

Date of Admission. 02.07.2013.

Date of decision. 31.08 .2013.

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.

Case No. CGRF /AZ/U/458/2013/42

1. M/s Marathwada Refractories Ltd.
Plot No. F-4 MIDC Chikalhana,
Aurangabad.

COMPLAINANT.

VERSUS.

1. Executive Engineer,(Adm.)
Nodal Officer,
O&M Urban Circle,
MSEDCL, AURANGABAD.

RESPONDENT.

2. M/s GTL LTD.
T-9 IT Park,
MIDC, Chikalhana,
Aurangabad.

CORAM:

Shri V.B.Mantri Chairperson

Shri V.S.Kabra Member.

Shri S.K.Narwade Tech. Member.

- 1) The grievance of the complainant is against the bill dated 29.10.2012 issued under the head of "Provisional bill for theft assessment" for Rs.55510.50/-.

- 2) The case of the in brief is that, the complainant is situated at plot at no F - 4/1MIDC chikalhana Aurangabad, carrying construction of IT park building and residential complex. The respondent no.1 released electricity connection for 20 Kw load in the year 2008. The complainant received bill dated 24.10.2012 for Rs.55510.50/- having remark as "Provisional bill for theft assessment". The complainant made representation against such bill but it was not accepted. The details of assessment bill have not been provided. Final assessment has not been made.
- 3) It is the case of complainant, incase recoded KVA demand is found excess than sanction load then, penalty for excess contract demand can be levied in the bills. Such case cannot fall either u/s 126 or u/s 135 of the act. It is therefore requested to quash the bill of Rs.55510.50/- and to refund the said amount paid under protest with interest there on @ 18% p.a. and further claimed compensation for illegally disconnection of supply.
- 4) The respondent no.1 MSEDCL has submitted reply and pleaded that, the complaint is related to respondent no.2 GTL. The MSEDCL has no knowledge about the events.
- 5) The respondent no.2 GTL has submitted its reply and pleaded that this Forum has no subject matter jurisdiction to enquire the grievance as grievance is relating to bill issued u/s 126 of the act. The provisional assessment was made u/s 126 of the act on 29.10.2012 for Rs.55510.50/- and the consumer was asked to remain present for hearing on such assessment but the complainant did not remain present for hearing on 14.02.2013.U/S 126 (3) of the act, the complainant can proper appeal u/s

127 of the act. This Forum cannot entertain the grievance as it is case u/s 126 of the act.

- 6) The Forum considering rival submissions proceeded to frame preliminary issue of jurisdiction on 07.08.2013. & matter was posted for hearing on such preliminary issue of jurisdiction on 13.08.2013.
- 7) This Forum heard submissions of Mr. Kapadiya for complainant on 13.08.2013. Nodal officer Mr. Ambade made his submissions on 26.08.2013 and also submitted his written arguments in addition to his oral arguments.
- 8) Considering the submissions so made on behalf of parties, the forum proceeds to record its findings to the preliminary issue as follows :-

POINTS

FINDINGS

Whether this forum has

Subject matter jurisdiction

No

To enquire the grievance

REASONS

- 9) There is no dispute to the fact that, the electricity connection taken for 20 KW load, for construction in year 2008. Spot verification was made on 16.10.2012. on such spot verification, the load connected was found to be 39.23 KVA. The copy spot verification report is on record.

- 10) The arguments of complainant are that, body seal, meter body meter glass were found O.K. during spot verification. There was no theft of electricity. The consumer was making payments of bills as per meter reading so there is no question of unauthorized use or theft of power. The respondent at most can impose penalty for excess load connected. The provision u/s 126 thereby cannot be attracted.
- 11) The complaint in support of his arguments has placed reliance upon inform order dated 20.07.2013, Order dated 15.04.2008, Order dated 15.04.2008 in recreations No 16/2008 and 19/2008 respectably passed by Electricity Ombudsman, copy of will issued by GTL in the name of secretary of this forum itself and Order of Ombudsman Nagpur in representation No.40/2012
- 12) In representation No 67/2012, fling squad checked mater reading and did not inspect the installation for ascertaining the connected load. In representation No 90/2013 it has been observed that in case the consumer exceeds contract demand, he has to be penalized. As per circular (commercial) No. 5 penalty for exceeding sanctioned load is determined In representation No. 16/2008, it is hold that the respondent can levy the penal charges at one & half times the normal charges in case of excess lode, sane are the observation in representation No 19/2008 by Ombudsman. In representation No 40/2012 Ombudsman Nagpur, it is observed that, in view of the provision made by MERC in respect of penalty of exceeding contract demand MSEDCL could not have proceeded against the appellat for unauthorized use of electricity v/s 126 of the Act.

- 13) The nodal officer on the other hand pointed out that, in the present case, the excess load consumed by complainant is not only exceeding the contract demand but also crossing the load limits category LTD B It has been pointed out that, consuming power in other tariff category for which rate applicable to units are on higher side. Its consequence to financial loss to D.L.
- 14) Mr. kapadiya, produced list of connected load at CGRF Aurangabad and argued that, excess load at CGRF Aurangabad and argued, that excess load is connected at 3KW even to this forum. He argued that, in of cases, excess load is connected.
- 15) This forum agrees the submissions of Mr.Kapadiya to the effect that, the remedy for excess load is to impose penalty. The present case however is found to be different than the cases on which the consumer has placed reliance including the cases decided by Ombudsman.
- 16) In the present case, the complainant not only exceeded the demand i.e. authorized load but also crossed the load limits which affect the rates applicable to the units. It prima facie appears that, complainant is availing benefit of higher tariff. He is authorized in tariff category L.T. 2 A, but availing tariff of L.T.2B, which cannot be said to be authorized use of power such is not the case, in above cases decided by Ombudsman on which complainant has placed reliance. This forum thereby held that, these cases are not applicable to the present case.
- 17) Admittedly the complainant connected load of 39.23KVA as against authorized load of 20KVA.The connected load of 39.23KVA is not authorized load. Such connected load prima facie violated the contract

demand and crossed the limits of tariff category. It is not a simple case to impose penalty but prima facie case to proceed u/s 126 of the act. More over the complainant has a remedy to prefer appeal under section127 of the act. The complainant did not remain present in response to the notice issued u/s 126 of the act & failed to make his submission before assessing officer. The complainant is availing the benefit of higher tariff to which he is not authorized. The respondent as such has make out prima facie case to show that, the complainant is making unauthorized use of electricity to proceed u/s 126 of the act. This forum thereby loses jurisdiction to enquire in to the grievance as made by complainant. This forum thereby proceeds to pass following order.

ORDER

1. This forum has no subject matter jurisdiction to enquire the grievance.
2. No order to costs.

Sd/-
(S.K.Narwade.)
Member/Secretary

Sd/-
(V.S. Kabra.)
Member

Sd/-
(V.B.Mantri.)
Chairperson