



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph.– 2210707 & 2328283 Ext:- 122

IN THE MATTER OF GRIEVANCE NO.K/E/026/0028 OF 05-06
OF M/S LANDMARK CONSTRUCTION REGISTERED WITH
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN
ZONE, KALYAN ABOUT THE EXCESS AMOUNT CHARGED.

M/s. Landmark Construction (Here in after
Shree Complex Bldg.No. 1, 4 & 5 referred to
Barave Road, Kalyan 421301. as consumer)

Versus

Maharashtra State Electricity Distribution Co. Here in after
Ltd. through its Assistant Engineer, referred to
Sub-Division IV Kalyan. as
licensee

1) Consumer Grievance Redressal Forum has been
established under regulation of "Maharashtra Electricity

Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” to redress the grievances of consumers. This regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred on it by section 181 read with sub-section 5 to 7 of section 42 of The Electricity Act, 2003. (36 of 2003).

- 2) The consumer is L.T. consumer of the licensee connected to their 415-volt network. The consumer registered grievance with forum on 29/08/2005. The details are as follows.

Name of consumer: - M/s. Landmark Construction.

Address: - Same as above

*Consumer Nos.:-1)020020826674, 2)020020826666,
3)020020826976, 4) 020020834863
5)020020835274, 6)020020834871*

*Amount of the assessment bill consumer No. wise: -
Rs.2,17,286/- , Rs.31,041/-, Rs.19,933/-, Rs.98,582/-,
Rs.47,931/- Rs.2,48,594/-.*

Period of assessment: - December 1997 to September 2004

Reason of assessment:- Bills not issued from the date of connection till September 2004.

The consumer made the following prayer in his grievance application.

- 1. To direct licensee to issue bills as per Section 56 of Electricity Act 2003 for the period of two years instead of 82 months.*
 - 2. To view the interest and delayed payment charges levied from October 2004 onwards.*
 - 3. To apply relevant tariff for the period concerned considering the tariff revision from time to time.*
 - 4. To direct licensee to refund/adjust the amount illegally collected from us forcefully by threatening disconnection of supply.*
 - 5. To direct licensee not to disconnect electric supply for payment of balance amount unless a decision of the forum.*
- 3) The batch of papers containing above grievances was sent by forum vide letter No. 0281 dated 29/08/2005 to Nodal Officer of licensee. The letter was replied by Nodal Officer vide No. 1603 dated 6/10/2005.
- 4) All three members of the forum heard both the parties on 15/09/2005, 6/10/2005 and 24/10/2005. Shri R.M.P. Reddy and Shri. T.R. Mohandas, representatives of the consumer, represented on 15/09/2005 and 6/10/2005 Shri Sadanand Tiwari representative of consumer joined above person on 24/10/2005. Shri P.S. Ghewde represented licensee.
- 5) Shri R.M.P. Reddy, representative of consumer, repeated grievances mentioned in sub clauses 1 to 5 of para 2 above

during the hearings on 15/09/2005, 6/10/2005 and 24/10/2005.

- 6) The licensee had issued the bill for commercial tariff for consumer No. 020020834863 and 020020835274. The licensee corrected this mistake and issued the correct bill for residential tariff in the month of September 2005.
- 7) The assessment of bill consumer No. wise, after revision by licensee, is as per following table.

Consumer No.	Bill Amount in Rs.	Remark
020020826674	1,97,099	12/ 97 to 9/ 04 82 months
020020826666	10,853	12/ 97 to 9/ 04 82 months
0200208226976	767	12/ 97 to 9/ 04 82 months
020020834863	78,399	1/98 to 9/04 81 months
020020835274	27,857	1/98 to 9/04 81 months
020020834871	2,28,412	1/98 to 9/04 81 months

- 8) The licensee vide letter No. 1603 dated 6/10/2005 submitted as follows.

“The Limitation Act, 1963 are the general provision of the Law of limitation and the Electricity Act, 2003 prescribes the limitation period in Section 56. The provision of Section 56 being the special law in respect of the limitation shall supercede the provisions of the Limitation Act, 1963 that is general law.

Section 56(2) of the Electricity Act says, “No sum due from consumer under this section shall be recovered after the period of two years from the date when such sum become first due”.

Now as per the first part of section 56(2) the bill demand is first time due in October 2004 and hence the same can be demanded within two years from October 2004.

Other part of section 56 (2) says that:

“Unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.

The above-cited section is on the lines of the Article 1 of the Limitation Act.

If the sum of October, 2004 bill is appearing in the account of the consumer i.e. personal or general ledger account till date and the supply is not disconnected on the ground of the non payment of the said dues the said sum shall be

recoverable according to the section 56(2) of the Electricity Act, 2003.

However, the section 17 of the Limitation Act will apply to the present, as due to the mistake the consumer was not assessed for the period from December, 1997 to January, 1998 and further consumer committed fraud by enjoying supply of energy and at no time offered to pay for the supply by informing and demanding bill.

It may further be stated that by the letter, dated 01/11/2004 the consumer agrees to pay the dues in installments and accordingly, paid the part payments of Rs.2,85,000/-. Under the law any agreement in writing to pay even time barred dues is binding on the parties. Further the consumer after admitting the liability is stopped from denying his liability under the principle of estoppels.

The ratio of the A.I.R., 1978, Bombay, page 369 says that so long the consumer wants continuous supply of energy, he cannot take the plea of Limitation as the same will be against commercial honesty and as such licensee can validly, legally and lawfully maintain an action of recovery of the said dues against the consumer”.

- 9) The Chairperson and Member disagree with the views expressed by licensee in above para and are of the opinion that the charges of electricity used become due when the bill is generated by the licensee as per their billing cycle. In the present case all the six bills mentioned in para 7 above

were not generated by the licensee as per their billing cycle program and were first sent to consumer in October 2004 after the date of connection (after 82 months from the date of connection). The licensee, therefore, cannot claim the sum due for 82 months as this dues has not been shown continuously as recoverable as arrears of charges of electricity supplied and the licensee can only claim the sum for last two years i.e. from October 2002 to September 2004.

- 10) The Member Secretary (Executive Engineer) however, disagree with the views mentioned at para 9 and expressed his opinion as follows:

In the instant case it would not be fair and justified to invoke the provision of Section 56 of E.A.2003 and to limit the recovery of dues (by the Licensee) for only two years prior to the date on which the recovery was first raised because-

- a) The applicant (consumer) has used electricity for the entire period of 82 months prior to the date when the Licensee first raised the energy bill. As such the consumer is duty bound to pay for the electricity he has used and therefore, cannot disown the responsibility of paying for it, notwithstanding the provision of any Law or rule in existence in this regard.

The consumer cannot and should not be given the chance to take undue advantage of the provision under Section 56 of E.A. 2003.

- b) The consumer in his written letter to the Licensee dated 1/11/2004 has accepted to pay the billed amount for the entire period of 82 months.
- 11) We, Chairperson and Member are of the opinion that the licensee cannot recover the sum due from consumer after the period of two years from the date when such sum become first due. In the instant case in all six cases sum has become first due from the date of billing cycle in each of the six cases. The licensee has not claimed this sum up to September 2004 and has claimed the sum first in October 2004 in all six cases. The licensee, therefore, can claim the sum two years before October 2004 i.e. from October 2002 to September 2004.
- 12) The forum could not award decision within a period of two months from the date of receipt of grievance (grievance was received and registered by forum on 29/08/2005) as required as per clause 6.12 of Chapter II of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation, 2003, because of the following reason.
- a) Postponement of hearing scheduled on 17th October 2005 and 20th October 2005, as consumer could not

attend the hearings due to either dislocation of traffic or personal problems.

b) Delay in reconciling the amount of dispute and period of dispute by licensee and consumer both.

13) After carefully going through the entire material available on record & observations made in preceding paras, we are inclined to pass the following order with two (Chairperson & Member of CGRF) in favor & one (Member Secretary of CGRF) against it.

O-R-D-E-R

1) The assessment bills, after revision by licensee, issued to the consumer by the licensee as detailed in para 7 above are, hereby, quashed and set aside. The licensee should prepare all the six bills, as per relevant tariff applicable from time to time, for two years preceding October 2004 i.e. from October 2002 to September 2004 on prorata consumption of energy presuming uniform consumption of energy through out. The bills should be prepared as per the following table.

Consumer No.	Consumption in units
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020020826674	$50469 * 24 / 82 = 14771$
020020826666	$9174 * 24 / 82 = 2685$
0200208226976	$5662 * 24 / 82 = 1657$
020020834863	$20074 * 24 / 81 = 5947$
020020835274	$10360 * 24 / 81 = 3069$
020020834871	$56456 * 24 / 81 = 16727$

- 2) The licensee should not levy interest and delayed payment charges while issuing above bills to the consumer.
- 3) The licensee should adjust the amount already paid by the consumer in the next two billing cycles bills to be issued to the consumer.
- 4) The stay order issued for disconnection of electric supply of above six consumer Nos. stands vacated after issue of bills as per para 1 above.
- 5) Consumer can file appeal against this decision with the Ombudsman at the following address.

Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, Bandra Kurla Complex,
Mumbai 5.

Appeal can be filed within 60 days from the date of order.

- 6) Consumer, as per section 142 of the Electricity Act, 2003, can approach Maharashtra Electricity Regulatory Commission at the following address.

Maharashtra Electricity Regulatory Commission, 13th floor,
World Trade Center, Cuffe Parade, Colaba,
Mumbai 05

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”.

Date: - 17/11/2005 CSonsusmr

(M.R.Mehetre)	(Sau.V.V.Kelkar)	(I.Q.Najam)
<i>Member Secretary</i>	<i>Member</i>	<i>Chair person</i>
CGRF Kalyan	CGRF Kalyan	CGRF Kalyan