

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM  
AURANGABAD ZONE, M.S.E.D.C.L., AURANGABAD.

( Case No: CGRF/ AZ / U / 338 / 2011 / 18 )

Date of Filing: 23.06.2011

Date of Decision: 17.08.2011

Smt. Veena Atre,  
Plot No. 66, Sarang Housing Society,  
Garkheda,  
Aurangabad.  
(Consumer No.490012270299)

Complainant.

V/s

1. Maharashtra State Electricity Distribution Co. Ltd.

Urban Circle Aurangabad. Respondents.

2. M/s GTL Limited, Cannought Place, CIDCO, Aurangabad.

Claim:- Quashing of wrongly claimed Arrears.

Coram:

Shri V.B. Mantri President

Shri V.S. Kabra Member

Shri Mohd.Qamaruddin, Tech. Member

JUDGEMENT:-

The complainant came before this Forum initially with the grievance that, details about the arrears shown in the bill are not shown or provided. The complainant was surprised to receive the bill for the month of April 2011 in which once again the arrears those were withdrawn were shown. The complainant approached for correction of bills and also submitted reminder letter on 6.6.2011 but no cognizance was taken.

The complainant therefore at first instance prayed for direction to the respondent to provide personal ledger and details of arrears shown in the bill. The complainant requested for liberty to submit her reply or grievance on receipt of details of arrears.

The complainant is the consumer. He has thereby right to know about the details of arrears. The respondent No.1 has thereby rightly conceded to provide such details as prayed by the complainant. The prayer of the consumer to that effect was allowed on 26.07.2011. The order to that effect was passed on the complaint. Liberty was given to the complainant to submit his grievance if any on receipt of such details.

The complainant then submitted his grievance on 21.05.2011 for issuing revised bill on deducting arrears wrongly charged. The complainant has claimed such relief on the basis of following facts.

It is pleaded and submitted that, the complainant is the consumer of respondent No.1. The respondent No.2 is its franchise.

The building of the complainant consist of ground floor and first floor, situated at Plot No.66, Garkheda, Aurangabad. The first floor is being used for residential purpose, whereas the ground floor was given on rent to M/s Subhiksha Shoppee for the period August 2006 to Jan.2009. The premises was then let out to State Bank of Hyderabad for banking purpose.

The complainant has taken single phase meter for residence and three phase meter for ground floor for commercial use. The bills were paid regularly. There were no arrears. There was no dispute regarding bills till Feb.2011. However the Bank Manager of SBH handed over bill for the month of March 2011 in which arrears of Rs. 1,67,250/- has been shown. The complainant received the bills for the month of April in which arrears were again shown, though the concern officer had withdrawn the arrears by verifying the record on **complaint of the complainant**. The respondent No.2 has been appointed as franchise w.e.f. 01.05.2011 therefore complainant approached and requested both the respondents for correction of bills, but no cognizance has been taken. The sum due for more than two years can not be recovered u/s 56(2) of the Electricity Act. The complainant therefore pray that, the arrears of bills as shown for Rs.1,56,522 along with interest and D.P.C. may be quashed. The respondents 1 & 2 may be directed to refund the sum of Rs.1,56,522 along with interest @ 14 % p.a. and claimed Rs.25,000/- towards harassment and mental agony.

It has been submitted that, inspection was carried out by its Flying Squad on 14.05.2008. Assessment bill u/s 126 of Electricity Act 2003 was issued in the month of March 2011. The use of electricity was considered as for mall and thereby the sum of Rs. 1,56,522 has been claimed as an arrears, which also included as Penal charges. The procedure as laid down u/s 126 of the Act was not followed. Provisional assessment bill was not issued. Legal provisions were not observed. The bill may be therefore quashed.

The respondent MSEDCL has submitted reply and denied genuineness of the grievance. It is submitted that, no intimation was given to the MSEDCL for given the premises on lease the complainant as such contravened the provisions. The premises has been leased out to Subhiksha Shoppee, which is mall and therefore assessment bill was given u/s 126 of the Act due to change of tariff. The original application was for commercial purpose.

It has been submitted that, the employee of MSEDCL had visited the premises, during which it was found that, the premises was given on lease to mall. It is submitted that, Sec.56(2) of the Act is applicable to arrears which are undisputed. The grievance complaint should be therefore dismissed. The respondent MSEDCL has then submitted the assessment report of Flying Squad on 11.07.2011.

The respondent No.2 G.T.L. has submitted its own separate reply and pleaded that, the complainant has deposited by cheque of Rs.39,698/- for energy charges of current bills for the month of April & May 2011 and cheque of Rs.1,59,902 towards arrears in dispute.

Heard the submissions of Mr. Kapadiya, the representative of the complainant. Heard submissions of Nodal Officer.

In view of the submissions so made on behalf of the parties, the following points arise for our determinations and our findings there on are as follows:-

|    | <u>POINTS</u>   | <u>FINDINGS</u> |
|----|---|-----------------|
| 1. | Whether the respondent No.1 has followed the procedure laid down u/s 126 of the electricity Act 2003, while issuing bill for the month of March 2011. | No              |

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|    |   |                |
|----|---|----------------|
| 2. | Whether the respondents are entitled to recover | Does not arise |
|----|---|----------------|

arrears of bill preceeding two years

3. What relief/order/Redressal As follows.

### REASONS

There is no dispute, that, the complainant is the possessor of the building situated on Plot No.66, Garkheda, Aurangabad. The building is consisted of ground floor and first floor. The ground floor was leased out M/s Subhiksha Shoppee. It was then leased out to State bank of Hyderabad.

The complainant had taken commercial connection for ground floor and three phase meter.

The Flying Squad inspected the spot on 14.05.2008. The officer in charge of flying squad, during inspection of the premises found irregularities. He found that, the category of consumer was commercial. Tariff was being applied was commercial. The electricity however was being used for malls. Known as Subhiksha Malls condition of meter was found working. The Dy. Engineer in charge of flying squad thereby passed remarks to apply mall tariff instead of commercial tariff. In compliance of such remarks of Dy. Executive Engineer, assessment of bills as per Section 126 of Electricity Act 2003 appears to have been issued. The reading at the time of inspection 15183 was taken into account whereas reading before 12 months 1303 was taken into account. Energy charges for 13880 units @ Rs.8.50 x 2 which comes to Rs.2,35,960/- has been thereby charged treating change of use of electricity u/s 126 of the Act. The amount of Rs.79,438 which has already been paid has been deducted and thereby the difference of Rs.1,56,522 has been claimed to be an arrears of bill in the month of March 2011. It is therefore argued that arrears of two years before can not be claimed as per section 56(2) of the Act.

Basically, the consumer infact has changed the use of electricity or not, is the question in controversy. Whether section 126 of the Act is applicable or not is the controversy, which is required to be decided. Whether tariff applicable to malls are different or not, that is again controversy which needed to be decided. What tariff is applicable to malls is again another question in controversy. Whether Subhiksha Shoppee is mall or shop is furthermore point in issue. All these questions of controversies, can only be decided by considering objections raised if any by the consumer

in response to the provisional assessment and by affording reasonable opportunity of hearing given to the consumer u/s 126 of the Act. Unless such opportunity of hearing is given to the consumer, specifically on aforesaid controversial questions, it would not be safe, proper and justified to decide the points in issue on either side. Offording opportunity of hearing is mandatory u/s 126 of the Act and supersession of such mandatory provisions would be violative of principle of natural justice.

In case, the assessing officer comes to the conclusion that, the consumer has changed use of electricity or he was indulging in unauthorized use of electricity, then he was duty bound to assess provisionally to the best of his judgment, electricity charges and such provisional assessment was required to be served on the consumer. The consumer was then entitled to file objections if any. The assessing officer was duty bound to afford reasonable opportunity of hearing to the consumer and then should have passed final order. The person aggrieved by such final order, is entitled to prefer an appeal against such final order, and order of appellate authority is final.

In the present case, no provisional assessment is made, opportunity of hearing is not given. Final order is not passed. Hence in another words procedure laid down u/s 126 of the Act has not been followed, while issuing the bill for the month March 2011 in which aforesaid charges have been shown as an arrears. The point No.1 as such has been answered in negative.

#### Point No. 2 & 3

No sum due from any consumer is recoverable after period of two years, from the date, when such sum become arrears of charges for electricity supplied. In the present case, the premises was inspected on 14.05.2008. The bill appears to have assessed on the same day i.e. on 14.05.2008. The bill however has been issued in the month of March 2011. It has been thereby submitted that, the bill of arrears is not recoverable, as it is of beyond period of two years, as per Sec. 56(2) of the Act.

It has already been observed and decided that, the assessing officer did not issue provisional bill. He did not afford reasonable opportunity of hearing as against provisional bill the consumer could not get opportunity to file his objections. The assessing officer, on considering such objections

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did not pass final order of assessment. The assessing officer should be therefore directed to follow the procedure, as laid down u/s 126 of the Act. The Officer shall consider the objections and decide those objections including the controversy if any raised regarding question of change of use of electricity or not or question regarding unauthorized use of electricity or

not. The assessing authority then if found that the consumer was indulging unauthorized use of electricity then may proceed to pass final order of assessment by deciding all the objections, if any as per Sec.126 of the Act. The consumer or the respondents as the case may be then entitled to prefer an appeal, within 30 days. The question or point in issue of limitation u/s 56(2) of the Act may be then arise for its decision if required in case final order came to be passed against the consumer. Hence in view of finding to point No.1, & for aforesaid reasons findings to point No.2 does not arise.

The consumer has deposited the sum of **Rs. 39,698** towards energy charges of current bill for the month of April & May 2011. The said amount is required to be adjusted as against the said bill for current bill for the month of April & May 2011 receivable by respective respondents entitled to receive the bills for respective months. The consumer has also deposited the sum of Rs.1,59,902 towards arrears in dispute. The respondent No.2 should be permitted to retain the said amount as an deposit with respondent No.2 till final order is passed by following procedure as laid down u/s 126 of the Act, by assessing officer. The amount shall be then adjusted as per final order or the order passed by appellate authority **u/s 127** of the Act if any. The grievance to that effect is to be allowed. The assessing officer, should be directed to pass final order of assessment by following procedure laid down u/s 126 of the Act. With these reasons, observations and findings, the Forum proceeds to pass following order.

### **ORDER**

01. The grievance of the consumer is thereby partly allowed.
- 02.** The assessing officer shall provisionally assess to the best of his judgment the electricity charges payable by the consumer.
03. The assessing officer shall then serve the order of provisional assessment on the consumer.
04. The assessing officer shall then consider and decide the objections if any, including objection if raised regarding applicability of Sec.126 of the Act or objection regarding change of use or indulging consumer in unauthorized use of electricity and shall then pass final order to that effect.

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5. The effect and execution of assessment bill of Rs.1,56,522 is hereby stayed till then.
6. The sum of Rs.39,698 so deposited by the consumer by cheque with respt.No.2 G.T.L. Co. be adjusted towards current due bill payable to the concern company.

7. The respondent No.2 G.T.L. Ltd. Co. is permitted to retain the sum of Rs.1,59,902/- so deposited by the consumer by cheque as against the disputed arrears bill as an DEPOSIT till passing final order by the assessing officer u/s 126 of the Act.
8. The assessing officer may pass appropriate order, while passing final order regarding such deposit amount so permitted to be retained with respondent No.2 GTL Co.
9. Final order be passed within TWO months from the date of this order.
10. No order regarding costs & compensation.

Sd/-  
(V.S. Kabra)  
Member

Sd/-  
(Mohd. Qamaruddin)  
Member/Secretary

Sd/-  
(V.B. Mantri)  
Chairperson