



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 19/05/2012
Date of Order : 02/07/2012
Period taken : 44 days

IN THE MATTER OF GRIEVANCE NO. K/E/600/709 OF 2012-2013 OF
SHRI SATYAPRASAD BHATTACHARYA, AMBERNATH (EAST)
REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM
KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL .

Shri Satyaprasad Bhattacharya
Flat No. 504, Dafodils,
Shivshrishti Complex, Sai Section
Ambarnath (East),
Dist – Thane : 421 501

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Ambarnath East Sub-Division

(Here-in-after
referred
as licensee)

- 1) This Consumer Grievance Redressal Forum has been established under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers. The 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 a L.T. consumer of the licensee. The Consumer is billed as per residential tariff. Consumer registered grievance with the Forum on 19/05/2012 for Excessive Energy Bill.
The details are as follows :
Name of the consumer :- Shri Satyaprasad Bhattacharya
Address: - As given in the title
Consumer No : - 021520518964
Reason of dispute : Excessive Energy Bill
- 3) The set of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/0380 dated 19/05/2012 to Nodal Officer of licensee. The licensee filed reply vide letter No. SE/KC-II/Tech/2532, dated 04/06/2012 through Nodal Officer Kalyan Circle – II, Kalyan.
- 4) Hearing was held on 05/06/2012 and 21/06/2012 @ 16.00 hrs. We the Members of the Forum heard both the parties in the meeting hall of the Forum’s office. Shri Satyaprasad Bhattacharya Consumer & Shri Giradkar Nodal Officer, Shri Agrawal, Dy. Ex. Engr., Shri V. H. Kasal, Asstt. Engr. representatives of the licensee attended hearing.
- 5) We heard this matter. Consumer himself made submissions supported with some precedents of Hon. High Court and some material to

show what is profession? On behalf of Licensee Nodal Officer and other officers maintained their own stand which pertains to taking tuitions in residential premises amounts to using the electric connection for non residential / commercial purpose.

Before dealing the disputed aspect as brought before us it is necessary to note some factual aspects.

- a) Consumer Shri Satyaprasad Bhattacharya is residing with his wife Mrs. Moumita Bhattacharya and daughter in a premises 504, Daffodils, Shivshrishti Complex, Sai Section, Ambernath (East) which is of joint ownership of consumer and his wife.
- b) Consumer himself is a Scientist working with a reputed Indian MNC. His wife is M.Sc. B.Ed. ex teacher and is taking private tuitions in her house during the period from 3.00 p.m. to 7.00 p.m. Hence consumer's own daughter, some students from the said building and other are attending for taking guidance and those are the students of 9th and 10th standard.
- c) Towards said act of taking tuitions consumer is facing a problem from the members of the society and matter is taken to Co. Operative Court Thane in CCT No. 18/2012 wherein ad-interim relief of status quo is granted against the society as members of society objected for taking such tuition classes there.

Consumer being resident in the premises having consumer No. 021520518964 provided by the Licensee, he is paying bills regularly for seven years but on 19th March 2012 Shri Vinod Kale Engineer and his team visited consumer's residence. However, on hearing about the said visit consumer addressed a letter to Dy. Executive Engineer Ambernath (East) Sub-Division on 20/03/2012 explaining the dispute filed in Thane Co-Operative Court.

There after consumer received a provisional bill dt. 28/03/2012 for Rs. 14,150/- contending that it is charged under Section 126 of Electricity Act 2003. Precisely use of electricity is treated as non residential / commercial and bill is raised.

After receiving the bill dated 28/03/2012, on the very day consumer addressed a letter to the Zonal Executive Engineer and objected for said provisional bill, even mentioned that he will take up the matter in appeal under Section 127.

Further on the very next day i.e. on 29/03/2012 he approached IGRC about this grievance and even had sent E-mail on 30/03/2012.

The aspect of payment of provisional bill is dealt and consumer addressed a letter on 04/04/2012 seeking stay for recovery. Further on 16/04/2012 he gave one more letter showing payment of bill under protest and accordingly under protest bill is paid for Rs. 15,350/-. Said bill was issued on 09/04/2012 including the amount claimed under the provisional bill, accordingly payment is done under protest.

IGRC decided the matter on 30/04/2012 observing that IGRC has no jurisdiction under Section 6.8 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions Of Supply) Regulations, 2005.

Aggrieved by said IGRC order grievance is submitted dt. 16/05/2012 on 17/05/2012, towards it notice of hearing was issued, reply submitted by Dy. Executive Engineer Ambernath on 01/06/2012 and Nodal Officer on 04/06/2012. They maintained the stand that in the premises of consumer tuitions are taken hence it has become non residential / commercial and this aspect is hit under Section 126 of Electricity Act 2003. Hearing in this

matter is taken on 05/06/2012 and further hearing was taken on 21/06/2012. During initial hearing it was high lighted that consumer has filed an appeal under Section 127 but it is disclosed no appeal as such is filed under Section 127 and just consumer has mentioned that he may go in appeal.

On this count we gave a chance to both sides and we have heard them on 21/06/2012. During the course of hearing and on the basis of material now available, it is seen from the communication of consumer dt. 28/03/2012 following factual aspect is disclosed.

“My wife has never advertised her activities through any display board or leaflet or by any means. Therefore, our electricity tariff falls under purely domestic nature.....”

However, it is seen from the E-mail sent by consumer dt. 30/03/2012 following details are written :

“Myself Dr. Satyaprasad Bhattacharya is a Scientist working with a reputed Indian MNC. My wife is trained qualified ex. Teacher having M.Sc. and B. Ed. Degree..... My wife used to take home tuition to IXth and Xth std. students at home as a matter of practicing her profession and as mean for her independent earnings..... The home tuition is taken place from 3.00 p.m. to 7.00 p.m. normally in our drawing room using our sofas and few chairs. During tuition, only fans and when it is dark, the lights are being used. The same room is used for my studies, my wife’s and daughter’s studies for rest of the day, Being it our living room, guests used to sit at same room.”

Further in his grievance before this Forum he has narrated the factual aspects as under :

“With a great shock and surprise, my wife explained that this is our fully residential premises and only regular lights, fans, refrigerators, ACs. Are under use and no unauthorized gadgets are being used anywhere in the house and offered them inspection. The group further enquired about whether kids do come to our place for taking private tuition. My wife explained that, kids do come in small numbers at afternoon for seeking academic guidance among which our daughter and few kids from our housing complex are also a part of it. They all sit at our drawing room and study for 3-4 hours under my wife’s guidance. For rest of the day, the drawing room is used for welcoming guests, watching TV, as our study room, working on internet etc. like any other residential house. So guiding the kids at our own residence does not attract so called “commercial activities” definition at all. It is relevant to state here that, my wife is M.Sc., B.Ed. and an ex. School teacher who is professionally trained to guide the IXth and Xth std. kids. It is her only source of independent earning.”

After stating these aspects consumer has drawn our attention to the classification of applicability of tariff as per order of MERC in case No. 111 of 2009, dt. 12th September 2010 wherein case of LT- I : LT – Residential aspect is stated for (a, g) and reference is made for two such aspects & note (b) i.e.

(a)Private residential premises.....

(g)Residential premises used by professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc. in furtherance of their professional activity in their residences but shall not include Nursing Home and any Surgical Wards or Hospitals.

Note (b) : Professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc. occupying the premises exclusively for conducting his profession shall not be liable for this tariff.

Consumer further referred to the judgment of our Bombay High Court in Writ Petition No. 6891 of 2010 d. 4th August 2011 Rajendra G. Shah V/s. MSEDCL. In the said judgment the Hon. Lordships dealt the aspect of applicability of tariff to a residential premises wherein Lawyer resides and also deals his clients. Their Lordship at length dealt with the MERC order dt. 10th Sept. 2010 which is re-produced above and in the said judgment it is observed by the Hon. High Court in para No. 13 as under :

“The note says that residential premises used by Professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc., in furtherance of their professional activity in their residence, shall be charged as residential tariff. In my words key words in Clause (g) of the note are :

“In furtherance of their professional activity in their residences”. These words show Professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc. who carry on their professional activities in their residence i.e. the very premises in which they reside would be charged a tariff meant for “Residential use”. The note does not authorize the respondent to determine what is the dominant user of the premises. The lawyers, doctors, professional engineers and chartered accountants who are using the premises for their own residence and are using the very premises or part of the premises for their professional activities, would be charged “Residential tariff”

Accordingly consumer submitted in the judgment Hon. High Court clearly laid down the legal position i.e. any professional is using the

residential premises in furtherance of his profession then it is to be charged as residential and it will not be non residential or commercial. In this light consumer submitted that his wife his holding qualification as M.Sc., B.Ed. and an ex. School teacher and in furtherance of her profession as a teacher is taking private tuitions without any advertisement etc. in a drawing room that too for limited hours wherein her own daughter alongwith some kids from same building are attending. Accordingly he submitted that the act of his wife is definitely a profession. Teacher is doing such profession which cannot be termed as commercial teachers are respected for said noble profession and accordingly treating the teaching profession as commercial will be rather insulting. In this light he claimed that his wife in furtherance of her profession as a teacher taking tuitions during the limited period including her own daughter and in no way it will amount to doing any non residential activity and hence he submitted the stand taking by the Licensee's Officers branding the said act commercial or non residential is not at all legal and proper. Accordingly he submitted that the action taken by the Officers of Licensee is not supported with any legal aspect, even the order passed by IGRC is not correct.

Consumer further contended that this case in no way will come under Section 126 of Electricity Act 2003. There is no question of unauthorized use of electricity. As act is done in residential premises which is not commercial or not coming within the four corners of non residential activity, hence there is no question of unauthorised use of electricity. Further he submitted that though provisional bill is served on him, he has objected it immediately by issuing a letter on 28/03/2012 which is not at all dealt and as required under Section 126 no final order is passed and there by there

cannot be any appeal under Section 127 and hence it cannot be said that there is no valid action commenced under Section 126 of Electricity Act. At this stage we tried to have information of officers of Licensee whether any reasoned order of provisional assessment is passed and reply is received in negative. Further it is asked whether any final assessment order is passed, reply is received in negative. Accordingly this legal aspect also demonstrates that in fact there is no valid action under Section 126 of Electricity Act. However, we find even the action under Section 126 of Electricity Act is not completed though half hearted action of provisional assessment is contended but there is no such order, however, simply provisional bill is issued. This action is not based on the required legal footing.

On all these grounds consumer contended that the order passed by authorities towards provisional assessment order of IGRC be set aside.

The Nodal Officer and officers of Licensee maintain their stand that "Taking tuitions in the residential premises will convert it to commercial use and it amounts to non residential use hence action of Licensee is correct."

Considering aforesaid rival contention it is clear that consumer is facing a problem with co-residents in the said housing society. Matter is pending before Co-Opeative Court Thane and they are objecting for using the premises for taking tuitions. However, consumer is armed with a order of status quo from Co-Opeative Court Thane. No doubt it is an order under Co-Operative Society Act. Secondly we find wife of consumer is well educated, highly qualified professional teacher and in futherence of profession if she is taking tuitions therein, it cannot be branded as an act of doing any commercial activity or non residential activity. As per MERC

order dt. 12th Sept. 2010 referred above, in residential premises wherein a professional is residing, she is a co-owner of the premises and like other professionals i. e. Lawyers, Doctors, Professional Engineers, Chartered Accountants etc. if she is taking tuitions in furtherance of her profession it cannot be branded as a commercial activity or non residential activity. Accordingly we find the stand taken by the officers of Licensee is not correct.

Just quoting Section 126 is not sufficient which is to be demonstrate that Section 126 is resorted to by passing order of provisional assessment and then even passing the final order, then only it gives right under Section 127 for appeal.

Accordingly we find Section 126 of Electricity Act is not attracted to this matter and hence there is no question of bar by jurisdiction. In this light we find grievance of consumer is totally correct which needs to be redressed by setting aside the provisional bills issued and giving consequential reliefs.

Hence we pass the following order :

O-R-D-E-R

- 1) The grievance application is allowed which is a valid grievance. Towards it's redressal the concerned authority who issued provisional bill dt. 28/03/2012 is to cancel it and to issue a regular bill as residential use. The act of taking tuitions in the residential premises of consumer is not a commercial activity or it won't convert the use as non residential.

- 2) Concerned authorities to appropriately issue bills to the consumer as a residential tariff hence forth and correct the previous one.
- 3) Towards provisional bill consumer has deposited an amount of Rs. 14,150/- which is a part of bill issued on 08/05/2012, said payment is done under protest on 16/04/2012, hence Licensee is to refund the said amount with interest as per prevailing Bank Rate from 16/04/2012 till the date of it's refund by cheque. Said refund be done within 30 days and compliance be reported within 45 days from the date of receipt of this order.
- 4) The Consumer can file representation against this decision with the Hon. Electricity 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”.

- 5) Consumer, as per section 142 of the Electricity Act, 003, 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”

Date : 02/07/2012

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

(R.V. Shivdas)
Member Secretary
CGRF Kalyan

(Sadashiv S. Deshmukh)
Chairperson
CGRF Kalyan