



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/E/750/904 of 2013-14

Date of Grievance : 27/12/2013

Date of order : 11/02/2014

Period Taken : 63 days.

IN THE MATTER OF GRIEVANCE NO. K/E/750/904 OF 2013-14 IN RESPECT OF SHREEBA ENTERPRISES, UNIT NO.B-05, TIRUPATIUDYOG NAGAR, SATIVALI ROAD, VASAI (E),PIN- 401 208, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING NOT GIVING NEW SUPPLY.

Shreeba Enterprises
Unit No.B-05,Tirupati Udyog Nagar,
Sativali road, Vasai (E),Pin-401 208 (Hereafter referred as Consumer)
Consumer No.001840851091

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy.Exe.Engineer, Vasai Road, Sub.Divn, (Hereinafter referred as Licensee)

Appearance : For Consumer – Shri Harshad Seth.

For Licensee - Shri Uंबरजे -Deputy Executive Engineer,

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003.(36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003).

Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other conditions of supply) Regulations 2005'. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005.' Hereinafter referred 'SOP' for the sake of convenience.

2] Consumer is having LT connection and consumer was accordingly assessed till May 2013. Consumer was paying bills regularly. However, consumer registered this grievance with the Forum on 27/12/2013, contending that though final assessment order u/s. 126 of Electricity Act dated 6/7/2013 is received by the consumer on 7/8/2013, it is not legal, no any provisional assessment order was served and copy of inspection report not given. Further, it is prayed that under the threats of disconnection amount demanded as shown in the bill, inclusive of final assessment order, which is paid, and now, it's refund is sought.

3] In this matter, the papers pertaining to above grievance were sent by Forum vide No. EE/CGRF/Kalyan/Consumer No.006 dated 2/1/2014 to the Nodal Officer of Licencee, and reply is filed on behalf of Licencee on 18/1/2014. Consumer too added some details vide his submissions dated 28/1/2014.

4] We heard both sides at length. We have gone through the papers and submissions placed on record. On it's basis following factual aspects are noted:

a] Consumer is having supply bearing consumer No. 001840851091, it is of LT supply. There was no dispute till 29/5/2013.

b] It is contended by Licencee that on 29/5/2013, inspection was conducted in the premises of consumer and it was disclosed that electric supply was used for godown and packing, which is a non-commercial activity. Accordingly on it's basis action is taken.

c] On 7/6/2013, on the basis of inspection report as per Licencee, provisional assessment order u/s. 126 of Electricity Act was issued. Endorsing the claim shown in provisional assessment order to the tune of Rs.1,72,910/-. final assessment order is issued to the consumer. As contended by him , he received it on 7/8/2013. Consumer disputed it by sending letter on 12/8/2013, making it clear that inspection report not received, provisional assessment order not served, ground of action u/s. 126 is not correct.

d] Thereafter, on the basis of said final assessment order, due amount worked out towards action us.126 of the Electricity Act, added in the bill of September 2013, showing previous arrears to the tune of Rs. 1,84,356.82 and adding current bill in it total claim, was shown to the tune of Rs.1,95,270/-.Said payment was done by consumer on 23/10/2013 and as there was threat of disconnection. Consumer paid an amount of Rs.100/- towards reconnection charges on 24/10/2013, thereafter supply was restored.

e] Simultaneously, while paying amount, consumer addressed letter to Dy. Executive Engineer on 23/10/2013 and on the very day, application to be filed with IGRC was prepared and actually, it is submitted to IGRC on 25/10/2013.

f] As there was no any action as sought by consumer, consumer approached this Forum on 27/12/2013.

5] On perusal of aforesaid chronology of facts, it is clear that there was inspection on 29/5/2013 and action is, further taken u/s. 126 of Electricity Act. Consumer's representative challenged this action u/s. 126 of Electricity Act, contending that copy of inspection report not given to the consumer. However, in reply, it is clarified by the Licencee that copy was given to the representative of consumer, available there and there is signature on it, of the concerned. At this stage, it is just required to be mentioned that consumer has given the said industrial plot on leave and Licence basis to M/s. Terry Air Equipments Pvt. Ltd, for 36 months from 10/12/2012. Accordingly, it needs to be considered whether in fact the present consumer who is owner of that plot and has given it on leave and licence basis, was he present at the time of inspection and whether he enquired and got verified the fact of inspection and report given to the concerned person present. However, factual aspects speaks, there is signature of the representative of the consumer.

Second aspect is challenged, contending that provisional assessment order claimed to be prepared and served on 7/6/2013 is not received by consumer. However, Licencee came up with contention that said order was issued, there was no any response from the consumer and hence ultimately, final assessment order is passed on 6/7/2013. On behalf of consumer, there is no dispute that said final assessment order is received, but date of receipt is stated as 7/8/2013. Consumer's representative vehemently contended that this final assessment order suffers from illegality, as there was no any opportunity given to the consumer and provisional assessment order was not served. Though after this final assessment order request was made, disputing the said aspect, praying for giving hearing. Which is also not allowed. Accordingly, it is contended that this action is, illegal. On behalf of the Licencee, it is contended that such request, was after passing of final assessment order and hence, there is no question of giving any opportunity of hearing. It is reiterated that provisional assessment order was issued by Licencee. It is a fact that in pursuance of the action u/s. 126 of Electricity Act, provisional assessment order passed, quantum of due amount was worked out to the extent of Rs.1,72,910/- and same amount is demanded, issuing supplementary bill along with final assessment order dated 6/7/2013. Further, it is, seen as that amount was not paid, regular monthly bill for the period from 2/9/2013 to 2/10/2013 was issued and in it, principle arrears are shown to the tune of Rs.1,84,356.82 and including current bill total amount payable is, shown as Rs.1,95,270/-. Said amount is paid by consumer on 23/10/2013, stating that it is a payment under protest and further it is contended that as supply was disconnected due to said action, he further deposited an amount of Rs.100/- and supply is restored. Accordingly, it is contended that recovery under the said order of assessment and final assessment order is not legal and proper, said amount be refunded.

6] On behalf of consumer, heavy reliance is placed on the order of Hon'ble Ombudsman i.e. Representation No. 64/2003 Mr. Dattprasad Narayan Kulkarni V/s. MSEDCL dated 5/9/2013. Even reference is made to the Judgment of Hon'ble Apex

Court. Anis Ahmed v/s. U.P. Power Corporation, Civil 544/06, decided on 1/7/2013. In the said judgment the Hon'ble Apex Court dealt with the provisions of Consumer Protection Act and observed that order of assessing Officer u/s. 126 of Electricity Act is the act of Public servant and it will not fall in the definition of consumer dispute. On this basis, consumer's representative, submitted that jurisdiction of this Forum is not barred and it's cognizance can be taken and orders can be passed. This reliance is in the light of Provision of MERC Regulation, towards the bars of jurisdiction created for this Forum in cases arising out of Section 126 and 135 of Electricity Act, as per Clause 7.6. of Regulation Act.

7] Though, Ld. C.R. heavily relied on the aforesaid Supreme Court Judgment. Wherein, it is held that, consumer Forum has no jurisdiction under the Consumer Protection Act. However, this Forum is established under the Electricity Act as per MERC Regulation. MERC specifically specified the bar of jurisdiction and even in the Act itself there is bar of jurisdiction of the actions u/s. 126 to the Civil Court or any other Authority and hence, we are required to consider this aspect. We are clear that section 126 of Electricity Act followed by section 127 speaks about orders passed u/s. 126 are available for appeal u/s. 127 and hence jurisdiction of Civil Court is barred and as stated above under the Regulation, jurisdiction of this Forum is also barred. No doubt, prima facie, we are required to consider the applicability of Section 126 of Electricity Act.

We find, in this matter, there is an inspection, it is followed by provisional assessment order, then final assessment order passed, person who passed the order is a authorized person, his status is not disputed, dispute raised is of procedural nature, so as to say non-service of notice etc. and if, an assessing officer come to a conclusion that in instant case, there is unauthorized use of electricity' then it is a finding of authorized Officer u/s. 126 which may be suffering with defects. But opportunity is there for challenging it, before the Appellate Authority. It is a right

given under the statute. It is necessary to note that authorized Officer is to pass an order it may be correct, incorrect, legal or otherwise but it is passed while discharging functions as Assessing Officer and his orders are not suffering from any inherent lack of jurisdiction. We find, this aspect, is, not open for this Forum to deal. Accordingly, we find portion of precedent relied on Ld. C.R. of Hon'ble Apex Court, and other precedents of Hon'ble Ombudsman are not helpful to the consumer. But judgment of Apex Court rather supports the Licencee. In the said Judgment of Apex Court dated 1/7/2013 in *Civil Appeal No.5466 of 2012 (arising out of SLP (C) No.35906 of 2011) – U.P. Power Corporation Ltd. & Ors. V/s Anis Ahmad*, there is a clear mention that against the final assessment order u/s 126 of Electricity Act, which is passed by public servant, there cannot be any dispute before the Forum. We find the peculiar observation of their Lordships in the said judgment speaks that there is an independent machinery available to challenge the final assessment order taking almost all pleas available under the Act including all procedural defect, legal flaw. Accordingly if once there is a final assessment order u/s 126 which is amenable for appeal u/s 127 then in the light of bar created under the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, i.e. clause no.6.8, and aforesaid judgment of Hon'ble Supreme Court, it will not be possible to enter into the assessment of legality and validity of the Order passed by Assessing Officer whose authority not disputed. This judgment of Apex Court is applicable to the present matter. In this light, it is not possible to discuss the other precedent of Hon'ble Ombudsman relied on by the CR.

On behalf of Licencee, reference is made that this Forum, has already decided this aspect in Grievance No. 868 and 878 decided on 14/10/2013. It is also a fact that said order passed by this Forum, was further challenged before the Hon'ble Ombudsman, who has upheld the order of this Forum, while deciding the representation of 97/2013 on 30/12/2013 amongst G.M.Modular V/s. **Executive Engg. MSEDCL**. Accordingly, we find no more comments are required on this aspect, when

there is an order by Authorised Officer u/s. 126 of Electricity Act, then this Forum is not able to decide whether said order is legal and proper. Such finding will amount to usurpation of jurisdiction which is not permissible .Hence, we find , there is no merit in the grievance, it is to be dismissed.

This matter could not be decided within 60 days as it was argued with recent precedent etc. on 28/01/2014.

Hence, the order.

ORDER

Grievance of consumer is hereby dismissed.

Dated:11/02/2014

I agree

I agree

(Mrs.S.A.Jamdar)
Member
CGRF,Kalyan

(Chandrashekhar U.Patil)
Member Secretary
CGRF,Kalyan

(Sadaashive S.Deshmukh)
Chairperson
CGRF, Kalyan

Note

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.
“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51”.
- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-
“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”
- c) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

