner has stated that even though the last date of payment was mentioned as 25.12.2017 , the said letter was posted by the Assessing officer on 08.02.2018 i.e. after four months after carrying out inspection.

18) That, as per provision of section 126 of EA 2003, after inspection of premises, provisional bill is required to be issued by the Assessing officer. It is after hearing on the objection, the final assessment order is required to be passed by the Assessing officer.

19) In the present matter the Assessing officer, after carrying out the inspection on 08.11.2017, did not issue provisional bill nor call the petitioner for hearing. The Assessing officer, by totally violating all provision of section 126 laid down in EA 2003, directly issued final assessment order after period four months. The action of Assessing officer shows clear ill intention of harassing the petitioner and deliberate attempt to extract money from the petitioner.

20) That, the petitioner has submitted application for providing electricity connection for construction purpose. The petitioner is still carrying out construction activities at site. The bills are also being issued as per commercial tariff by the Respondent. It is pertinent to note that the rate for commercial tariff is higher than industrial tariff.

21) The petitioner is surprised to note that officer of the rank of Executive Engineer of Respondent company has sanction additional load and categorized the petitioners use of electricity (construction purpose) into commercial category. Now, the officer of the rank below him is attempting to grab the petitioner under ambit of section 126 of by stating that the activity falls under Industrial category.

The petitioner consider himself lucky for the reason that the Addl. Ex. Engineer did not find a water pump at site wherein he could have grabbed the consumer u/s 126 and assessed units

22) The petitioner has stated that the final assessment order, issued after period of four months, by violating all provisions of section 126 of EA 2003 needs to be quashed as section 126 does not attract in the present matter.

It is prayed that,

1. Respondent may be directed not to disconnect electricity supply of the petitioner till final disposal of grievance
2. Respondent may be directed to produce copy of provisional bill duly served , proceeding of hearings , details of assessment etc.
3. The assessment order issued U/s 126 may be quashed .
4. Respondent may be directed to test the meter & issue revise bill as per its testing report.
5. The concerned officer of Respondent company may be directed to pay Rs. 50000/ for deliberately trying to extract money from the petitioner under pretext of section 126 of .
6. Respondent may be directed to pay Rs. 15000/ towards harassment and mental agony and Rs.10000/ towards cost of filing the present petition.

23) The Respondent has submitted say as under :-

That the consumer was having every opportunity of remedy to apply before the appellate authority provided in section 127 of the act 2003, instead of approaching to the right authority consumer has approached to the CGRF. But as per the rule 6.8 of MERC (CGRF 81. Ombudsman Regulation) 2006 the CGRF is not having the jurisdiction entertainment the complaint.

24) That the consumer has not approached the appellate authority provided in section 127 of the act 2003 only to save the 50% of assessment amount to be deposited as mentioned in sec. 127 (2) with the authority.

25) The Additional Executive Engineer (Flying Squad), MSEDCL Rural Circle/ the Assessing Officer on dated 08.11.2017 carried out inspection of consumer premises in presence of Consumer's Representative and found following irregularities -

(1) As per billing record of October-2017, current reading is 172820 KWH whereas actual current reading on meter is 175625 KWH i.e accumulated reading 2805 units found on meter.

(2) Supply used for Brick kiln & Sewage water treatment plant.

26) The Additional Executive Engineer (Flying Squad), MSEDCL Rural Circle/ The Assessing Officer has sent the provisional assessment sheet along with K-1 proforma to O&M Sub Division on date 13.11.2017 and in the same letter communicated that the date of hearing is arranged on 18.11.17 at 11.00 hrs.

27) However, the Consumer has not approached at Flying Squad office and hence, the Assessing Officer has issued Final Assessment Order on date 25.12.2017 amounting to Rs. 765651/-.

28) As the case falls under u/s Section 126, hence it is requested to dismiss the petition.

29) The complainant has submitted rejoinder as under:-

(A) Applicability of Tariff:

1) The bills were issued as per LT commercial tariff.

2) It is submitted that in cases where the section 126 of IE Act 2003 attracts, issuing of provisional assessments order is the first action neither required to be taken, however the Respondent failed to

issue provisional assessment order nor shown any proof of serving the same. The provisional assessment bill does not bear signature of consumer which is also additional proof that the same has not been served to the complainant. .

The complainant is paying all electricity bills as per commercial tariff which is much more than Industrial & Residential tariff. Further the complainant is not carrying out manufacturing of Brick kiln (Bhatti.) The work carried out by complainant , at the time of inspection was making of hollow blocks and not brick Kiln. The Dy. Ex. Engineer without understanding process of manufacturing of bricks kiln and hollow blocks came to conclusion that there is misuse of electricity.

(B) Mismatching of reading :

That, the meter reading are taken by MSEDCL staff and consumer has no role to play in taking meter reading. The bills are also generated and issued to the consumer on the basis of meter reading by MSEDCL staff only . The above facts confirms that we, as consumer, has no role in either taking meter reading nor in issuing of bills.

Violation of provision of section 126 of EA 2003:

It is submitted that the Dy. Ex. Engineer , Flying squad visited our premises on 08.11.2017 and did not handover any documents to the complainant nor to any of our representative .

The Dy. Ex. Engineer, Flying squad, after carrying out inspection on 08.11.2017, wrote a letter on 13.11.2017 to Addl. Ex. Engineer, Rural Sub Division, Aurangabad and asked him to issue energy bill in the name of the petitioner along with the provisional assessment order .

It is pertinent to note that no provisional assessment order was issued/ served to the petitioner.

30) The complainant has further submitted rejoinder as under :

The complainant has submitted that at any construction site the electricity is used for security lighting, curing of cement structures, temporary residential accommodation provided to workers and other misc. works which includes fabrication and site works like blocks making etc.

31) That, considering the mix nature of use of electricity, Hon'ble Commission has categorized the construction activities into commercial category and the tariff rates of same are kept higher than residential and industrial tariff.

32) The complainant further submits that at no construction site Respondent provided separate meter for the purpose of temporary residential of workers & security lighting etc. with residential tariff and for fabrication & other works with industrial tariff. Therefore the connection released to complainant's construction site and the bills issued as per commercial tariff are correct.

33) By way of example , the petitioner has quoted dispute decided by CGRF, Aurangabad in mater of M/S B. G. Shirke Construction, which was based on similar facts of the case in hand & wherein inspection was made by same Addl. Executive Engineer namely Shri Sonat.

34) It is submitted that M/S B.G. Shirke Construction Company took separate meters, one for manufacturing of bricks and cement products and other for general construction activities.

35) It is pertinent to note that the same Dy. Executive Engineer, Flying squad (Shri Sonat) on inspection of premises, recommended to issue bill of industrial connection as per commercial tariff u/s 126 of IE Act 2003.

36) In present case the same inspecting officer has treated use of electricity taken for construction purpose as industrial use and recommended to issue bill u/s 126.

37) The above contradictory action for same issue confirms ill intention of inspecting officer of Respondent Company.

38) We have gone through the application, say, rejoinder & all documents placed on record by both the parties. We have heard both parties. Complainant Representative Shri H.A. Kapadia & Respondent Shri Y.B. Nikam, EE (Admin), Aurangabad Rural Circle. Following points arise for our determination & its findings are recorded for the reasons to follow:-

Sr. No.	POINTS	FINDINGS
1)	Whether this Forum has jurisdiction to try the dispute?	Yes
2)	Whether the final assessment order under section 126 of IE Act, 2003 is legal & Correct?	No
3)	Whether the impugned bill of final assessment order requires to be quashed ?	Yes
4)	Whether the petitioner is entitle for cost of Rs. 15,000/- for harassment & Rs. 10,000/- for mental agony & Rs. 50,000/- as claimed?	No
5)	What order?	As per final order

REASONS

39) **Point No. 1 & 2 :-** The petitioner is engaged in construction & development of Residential & Commercial complex at G. No. 234/172 village Savangi, Tal. & District Aurangabad. There are five schemes & 1302 Nos. of flats out of which 500 Nos. of flats are under construction. Initially on 01.01.2013 Electric connection was released to the petitioner for 10 KW load. Later on, as per demand of petitioner for additional load of 40 KW, it was released in March 2015 & these total 50 KW load was released. Admittedly petitioner is charged for commercial tariff (purpose for construction) copy of demand note & receipt are produced at Page No. 12 to 14.

40) On 08.11.2017, Flying Squad, Aurangabad made spot inspection at the petitioner's premises at Savangi, Taluka & District Aurangabad & submitted Spot inspection report (Page No. 17).

Following material observations are made by the Dy. Executive Engineer, Shri Sonat.

Para 6, 4 & 5 -

4 - "Category of Consumer - LT-II-B."

5- "Tariff a) Being applied - LT-II."

b) Actually applicable - LT-II."

6- "Sanctioned load - 45 KW."

7- "Type of installation & nature - Construction on brick – Kiln & of work carried out there. Sewage water treatment plant."

14- "Condition of meter - Working OK"

16, 17 & 18 – "Recorded M.O. on meter = 39 KVA out of 39 KVA load

1) Total load used for brick kiln is 5.5 KW x 2, 1HPx1, 1HPx1, 3HPx1

2) Load used for sewage water treatment plant is 7.54 Px1, 3HPx1"

17- Irregularities observed

- 1) While checking, it is observed that, as per billing record of October 2017, current reading is 172820 KWH, whereas actual current reading on meter is 175625 KWH I.E. Accumulated reading 2805 units found on meter.
- 2) Supply used for brick Kiln & sewage water treatment plant.

“Issue bill to consumer as per correct meter reading. Assessment proposed under section 126 of IE Act, 2003 for the total industrial load 26.198 KW used by the consumer from commercial meter connection.

- 41) Now, let us refer Section 126 – of IE Act, 2003.

PART XII - INVESTIGATION AND ENFORCEMENT

Section 126: (Assessment): --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b)” unauthorised use of electricity” means the usage of electricity

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee; or

(iii) through a tampered meter; or

²⁴[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.]

42) In a recent case decided by Hon’ble Electricity Ombudsman, Nagpur in representation **No. 51/2017, M/s. Nath Biotechnologies Ltd., V/s The Superintending Engineer,** following observations are made at Para 11, 12 & 13

“11) An Order, dt. 30.06.2017, of the Hon’ble High Court, Bombay in Writ Petition No. 596 of 2017, para 9 which reads as under, is relevant to this case.

“Bare reading of Regulation 6.8 shows that if any notice and/ or Order passed by the petitioner under section 126 of the Electricity Act, that cannot be challenged before the Redressal Forum. Only on this point itself complaint filed by the respondent was not maintainable. Hence order passed by the Forum is required to be set aside.”

“12) Similarly, the Hon’ble Supreme Court of India, in its Order dt. 20.11.2011, in Civil Appeal No. 8859 of 2011, The Executive Engineer & another – V/S – M/s. Sitaram Rice Mill, have maintained in para 7 of the order as follows:

“High Court transgressed its jurisdictional limitations while traveling into exclusive domain of the Assessing Officer relating to passing of an order of Assessment and determining factual controversy of the case.”

“13) On the basis of the discussions during hearing and the documents placed on record, it is clear that the respondent MSEDCL have completed the process of Section 126 of the Electricity Act, 2003. The appellant therefore, should have approached the proper authority, that is, the Electrical Inspector, under Section 127 of the Electricity Act, 2003. The Electrical Inspector may examine whether the Superintending Engineer (Urban), Aurangabad, was correct in determining that this was a case of unauthorized use of electricity. I am therefore, not inclined to consider other issues raised by the parties on the merits of the case.”

43) Here, in this case, it is transpired that after inspection dtd. 08.11.2017 - directly final assessment order dtd. 25.12.2017 under Section 126 of IE Act, 2003 is served to the consumer on 12.02.20018 (envelop Page No. 21 and assessment order Page No. 20). The final assessment order does not carry any Outward No. Provisional assessment order (Page No. 26) with request letter issued by Dy. Exe. Engineer to the Department for issuance of energy bill (Page No. 27) is produced, but no document is forthcoming, to show service of provisional order / notice to

the consumer. The order of Provisional Assessment (Page No. 26) though refer the date of personal hearing scheduled on 18.11.2017 at 11 AM, however, there is no document to show that it was served to the consumer. Thus, there is no compliance of Section 126 (2) & (3) of IE Act, 2003. Thus without giving opportunity of hearing to the consumer in this case, directly final assessment order is served upon him, it amounts to violation of natural justice & also violation of mandatory, provisions laid down under sub clause 2 & 3 of Section 126 if IE Act, 2003. Therefore, process laid down under section 126 of IE Act, 2003 is not complied with, therefore entire action taken by the Respondent against the petitioner gets vitiated. On the basis of such illegal action, assessment can't be imposed against the petitioner. As such Section 126 can't be applied.

44) Rule 6.8 of MERC (CGRF & Ombudsman) excludes jurisdiction of the Forum in case of unauthorized use of electricity as provided under section 126 of IE Act, 2003, Here, since Section 126 of IE Act, 2003 has no application so, jurisdiction of the Forum is not excluded. As such we answer point No. 1 in the affirmative.

45) Considering the said legal phenomena, now merits of the case are also requires to be seen. It is found on demand note (Page No. 12) that electric connection was applied & sanctioned by Respondent has applied tariff, since initial stage " Commercial Connection". It is important to note that construction purpose includes all sort of construction activities for which power is used. Observations made by Addl. Executive Engineer at Para 7 of the spot inspection report goes to show nature at work carried out there on the spot is construction of brick kiln & sewage water treatment plant. The petitioner in rejoinder (Page No. 32, Para 4) makes it clear that strictly there is no brick kiln, but they are manufacturing hollow blocks & this particular submission corroborated as spot inspection report shows use of electric power 5.5 KWx2, 1HPx1, 1HPx1 & 3HPx1

for manufacturing bricks & sewage water treatment plant, the nature of work referred above found on the spot which is included in the construction activity. So, since initial stage the respondent has charged the rates of electric power at commercial. It is for the Respondent to apply proper tariff. So it is clear that, it is not the case of unauthorized use. It is the duty of the Respondent to apply proper tariff, since initial stage. As such on merits also Section 126 of IE Act, 2003 has no application & final assessment order passed is found illegal & incorrect. As such point No. 2 is answered in the negative.

46) Point No. 3 : - Once jurisdiction of this Forum is not excluded, then it is also necessary to examine as to whether there is unauthorized use & if it is found that there is unauthorized use, but procedure is not followed, then the recourse open is to remand the matter to give opportunity to the consumer. As regards case in hand use of electric connection is not found changed i.e. construction purpose. Manufacturing of brick & sewage water treatment plant are included within construction activities, which is sanctioned by Respondent. So there is no unauthorized use. However tariff LT-II-B – Commercial is on higher side than industrial. Now, the Respondent after spot inspection proposed to apply industrial tariff to the extent of 26.198 KW load used by petitioner for manufacturing of brick & for sewage of water plant. The petitioner has already paid tariff on higher side rate. Activity of manufacturing bricks & sewage water treatment plant being ancillary activities of construction work & it is only used for construction work, So tariff “Commercial” already applied by Respondent is found correct. Considering above discussion, neither there is any change of use, or unauthorized use by the Respondent. So, also tariff applied at initial stage is found correct. Therefore Section 126 is not applicable. As such final assessment order Rs. 7,65,651/- set aside & quashed.

47) About mismatching of meter reading, Consumer Representative Shri Kapadia has submitted that, it is the duty of the Respondent to take correct reading. Considering the spot inspection, wherein accumulated meter reading is found 175625 units. Considering current reading 172820 units issuance of bill is proposed for 2805 units with tariff Industrial. Though, the petitioner has claimed relief to test the meter & to issue bill according to test results, however, on going through inspection report (Page No. 17 to 18), the complete remarks of inspection of meter, it is found that the meter is checked by accucheck & it is found in working condition. So, the remarks are sufficient to show that correct reading is recorded on the meter. Fact remains that consumer has never requested to the Respondent by paying fees for testing the meter before filing the complaint. So, it is just and proper to issue the bill according to meter reading for consumption of 2805 units & it being construction purpose by applying commercial tariff. As Such, we answer, point No. 3 accordingly.

48) Point No. 4 : - Here, it is found a case of not following process under section 126 of IE Act, 2003 by Respondent & non application of correct tariff. We do not feel it just & proper to grant any type of cost as claimed by the petitioner. However, the entire scenario about application of procedural aspect is found defective. Therefore, we issue direction to officers of Respondent to strictly follow process under section 126 of IE Act, 2003, only on application of mind & only wherever it is applicable, we answer point No. 4 accordingly.

Note : In reply to point No. 5 operative order is on Page No. 32

Dissenting Opinion Of
Mr. L. M. Kakade, Technical Member / Secretary in Case No. 670

I have gone through the application, say, rejoinder & all documents placed on record by both the parties. I heard both parties. Complainant Representative Shri. H.A. Kapadia & Respondent Shri. Y.B. Nikam, EE (Admin), Aurangabad Rural Circle. I am not agree with opinions of Chairperson and CPO. Following are my findings against points raised by Chairperson & CPO :-

REASONS

- 1) **Point No. 1 :-** Respondent/ MSEDCL released LT Connection with consumer No. 490090009939 in the name of Sara Builders & Developers, Gut No. 234/1&2, Village Sawangi Tal & Dist. Aurangabad on Dt. 01.01.2013 for sanctioned load of 10 KW . Respondent/ MSEDCL released additional load of 40 KW i.e. total 50 KW in the month of March 2015.
- 2) The Respondent stated that, the Additional Executive Engineer, Flying Squad, Rural Circle Aurangabad / Assessing Officer on Dt. 08.11.2017 visited and carried out inspection of consumer premises in presence of consumer representative and prepared spot inspection report, consumer representative also signed it. Additional Executive Engineer, Flying Squad observed irregularities & remarked as

Para 16, – “Recorded M.D. on meter = 39.3 KVA..

Out of 39.3 KVA load

(1) Total load used for brick kiln is 5.5 KW x 2,

1HPx1, 5HPx1, 1HPx1, 3HPx1

(2) Load used for sewage water treatment plant is 7.5HPx1, 3HPx1”

Para 17- Irregularities observed

(1) While checking, it is observed that, as per billing record of October 2017, current reading is 172820 KWH, whereas actual current reading on meter is 175625 KWH I.E. Accumulated reading 2805 units found on meter.

(2) Supply used for brick Kiln & sewage water treatment plant.

“Issue bill to consumer as per correct meter reading. Assessment proposed under section 126 of IE Act, 2003 for the total industrial load 26.198 KW used by the consumer from commercial meter connection.”

3) The Respondent stated that, the Additional Executive Engineer, Flying Squad, MSEDCL, Rural Circle Aurangabad / Assessing Officer has sent the provisional assessment sheet along with K-I proforma to the Dy. Executive Engineer, Rural Sub Division-1 on Dt.13.11.2017 and requested to issue the bill along with assessment sheet to consumer, in the same letter communicated that date of hearing is arranged on Dt. 18.11.2017. The respondent stated that the consumer has not approached at Flying Squad Office, hence Assessing Officer has issued final assessment order on Dt. 25.12.2017 of amount Rs. 7,65,651/-.

4) The complainant representative Shri. H.A. Kapadia stated that the Final assessment order issued after period of four months by violating all provisions of section 126 of EA 2003 needs to be quashed as section 126 does not attract in the present case.

He prayed that,

1.Respondent may be directed not to disconnect electricity supply of the petitioner till final disposal of grievance

2. Respondent may be directed to produce copy of provisional bill duly served, proceeding of hearings , details of assessment etc.
 3. The assessment order issued U/s 126 may be quashed.
 4. Respondent may be directed to test the meter and to issue revised bill as per its testing results.
 5. The concerned office of Respondent company may be directed to pay Rs. 50000/- for trying to extract money from the petitioner under pretext of section 126 of EA 2003.
 7. Respondent may be directed to pay Rs. 15,000/- for harassment and mental agony and Rs.10,000/- towards cost of filing the present petition.
- 5) The contention of the Respondent / Distribution Licensee is that Assessing Officer has issued Final Assessment order on Dt. 25.12.2017 and case falls under section 126, as per rule 6.8 of M.E.R.C. Regulation 2006, CGRF is not having the jurisdiction to entertain the complaint.
- 6) The pertinent question is, Who has to look in to this question raised by the complainant representative ? How can CGRF have greater jurisdiction than the competent authority designated under the provision of IE Act 2003 ?, CGRF is not a Civil Court having over all jurisdictions on all the matters.
- 7) The issue of jurisdiction of CGRF be discussed first, with directions as per IE Act 2003, Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 and through various orders passed by Hon'ble Court and Electricity ombudsman.
- 8) The Hon'ble Supreme Court of India, in order Dt. 20.10.2011, in civil Appeal No. 8859 of 2011, The Executive Engineer and another- V/S- M/s Seetaram Rice Mill in Judgment para 3 illustrates the objects and reasons for enacting the Act 2003, is reproduced as:

“To ensure better regulatory, supervisory and revenue recovery system, as expressed in the objects and reasons of the 2003 Act, there was concerted effort in preventing unauthorized use of electricity on the one hand and theft of electricity on the other.”

9) Maharashtra Electricity Regulatory Commission is constituted under section 82 of I.E. Act 2003. In exercise of the powers conferred on it by sub sections (r) and (s) of Section 181 read with Sub-Section (5) to (7) of Section 42 of the Electricity Act 2003, Maharashtra Electricity Regulatory Commission specified regulation 2006 through notification i.e. Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006.

10) *Indian Electricity Act 2003, Section 42 (5 to 7) are reproduced here*

“(5) Every distribution licensee shall, within six months from the date of appointed or date of grant of license, which is ever is earlier establish a Forum for redressal of grievances of the consumers in accordance with guidelines as may be specified by State Commission.”

“(6) Any consumer, who is aggrieved by non redressal of his grievance under Section (5) may make representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.”

“(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the state commission.”

11) It is crystal clear from above that Forum shall work in accordance with the guidelines specified by State Commission i.e. as per MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006.

12) MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 Rule 6.8 is reproduced as under:-

“6.8 If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:

- (a) unauthorized use of electricity as provided under section 126 of the Act;*
- (b) offences and penalties as provided under sections 135 to 139 of the Act;*
- (c) accident in the distribution, supply or use of electricity as provided under section 161 of the Act; and*
- (d) recovery of arrears where the bill amount is not disputed.”*

13) The Hon’ble Supreme Court of India, in its Order dt. 20.11.2011, in Civil Appeal No. 8859 of 2011, The Executive Engineer & another – V/S – M/s. Seetaram Rice Mill, part is reproduced here

“(53). It is a settled canon of law that the High Court would not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of India where statutory alternative remedy is available. It is equally settled that this canon of law is not free of exceptions. The courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the Civil Courts. The High Court in exercise of its extraordinary Jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy

(57) In the present case, the High Court did not fall in error of jurisdiction in entertaining the writ petition but certainly failed to

finally exercise the jurisdiction within the prescribed limitations of law for exercise of such jurisdiction. Keeping in view the functions and expertise of the specialized body constituted under the Act including the assessing officer, it would have been proper exercise of Jurisdiction, if the High Court, upon entertaining and deciding the writ petition on a -jurisdictional issue, would have remanded the matter to the competent authority for its adjudication on merits and in accordance with law.

in para 7 of the order as follows:

“High Court transgressed its jurisdictional limitations while traveling into exclusive domain of the Assessing Officer relating to passing of an order of Assessment and determining factual controversy of the case.”

(59) For the reasons afore-recorded, the judgment of the High Court is set aside and the matter is remanded to the Assessing Officer to pass a final order of assessment expeditiously, after providing opportunity to the respondent herein to file objections, if any, to the provisional assessment order, as contemplated under Section 126(3) of the 2003 Act.”

14) *The Hon’ble Supreme Court in the case of U.P. Power Corporation Ltd [2013 AIR (SC) 277] has held that the complaint against the assessment made by the Assessing Officer under Section 126 and Section 135 to 140 of the Act is not maintainable before the Consumer Forum. Similarly, the National Commission in the case of Walmiki Jadhav has also held that consumer forum lacks inherent jurisdiction to entertain the complaint in the case of theft of electricity and the forum in such circumstances have to keep its hand off the grievance. While deciding Representation No. 52 of 2014 by order dated 2nd September 2014 in the matter of the Esen Packaging it was also held that if the consumer is aggrieved by the final assessment order passed by the Assessing Officer, remedy of appeal under Section 127 of the Act is available.*

15) *Hence the Hon’ble Supreme Court clearly directs through above order that the courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the Civil Courts. the complaint against the assessment made by the Assessing Officer under Section 126 and Section 135 to 140 of the Act is not maintainable before*

the Consumer Forum. National Commission in the case of Walmiki Jadhav has also held that consumer forum lacks inherent jurisdiction to entertain the complaint in the case of theft of electricity and the forum in such circumstances have to keep its hand off the grievance.

16) An Order, Dt. 30.06.2017, of the Hon'ble High Court, Bombay in Writ Petition No. 596 of 2017, Executive Engineer, MSEDCL, Rural Division Kolhapur – V/S- Shri Suresh Shivram Sawant and another , part is reproduced as under, .

(4) By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 5.8.2016 passed by Maharashtra State Electricity Distribution Company Limited Consumer Grievance Redressal Forum, Kolhapur in Case No.7 of 201617 directing petitioner to refund sum of Rs.12,790/with interest @ 6% p.a. The Forum also held that the respondent is liable to pay electricity charges as the same is used for domestic purpose instead of commercial purpose

(5.) The learned counsel for the petitioner submits that in the present proceedings, they issued notice to the respondent calling upon them to pay the electricity charges on the basis of commercial consumption instead of domestic as they learnt that the respondent was doing commercial activity on the same electricity connection. Thereafter petitioner issued notice cum order dated 24.11.2015 under section 126 of the Electricity Act, 2003 calling upon the respondent to pay sum of Rs.12,790/and penalty thereon. She submits that the said order was challenged by the respondent by filing complaint before Maharashtra State Electricity Distribution Company Limited Consumer Grievance Redressal Forum at Kolhapur. She submits that the complaint filed by the respondent itself was not maintainable in view of the Regulations framed under the Electricity Act i.e. Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2006. She submits that as per Regulation 6.8, there is a prohibition to entertain any complaint in respect of the orders passed under section 126 of the said Act. She submits that as the complaint filed by the respondent itself was not maintainable in law, impugned order is required to be set aside.

(6). On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that the complaint filed by them was according to law. He submits that the Forum considered the grievance made by the petitioner and held that the complaint was

maintainable and hence, there is no question of entertaining the present petition solely on the ground of maintainability of the complaint. Therefore, there is no substance in the present Writ Petition and same is required to be set aside.

(8). The issue involved in the present Writ Petition is whether the complaint filed by the respondent before the Maharashtra State Electricity Distribution Company Limited Consumer Grievance Redressal Forum, Kolhapur is maintainable. For the sake of convenience, Regulation 6.8 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2006 is considered.

(9). Bare reading of the Regulation 6.8 shows that if any notice and or order passed by the petitioner under section 126 of the Electricity Act, that cannot be challenged before the Redressal Forum. Only on this point itself complaint filed by the respondent was not maintainable. Hence, order passed by the Forum is required to be set aside.:

17) Hon'ble High Court, Bombay in this Writ Petition No. 596 of 2017 order passed recently very clearly interpreted "prima facie" word in MERC Regulation Rule 6.8 i.e., if any notice and or order passed by the petitioner under section 126 of the Electricity Act, that cannot be challenged before the Redressal Forum, hence case is not maintainable

18) Order passed by Hon'ble Electricity Ombudsman (Mumbai) In Representation No. 19 Of 2018 In the matter of billing under section 126 of the E.A. 2003 In case of Sujata Prasanna Soparkar Appellant V/s. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) Respondent Date of Order: 28th February, 2018 , part is reproduced here,

"(1) This Representation is filed on 25th January, 2018 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated 20th December, 2017 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).

(2) The Forum has dismissed the grievance by observing that the grievance is barred as per the provision of Regulation 6.8 of the CGRF Regulations as it attracts Section 126 of the Electricity Act, 2003 (the Act).

(3) Aggrieved by the order of the Forum, the Appellant consumer has filed this representation stating that the supply was given on 1st November, 2010 under Agricultural Tariff category for use of horticulture products. Appellant constructed 3 rooms in the year 2015 on the plot of which one was to store the fruits raw materials and tools, another for the Care taker and third one as spare. The Respondent carried out inspection on 24th August, 2016 and thereafter, in June 2017, issued supplementary bill of Rs. 6,16,600/-. On enquiry, it was revealed that it was assessment bill for 6 years under Section 126 of the Act. The MSEDCL has laid down the Conditions of Supply as per the provisions of the Act and on the basis of Conditions of Supply Regulations issued by the Maharashtra Electricity Regulatory Commission (the Commission). It lays down the procedure for issue of Provisional Assessment Order (PAO) and Final Assessment Order (FAO) under Section 126 of the Act. No such procedure was followed before issuing the assessment bill. In the absence of FAO, the Appellant consumer could not file appeal as provided under Section 127 of the Act. The supply came to be disconnected and hence the Appellant was forced to pay 50% of the bill. The Appellant approached the Forum, however, the Forum has rejected the grievance relying on Regulation 6.8 of the CGRF Regulations. The Appellant has referred to the judgement of the Supreme Court in the matter of Executive Engineer V/s. M/s. Sri Seetaram Rice Mill as well as other orders passed by the Electricity Ombudsman (Mumbai) in this regard and prayed that action taken by the Respondent under Section 126 of the Act be Set aside and the amount paid be refunded.

(4) *The Respondent MSEDCL has filed reply dated 24th February, 2018 stating that the Appellant consumer is having connection under LT-IV Agriculture tariff. The Assistant Engineer of the Respondent who carried out inspection in August 2016 has reported that the electricity is unauthorizedly used for residential purpose. The bill was thereafter issued as per the assessment under Section 126 of the Act. The Appellant consumer did not pay the bill, hence the supply was disconnected in September 2017. The Appellant paid the amount of Rs. 3,35,650/- on 7th October, 2017 and thereafter, the supply has been restored. The bill was issued for unauthorized use of supply and therefore, the action taken by the Respondent is correct.*

(5) *During the hearing, the Appellant pointed out that the supply is used for agricultural purpose, however, the Respondent issued supplementary bill without proper verification and without obtaining the signature of the consumer during the inspection. There is no proper explanation about the assessment worked out and no PAO and FAO was issued and served to the consumer. The Appellant, therefore, could not file the objection to the PAO. The Respondent has not passed the FAO and therefore, the Appellant could not file appeal under Section 127 of the Act and is left without remedy. The Appellant therefore approached to the Forum. The Forum has not granted any relief, and has rejected the grievance as per Regulation 6.8. It is necessary to protect the interest of the Appellant consumer in such a situation by setting aside the supplementary bill.*

(6) *The Respondent MSEDCL, on the other hand, pointed out that since the supply was unauthorizedly used for residential purpose, the supplementary bill under Section 126 was correctly issued after inspection. The Respondent, however, agreed that consumer was not heard and the FAO has not been issued while sending the supplementary bill.*

(7) *Heard the parties. The Forum has rejected the grievance in view of Regulation 6.8 of the CGRF Regulations. It provides that if the grievance falls within the provisions of Section 126 of the Act for*

unauthorized use of electricity, the same is excluded from the jurisdiction of the Forum. During the hearing, the Respondent, however, fairly agreed that neither the PAO has been issued in this matter nor, after considering the objections, FAO has been passed.

(8) Section 126 of the Electricity Act, 2003, interalia provides as under: -

1. If an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

2. The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed (3) The person, on whom a notice has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(9) The Appellant has relied upon the judgment of the Supreme Court in the matter of M/s. Sri Seetaram Rice Mill [2012 (1) ILR - CUT-554] in which the Supreme Court held that appropriate course of action for the High Court would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under section 126 (3) and the authority to pass final order of assessment as contemplated under section 126 (5) of the 2003 Act.

(10) After some deliberations, parties agreed that the procedure as laid down under Section 126 of the Act will have to be followed in this case. The Respondent MSEDCL is, therefore, directed to take steps in accordance with the provisions of Section 126 of the Act. Needless to state that the Appellant consumer shall file the objections, if any, within the stipulated time as may be directed by the Assessing Officer and cooperate in the proceeding.

(11) This representation is accordingly disposed of.”

19) Order passed by Hon'ble ELECTRICITY OMBUDSMAN (MUMBAI) in this REPRESENTATION NO. 19 OF 2018 clearly directs regarding - if any procedure as laid down under Section 126 of the Act is not followed ,the Respondent / MSEDCL be directed to take steps in accordance with the provisions of Section 126 of the Act. Appellant consumer shall file the objections, if any, within the stipulated time as may be directed by the Assessing Officer and cooperate in the proceeding. Hence it is clear that instead of quashing the assessment bill under section 126 only on ground that if any procedure is not followed by the Assessing Officer, case be remanded to Respondent MSEDCL to take steps in accordance with the provisions of Section 126 of the Act.

20) In a recent case decided by Hon. Ombudsman, Nagpur in a case of M/s. Nath Biotech V/s The Superintending Engineer, Aurangabad. Representation No. 51/2017, decided on 28th March 2018 at Para 13 is material:-

“13) On the basis of the discussions during hearing and the documents placed on record, it is clear that the respondent MSEDCL have completed the process of Section 126 of the Electricity Act, 2003. The appellant therefore, should have approached the proper authority, that is, the Electrical Inspector, under Section 127 of the Electricity Act, 2003. The Electrical Inspector may examine whether the Superintending Engineer (Urban), Aurangabad, was correct in determining that this was a case of unauthorized use of electricity. I am therefore, not inclined to consider other issues raised by the parties on the merits of the case.”

21) Hon. Ombudsman, Nagpur in this case directed petitioner to approach Proper authority that is, the Electrical Inspector, and said that he may examine whether Assessing Officer was correct in determining that this was a case of unauthorized use of electricity.

22) Now consider the present dispute with ratio laid down / guidelines directions in above orders;

Consumer representative was present at spot inspection On Dt.18.11.2017, during which irregularities observed by Additional Executive/Assessing Officer Engineer Flying squad,. Consumer representative had also signed the report. From record it is observed that Additional Executive Engineer /Assessing Officer Flying squad sent letter to Dy. Executive Engineer R1 O&M Sub Division to issue energy bill to concern consumer along with provisional assessment sheet, but acknowledgement is not produced on record. Shri Kapdia H.A stated that necessary procedure has not been followed under section 126 EA 2003 and Assessing Officer issued Final assessment directly after period four months order. The letter of final assessment Dt. 25.12.17 amounting Rs. 7,65,651 was received to consumer on Dt. 12.02.2018 and he acknowledged it.

23) In present case the Assessing Officer has passed final order, the consumer has remedy under section 127 of the Electricity Act, 2003. The appellant therefore, should have approached to the proper authority, that is, the Electrical Inspector, under section 127 of the Electricity Act,2003, The Forum has no Jurisdiction as per Order, Dt. 30.06.2017, of the Hon'ble High Court, Bombay in Writ Petition No. 596 of 2017, hence the case is not maintainable. The Forum has also no Jurisdiction to analysis procedurals parts, as MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 not conferred it. The rule 6.8 Regulation 2006 is more towards excluding the jurisdiction of CGRF

from cases under section 126. Also statutory alternative remedy is already available to appellant. In this case Forum members i.e. Chairperson and CPO in their opinion said that, in this case section 126 can't be applied as procedure is not complied and quashed the assessment amount. Later on tried the case on merit basis to examine as to whether there is unauthorized use. It transgress in to the Jurisdiction of the competent authority under section 127. In present case Final order is passed. The Electrical Inspector may examine whether the Assessing Officer, was correct in determining that this was a case of unauthorized use of electricity. The Hon'ble Supreme Court and National Commission also not permit to try the cases under unauthorized use of supply.

24) In the present case ,the intention of consumer to file this complainant or other retakes before forum is only to save him from paying 50% of disputed bill before competent authority under section 127 i.e. Electrical Inspector. Hence I had not found any subsequent in the complaint made by consumer, Considering all facts point 1 is answered in the negative.

25) Point No. 2), 3) and 4) are not applicable since CGRF has no jurisdiction in this case. Hence the order. (A) The Petition is hereby rejected, (B) The petitioner is at liberty to approach before Electrical Inspector under section 127 of IEA 2003 in appeal against assessment bill of Rs. 7,65,651/- dtd. 25.12.2017.

Sd/-

Laxman M. Kakade
Technical Member/Secretary

49) Considering the aforesaid discussion & the majority view of the Chairperson & CPO, we proceed to pass the following order in reply to point No. 5.

ORDER

- 1) The Petition is hereby allowed in following terms :-
- 2) The final assessment order (Page No. 20 dtd. 25.12.2017) for Rs. 7,65,651/- is quashed.
- 3) The respondent is hereby directed to issue revised bill to the petitioner for consumption 2805 accumulated units by applying Commercial Tariff.
- 4) Respondent to comply within 30 days from the receipt of order & to report compliance.
- 5) Rest of the Prayer is rejected.
- 6) Parties to bear their own costs.

Sd/-
Shobha B. Varma
Chairperson

Sd/
Vilaschandra S.Kabra
Member CPO