



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph- 2210707, Fax - 2210707, E-mail : cgrfkalyan@mahadiscom.in

K/E/774/932 OF 2013-14

Date of Grievance : 24/02/2014
Date of Order : 07/05/2014
Period Taken : 73 days

IN THE MATTER OF GRIEVANCE NO. K/E/774/932 OF 2013-14 OF MRS. VIDYAVATI BHANDARI, DR. RAVI HOSPITAL, 50, VEER SAVARKAR NAGAR, NAVGHAR (WEST), VASAI (WEST), DISTRICT-THANE, PIN-401 202 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL.

Mrs. Vidyavati Bhandari –Dr. Ravi Hospital,
50, Veer Savarkar Nagar, Navghar (West),
Vasai (West) District-Thane. Pin-401 202 (Hereinafter referred to as Consumer)
Consumer No..001610351545.

V/s.

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Exe. Engineer, Vasai Road [E] S/Dn. (Hereinafter referred to as Licensee)

Appearance :- For Consumer - Shri Harshad Sheth, Consumer's Representative
For Licensee - **Shri Satish Umbarje, Dy. Exe. Engineer**
Shri Vaze, Asst. Accountant

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. 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 (Electricity Supply Code and other conditions of supply) Regulations 2005'.

2] Consumer is having residential supply and charged as per of LT-1 and having consumer No.001610351545. On the basis of inspection dated 12/9/2013, Flying Squad of Licencee reported on 19/9/2013 that consumer is to be dealt u/s. 126 of I.E.Act and bill be issued. Towards it, it is directed that tariff be changed from LT-1, to residential to LT-II commercial. Accordingly on 28/10/2013 bill for Rs.19,770/- issued by Dy. Executive Engineer, Vasai, Sub-Divn. The said amount was deposited by consumer under the threats of disconnection. However, consumer disputed it by writing letter on 21/12/2013. Prior to it, Dy. Executive Engineer directed Junior Engineer on 23/9/2013, to club this supply of consumer, in another consumer number of the present consumer which is carried out and accordingly clubbing is done on 28/9/2013, showing this particular supply to the consumer as PD.

3] It is the contention of the consumer, though meter is, shown PD. Further bills are raised which are not correct. Secondly, it is contended that bill for Rs.19,770/- issued, resorting to action u/s. 126 of I.E.Act which is not at all correct as there is no provisional order, there is no final assessment order and none of such orders are issued or served. Accordingly, consumer approached for quashing the alleged action u/s. 126 of I.E.Act and sought direction for refund of security deposit with interest thereon.

4] On receiving the grievance, copy of it was forwarded to the Nodal Officer, vide Letter No. EE/CGRF/Kalyan/090 dated 24/2/2013 of this Forum along with it's accompaniments. In response of Licencee appeared and filed reply dated 11/3/2014, therein contended that SD amount is being adjusted in new consumer No.001615500310. In respect of action u/s. 126 of I.E.Act, it is contended that on assessment sheet, dated 19/9/2013, signature of consumer is obtained and it is prepared by Dy. Executive Engineer Flying Squad and hence, itself is, treated as provisional assessment order. In respect of final assessment order, it is contended that it is, available for challenge before the Appellate Authority u/s. 127 of the I.E.Act. Accordingly, it is contended that this grievance cannot be entertained and dealt by this Forum, it be rejected.

5] We heard both the sides and it is pointed out by Ld. Representative for the consumer that in fact, there is no any provisional assessment order as such. So called provisional assessment order, relied on by Licencee, is, nothing but an assessment sheet and in it words are added as ‘ **Provisional (K-1)** ‘ and this particular sheet is addressed to Dy. Executive Engineer Sub-Divn. Vasai (W), which is dated 19/9/2013. As per the said assessment sheet, Dy. Executive Engineer was directed to issue bill for 24 months. On this basis, bill for 24 months is prepared on 28/10/2013 by Dy. Executive Engineer Sub-Divn Vasai, and sent it to the consumer. It is claimed that due to threats of disconnection , amount was required to be paid. It is claimed that assessment sheet of Flying Squad is not addressed to the consumer, and said assessment sheet cannot be said to be a ‘ **provisional assessment order**’. It is submitted that provisional assessment order is, to contain clause that the consumer, is, at liberty to make representation within a particular time and on hearing, final assessment order will be passed, and accordingly this matter proceeded without passing any provisional assessment order.

6] We find, there is no any such order of provisional assessment, is prepared or served on the consumer and the letter placed on record dated 19/9/2013 is not addressed to the consumer and there is no any opportunity available to the consumer to make representation. Secondly, though action is said to be u/s. 126 of I.E.Act, there should be a final assessment order after passing provisional assessment order that too on service of provisional assessment order and giving opportunity of hearing. In other words provisional assessment order is to be followed by final assessment order. During hearing Officer of Licencee placed on record, the copy of said final assessment order dated 28/10/2013. Consumer's representative submitted that it is seen for the first time before this Forum and copy of it is provided before this Forum only. He contended that there is no service of this final assessment order on consumer. We tried to have the material for the service of final assessment order and Officers of Licencee was not able to point out any such acknowledgment about final assessment order served on the consumer. Consumer's representative, in the light of above, submitted that action is not commenced as per section 126 of I.E.Act. Provisions are not followed by Licencee and Prima facie section 126 will not be applicable. On the other hand, Officer of Licencee contended that final assessment order is passed, provisional assessment order was prepared by Flying Squad and signature of consumer obtained on it and hence, there is no any flaw in it.

7] On the basis of above, we find provisions u/s. 126 of I.E.Act are peculiar in nature. There is a provision of appeal u/s. 127 of I.E.Act and jurisdiction of Civil Court or any other Authority is barred for such action taken by Competent Assessing Authority. Even MERC Regulation 6.8 bars jurisdiction of this Forum when prima facie, it is found that matter is falling u/s. 126 of I.E.Act. No doubt, Officers of Licencee relied on this clause of bar of jurisdiction, but consumer's representative submitted that if at all, any appeal is to be taken to the Appellate Authority, then there should be a final assessment order served on the consumer and said final assessment order is not served on the consumer. Secondly, it is submitted that final assessment

order is based on provisional assessment order passed by Assessing Authority and served on the consumer. Accordingly, it is submitted that as these two conditions are not fulfilled, which is seen prima facie, from the facts involved in the matter. It is clear that when there is provision of appeal and bar of jurisdiction of others is laid down then always it is necessary to ensure, provisional assessment order passed, final assessment order passed and served. But in this matter, prima facie these two aspects are clearly lacking. There is no provisional assessment order, though there is so called provisional assessment sheet prepared by Executive Engineer, Flying Squad is not addressed to the consumer and no opportunity was given to consumer to make submissions. Licencee has already prescribed a form for passing provisional assessment order and it speaks that it is a order passed and addressed to the consumer giving intimation about liberty available to the consumer for making representation or submitting reply within the prescribed time. Hence, the provisional assessment order which Officers of Licencee are trying to brand as provisional assessment order, but prima facie it is not found so. Further final assessment order though placed on record, it's service on consumer not shown. Unless final assessment order is, served or received by the party, there is no any scope to approach Appellate Authority. Accordingly, flaw in resorting to section 126 of Electricity Act is clearly exhibited. Said flaw itself hits at in it's root. Any further action of recovery on that basis will not be legal and proper. We are coming to this conclusion on prima facie considering, the non existence of provisional assessment order and non service of final assessment order. Thus we find that so-called bill of Rs.19,770/- issued treating it u/s. 126 of Electricity Act, is not legal and proper. It is not enforceable and recovery on this basis is not legal. Said amount is liable to be refunded. We find further in respect of Licencee's action whereby consumer's connection clubbed with other connection, there is no dispute when there is clubbing effected then there cannot be any bill from September 2013 of clubbed connection for which consumer cannot be held responsible and we find security deposit of said connection is to be refunded. In this regard,

Licencee submitted that said security deposit will be reflecting in the clubbed connection of consumer. Accordingly, we find this particular relief is being granted by Licencee which it has to comply.

Hence the order.

ORDER

Grievance of the consumer is hereby allowed.

Amount of Rs.19,770/- recovered by Licencee as per bill dated 28/7/2013 found not legal and proper as there is no any service of final assessment order and there is no issuance of provisional assessment order as such , giving opportunity of hearing to the consumer.

Licencee is liable to refund above amount to the consumer with interest as per RBI Bank Rate from the date of deposit.

Secondly, Licencee to adjust and ensure security deposit along with interest as per the rules. Security Deposit is transferred and reflected in consumer's other number appropriately in the next billing cycle.

Above directions, licencee to comply within 30 days from the date of this order and to report compliance within further 15 days.

Kalyan

Dated: 07/5/2014

I agree

I agree

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

(Chandrashekhar U.Patil)
Member Secretary
CGRF,Kalyan

(Sadashiv 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.

GRIEVANCE NO. K/E/774/932 OF 2013-14

“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.