

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

**Case No. CGRF/AZ/AUC/682/2018/22
Registration No. 2018060034**

Date of Admission : 12.06.2018

Date of Decision : 24.07.2018

Shri Mehtole Kiran Satishlal, : COMPLAINANT
House No. 4-23-999, S.O. 16779,
Usmanpura, Peer Bazar Road,
Aurangabad.
(Consumer No. 490014186007)

VERSUS

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

Complainant Representative : Shri H.A. Kapadia
Respondent : Shri M. V. Yeotikar,
Addl. EE, Kranti Chowk SDn

CORAM

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

CONSUMER GRIEVANCE REDRESSAL DECISION

1) The applicant Shri Kiran Satishlal Mehtole, House No. 4-23-999, S.O. 16779, Usmanpura, Peer Bazar Road, Aurangabad is a consumer of Mahavitaran having Consumer No. 490014186007. The applicant has filed a complaint against the respondent, the Executive Engineer i.e. Nodal Officer, MSEDCL, Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 12.06.2018.

BRIEF HISTORY & FACTS RELATING TO THE GRIEVANCE:

2) The complainant is consumer of Respondent Company and is residing at above mentioned premises along with his family. Respondent has released two Nos. of electricity connection at above mentioned premises, one for his residence (Ground floor) and other for 1st floor which is given on rent.

1. It is submitted that, Respondent Company released two Nos. of electricity connection for residential purpose to the premises of the complainant.
2. The complainant submits that Respondent released single phase connection on 03.05.2010 and allotted consumer No. 490012497471 for meter installed for resident of the complainant. The Respondent also released another single phase connection on 31.03.2012 for premises given on rental basis. The consumer No. allotted is 490014186007. Both the meters are in the name of the complainant and are installed in the premises of the complainant. The bills were issued as per relevant LT 1 tariff which is applicable for residential use of electricity.

3. It is submitted that Respondent issued provisional bill dt. 29.04.2017 for Rs. 31,207.77 u/s 126 of EA 2003. No details were provided nor any letter or details of violation of provision of section 126 was given along with bill dt. 29.04.2017.
4. The complainant has submitted that, on receipt of assessment bill, he immediately contacted Addl. Executive Engineer's office at Kranti Chowk on 05.05.2017 and registered his objection against the said assessment bill. The complainant requested Addl. Ex. Engineer to withdraw the assessment bill as the electricity supply is being used for residential purpose and there is no change in purpose of use of electricity.
5. It is submitted that no cognizance of the letter dt. 5.5.17 was taken by Respondent nor any hearing was conducted as per provision of section 126 of EA 2003.
6. The complainant has submitted that all the bills till Nov. 2017 were issued as per reading recorded by the meter and no assessment amount was shown in the bill. However in spite of above situation, Respondent on 19.12.2017, disconnected electricity supply without giving any notice and thereby violating provision of section 56 of EA 2003.
7. The complainant, on disconnection of supply visited the office of Respondent and showed copy of bill of Nov.17 and payment receipt. On realizing, their own mistake, Respondent reconnected the electricity supply of the complainant.
8. The complainant has submitted that Respondent issued bills for month of Dec. 2017 as per meter reading. However, the bill for Jan. 2018 was issued on average basis.

9. The complainant was in receipt of bill for the month of Feb. 2018 which shows 612 as consumption. The bill amount shown was Rs. 39940/-. No details were provided by the Respondent for adjustment amount of Rs.33207.77 shown in the bill.
10. It is submitted that on 14.02.2018, Respondent once again disconnected the electricity supply without giving any notice _ The complainant therefore submitted his complaint on 14.2.2018.
11. Since no justification for disconnection of supply nor any documents showing proof of violation of provision of section 126 of EA 2003 were provided, the complainant filed his grievance before IGRC of Respondent company on 04.04.2018.
12. It is submitted that, IGRC without going into details and without verifying any documents, dismissed the grievance on the verbal statement of Addl. Ex. Engineer, Kranti Chowk Sub Division.
13. It is submitted that, on his application submitted under RTI Act, Respondent, for the first time, provided copy of spot inspection report dt.15.04.2017 which bears no signature of consumer or his representative.
14. That on the basis of spot inspection report dt. 15.04.2017, provisional bill was issued on 29.04.2017 and the amount of Rs. 33,207.77 was shown as bill adjustment in the bill for the month of Feb.2018.
15. That, after issue of provisional assessment order, as per provision of section 126, hearing was required to be conducted and the final assessment order was required to be passed within one month from date of issue of provisional assessment order. In present case , the provisional assessment bill was issued on 29.04.2017 and without giving

opportunity of hearing and without passing final order of assessment, the amount was claimed from bill of Feb.2018 i.e after 10 month of issuing provisional bill.

The above facts shows clear violation of all provision of section 126 of EA 2003 and therefore the assessment bill is required to be quashed.

16.That, as per MERC tariff order 2016-17, the use of electricity for students residents purpose is categorized into Residential tariff. The spot inspection report dt. 15.04.2017 discloses use of electricity for students accommodation.

3) The above facts clearly discloses that since the use of electricity at the premises of the complainant was for students residential accommodation / hostel purpose which is categorized into Residential category as per Hon'ble MERC tariff order, section 126 of EA 2003 does not attract.

Hence it is prayed that,

1. Respondent may be directed to reconnect electricity supply of the petitioner immediately.
 2. The provisional assessment bill of Rs. 31207.77 issued U/s 126 may be quashed.
 3. The concerned officer of Respondent Company may be directed to pay Rs. 15,000/ for deliberately trying to extract money from the petitioner under pretext of section 126 of EA 2003.
 4. Respondent may be directed to pay Rs. 10000/ towards harassment and mental agony and towards cost of filing the present petition.
- 4) The Respondent has filed say (Page No. 34) as under :-

At the outset respondent submits that the Present complaint is related with the action taken under section 126 of the electricity act to which this Hon'ble

Forum is not having jurisdiction as per the Regulation 6.8 of MERC (CGRF and Ombudsman) Regulation 2006.

1. It is admitted that, to the extent that MSEDCL has issued Single Phase LT-Residential connection in the year upon the request of the consumer for his residential purpose. The second connection is issued by the M/s GTL Pvt. Ltd in the year to the applicant.
2. It is admitted that, to the extent that the consumer is having two residential connections in his one common premise. It is alleged that, he second connection is obtained by the consumer with the consumer no. 490014186007 by hiding the material facts and by joining hands with the then officials of the M/s GTL Pvt. Ltd distribution franchisee. The complainant is not entitled to have two separate residential connections (for the same purpose) for one common premise in his own name as per the condition no 2.2.5 of the condition of supply.
3. The contents of the paragraph no 3, 4 & 5 are denied as the Provisional assessment and relevant documents are already provided by the then officials of the respondent to the consumer issued on dated 29.04.2017, hence the complainant was in position to file his objection to the Provisional Assessment on dated 05.05.2017, wherein he has denied provisional assessment and further submitted to set aside the provisional assessment bill. Further upon hearing to the consumer on 05.05.2017 and the written objection filed, respondent has confirmed his earlier stand of the action initiated under section 126 of Electricity Act 2003.
4. The contents of paragraph number 6 & 7 are denied. The action initiated under section 126 was confirmed by the respondent after submission of

written submission and hearing to the complainant. Further as there were outstanding of amount against the assessment amount the supply to the premises of the consumer was disconnected after intimating about the outstanding arrears. Further the said supply was restored upon the request of the consumer.

5. The contents of the paragraph no. 8 & 9 are admitted & stated that, the assessment amount was outstanding against the consumer, respondent was made debit adjustment (+ B-80) in the energy bill of the consumer of February 2018.
6. The contents of paragraph no. 10 are denied. That the consumer was aware of the fact that respondent has already taken action u/s 126 and there was outstanding amount of assessment from him , hence the supply of consumer premises was disconnected after intimating to the consumer.
7. The contents of paragraph no. 11 are denied to the extent that no any intimation was given to the consumer. Proceedings before the IGRC is admitted. IGRC has no jurisdiction to try the dispute.
8. The contents of paragraph no. 13,14 & 15 are denied. That, on 15.04.2017 has inspected the premises of consumer and submitted the report to assessing officer. The assessing Officer upon the report and actual position in this matter issued the provisional assessment u/s 126 on 29.04.2017 alongwith the relevant documents to the consumer to which the complaint had filed the objection on 05.05.2017 and has submitted his oral submission to the Assessing Officer about his objection to the provisional assessment. Considering the nature of case the Assessing Officer has confirm the earlier stand taken from him about

the assessment issued u/s 126, later on debit adjustment was made in the energy bill of consumer. Further consumer has submitted application under RTI in addition to his earlier stand for justifying his objection based on 05.05.2017.

9. The contents of paragraph no. 16 is related with the tariff order issued by Hon, MERC which is applicable w.e.f. 01.04.2017 onwards.

5) The Respondent has filed additional reply as under :

A) That, the Complainant, has challenged the action of respondent authority taken under Section 126 of the Electricity Act, 2003, as per that, the assessment done by the respondent against the appellant is for the use of electricity for the purpose other than for which is granted.

In the present case the inspection was done on 15.04.2017 as per that, provisional bill of Rs.33207.77/- was issued to the consumer on 29.04.2017 and the same was received by the Complainant.

B) In order to avoid the payment the consumer has filed this application.

C) In view of this judgment of the Hon'ble High Court in WP No. 596/17 dtd. 30.06.2017, the Complaint is not tenable before this Hon'ble Forum. Regulation 6.8 of Consumer Grievance Redressal Forum & Electricity Ombudsman rules 2006, oust the jurisdiction of this Forum to entertain the dispute.

Hence, it is prayed for dismissal of the complaint or to issue directions to approach under section 127 of IE Act 2003.

- 6) That, the Complainant has filed Additional say as under :
1. It is submitted that as per provision of MERC Regulations consumer/ owners can demand number of connections within the same premises depending on number of users and purpose of use of electricity. As per provision of EA 2003, resale of electricity is permitted to authorized Distribution Licensee only. Therefore it is perfectly legal if owners and tenants in same premises have two or more numbers of meters as they are not authorized to resale electricity to any other person/s. If Respondent are firmed on its reply.
 2. The contents of above paras 4, 5 & 6 confirms that after issuing provisional assessment bill on dt. 29.04.2017 and after receipt of objection letter dtd. 05.05.2017 of the complainant, all bills for period May 2017 to Jan.2018 were issued as per reading shown on meter. However the supply was disconnected without giving any notice on 19.12.2017 and again reconnected after complaint filed on 19.12.2017 by the complainant.

The above facts discloses that supply was disconnected without giving any notice and assessment amount was included in the bill of Feb.2018 without conducting hearing and passing final assessment order. The action of Respondent violates the provision of section 126 as well as section 56 of EA 2003.

The provisional assessment bill dtd. 29.04.2017 was issued on the basis of inspect on carried out by non designated officer which is clear violation of provision of section 126(1) of EA 2003.

The contents of para 11 are incorrect, misleading and hence denied. The complainant, after receipt of reply from Respondent, contacted

concerned officer of M.E.R.C.at Mumbai. It has been confirmed that MERC has passed its last tariff order on 3.11.2016 and thereafter no tariff order has been passed by Hon'ble Commission till today.

3. That, Hon'ble Commission, thorough its tariff order dt. 3.11.2016 has categorized premises used for students accommodation into Residential category. MSEDCL on the basis of this tariff order has also issued necessary directives to its field officers. In spite of above crystal clear directives and in spite of observing purpose of use of electricity as for residential, Respondent issued a provisional assessment bill u/s 126 of EA 2003 for Rs 33207.77, which is totally incorrect and against the categorization made by Hon'ble Commission.
4. That, the Assistant Engineer (Name not disclosed) who has inspected complainant's premises on 15.04.2017 has not made any adverse remark or suggested to initiate action u/s 126 of EA , 2003.
5. That Respondent issued provisional assessment bill u/s 126 for Rs. 33,207.77 on 29.04.2017. No document like spot inspection report, details of assessment etc. were provided along with bill.
6. That , on receipt of bill, the complainant submitted his objection letter on 5.5.2017. However no cognizance of the objection letter was taken by Respondent and no hearing as per provision of section 126 was conducted by the Respondent.
7. That electricity supply of the complainant was initially disconnected without giving any notice 19.12.2017. However the same was reconnected after showing proof of payment of bill for November 2017.

8. That, all bills from April 17 to Jan.18 were issued as per reading shown on the meter. No assessment amount was shown in the bills issued during said period.
9. That, Respondent included the amount of Rs. 33207.77 in the bill of Feb. 2018 without conducting any hearing on the objection and without passing any final assessment order which is clear violation of provision of section 126 of EA 2003.
10. That , as per provision of section 126 of EA 2003, final assessment order is required to pass within one month from date of issue of provisional assessment bill. However in present case the assessment amount was included in the bill after ten (10) months of issue of provisional assessment bill.
11. That, Respondent has failed to produce any proof of confirmation that electricity used for students accommodations falls under LT commercial tariff.
12. That, Respondent in spite of observing that there is no change in purpose of use of electricity and without following due procedure of section 126 and section 56 of EA 2003, disconnected electricity supply of premises.
13. The complainant has submitted that, due to illegal disconnection action carried out by Respondent, students residing vacated the premises which resulted in huge financial loss to the complainant in addition to humiliation and mental agony. The complainant is therefore needs to be compensated.
14. The complainant has submitted that, the present grievance does not fall under purview of section 126 as there is no misuse of electricity

supply nor there is change in purpose of use of electricity neither there is any change in applicability of tariff,

15. The complainant has submitted that, Hon'ble Forum as well as Hon'ble Electricity Ombudsman at Mumbai & Nagpur, as per provision of MERC Regulations 6.8, has admitted such disputes and passed its orders which are compiled by MSEDCL. In none of the matter appeal has been filed nor any stay has been granted by appellate authority.

7) We have gone through the application, say, rejoinder & all documents placed on record by both the parties. We have heard Complainant Respondent Shri H. A. Kapadia at length. Following points arise for our determination with our findings thereon for the reasons to follow:-

Sr. No.	POINTS	FINDINGS
1)	Whether this Forum has jurisdiction to try the dispute ?	Yes
2)	If yes, whether the disputed bill of Rs. 34207/- is required to be revised?	Yes
3)	Whether the complainant is entitle for compensation of Rs. 15,000/-& Rs. 10,000 as claimed ?	Yes Rs. 3000/-
4)	What order & costs ?	As per final order

REASONS

8) **Point No. 1 to 3** :- As points 1 & 2 are interrelated, hence discussed together. The Respondent has released single phase Residential connection on 31.03.2012 with consumer No. 490014186007 in the name of Shri Mehtole Kiran Satishlal. Assistant Engineer (Quality Control) of respondent inspected the site

premises on 15.04.2017 and prepared spot inspection report (Page No. 33). Remark in spot inspection report is like "2 Floors are used for rent to students they live there on cot basis ground floor is on another meter which is from separate meter". It is signed by AE(QC) of respondent only. On this report Additional Executive Engineer issued provisional assessment bill under Section 126 of Rs. 33,207.77 on dtd. 27.04.2017.

9) According to respondent this case is under section 126 of I.E. Act 2003, so jurisdiction of this Forum is excluded as per Rule 6.8 of MERC (CGRF & Ombudsman) Regulation 2006. Now, let us point out as when, how jurisdiction of this Forum is excluded.

10) The ratio laid down 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."

"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."

11) Rule 6.8 of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 speaks 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;
- (2)(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."

12) Considering ratio of the aforesaid cases, in this case, Respondent had no notice / order passed and served to the petitioner, so Rule 6.8 is inapplicable.

13) A joint and harmonious reading of provisions under section 126 of I. E. Act, 2003 would indicate that an inspection should precede assessment. The licensee is obliged to follow principles of natural justice & grant reasonable hearing under Section 126 (3) of I. E. Act, 2003. Section 126 (3) of I. E. Act, 2003 further provides that if the Assessing Officer comes to the conclusion that there has been unauthorized use of electricity he shall provisionally assess the electricity charges

payable & such order is required to be served on the person concerned, who will be entitled to file objections, if any before the Assessing Officer, who will pass final order of assessment after affording a reasonable opportunity of hearing to such person, within thirty days from the date of such order of provisional assessment.

14) As regards case in hand, it is pertinent to note that spot inspection report dtd. 15.04.2017, on the basis of which disputed bill i.e. assessment bill is issued does not refer about proposed action under section 126 of I.E. Act 2003.

15) As per MERC low tension (LT) Tariff Order MYT Order for period from 2016-2017 to FY 2019-20 LT1(B) : LT – Residential is reproduced here.

LT-1(B) LT- Residential – This tariff category is applicable for electricity used at low/medium voltage for operating various appliances used for purposes such as lightening, heating, cooling, cooking, washing, cleaning, entertainment, leisure, water pumping in the following premises.

“d) All other students or working men / women Hostels are comes under residential category.”

16) Parties are not at quarrel about the fact that both electricity connections of the complainant are residential, out of which first floor is rented to student who resides on share basis, sharing all public utility services commonly. Considering the aspect of facilitation, the students who are taking education, the Hon. MERC in their wisdom thought it fit to charges such premises at residential tariff & hence inserted clause “d” as above in the aforesaid tariff order. As such, it is clear that the first floor of complainant’s premises i.e. consumer No. 490012497471 electricity connection given on rent to student, being covered under clause “d” of aforesaid tariff order & hence residential tariff is applicable. Consequently, there is no change of use of the premises as propounded by the Respondent. As such the basis cause applied by the Respondent is completely wrong, as section 126 of

IE Act 2003 is not at all made applicable in this case. As regards the procedure, it is important to note for the first time on 15.04.2017, spot was inspected. The spot inspection report (Page No. 33) goes to show that, there is no conclusion of application of Section 126 of IE Act 2003. Sign of consumer was not obtained. That apart, it is important to note that, on 29.04.2017, provisional bill under section 126 of IE Act 2003, for Rs. 33,207.77 is issued, however, no information was provided to consumer as to why & how this amount was calculated, which is breach of natural justice. Not only that, it appears that thereafter on 05.05.2017 objection in writing (Page No. 13) was raised by consumer & received by the Respondent, but hearing was not at all given to consumer. So, also, till November 2017 bills were issued as per reading recorded by the meter & paid by consumer. Then on, 19.12.2017, electricity supply of the complainant was disconnected wrongly, which fact is not disputed by the Respondent. Bill of December 2017 was also issued as per meter reading. Bill for the amount of Rs. 39940=00 was issued without giving any details, then on 14.02.2018, again electricity supply was disconnected appears to be without giving notice to the consumer. Therefore on 14.02.2018, again objection (Page No. 17) was raised in writing by the consumer & it was received to the Respondent.

17) Considering the above scenario, it is crystal clear, that neither there is change of use of electricity supply made by the complainant, nor procedure under section 126 of IE Act 2003 is followed. The concerned officer issued wrong bills & illegally disconnected the electric connection of complainant twice, which amount to grove injustice caused to consumer. Hence, it is found that Section 126 of IE Act 2003 is not at all attracted in this case. Consequently jurisdiction of this Forum is not ousted. It is also found that the provisional assessment bill (Page No. 12) of Rs. 31,207.77 issued is illegal & unauthorized & requires to be

quashed. It is found that the concerned officer has wrongly applied under section 126 of IE Act 2003 & unauthorizely & without notice under Section 126 of IE Act 2003, disconnected the electricity supply of the complainant. Consequently, it has caused mental agonies & inconvenience to the consumer. In this back drop we feel it just & proper to grant compensation of Rs. 3000/- the complainant from erring officer.

Considering above discussion, we answers point No. 1 to 3 in the affirmative & proceed to pass following order in reply to point No. 4.

ORDER

The petition is hereby allowed in the following terms :

- 1) Order passed by IGRC dtd. 18.04.2018 in case No. अअ/औशंम /अंतनिक/ ०२/ तांत्रिक/१०३४ dtd. ०७.०४.२०१८ is hereby set aside and quashed.
- 2) The disputed provisional assessment bill of Rs. 31,207.77 issued under Section 126 of IE Act 2003 is hereby set aside & quashed.
- 3) Compensation of Rs. 3000 for illegal disconnection of complainant be recovered from erring officer & be paid to the complainant.
- 4) Electricity supply of the complainant be reconnected immediately on receipt of this order.
- 5) Parties to bear their own cost.
- 6) Compliance to be send within 30 days.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Laxman M. Kakade
Member / Secretary

Sd/
Vilaschandra S.Kabra
Member