



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

Date of Grievance : 17/06/2013
Date of Order : 26/06/2013
Period Taken : 9 days

ORDER IN THE MATTER OF GRIEVANCE NO. K/DOS/012/855 OF 2013-14 OF G.M. MODULAR PVT. LTD. OF KALYAN(WEST), REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT DISCONNECTION OF SUPPLY

G. M. Modular Pvt. Ltd.,
Gala no.08, Bokadia Industrial Estate,
Sativali,
Vasai [E] – 401 208, Dist Thane
Consumer No.002170784742

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Exe. Engineer, Vasai Circle, Vasai
and Nodal Officer.

(Here-in-after
referred
as Licensee)

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

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 having Industrial supply from the Licensee. The Consumer is billed as per said tariff. Consumer registered grievance with the Forum on 17/6/2013.
3. The papers containing above grievance were directed to be served on Nodal Officer by Forum vide letter No. EE/CGRF/Kalyan/0341 dated 19/6/2013 to Nodal Officer of Licensee. The Licensee appeared through its Officers and filed its reply on 25/6/2013.
4. In this matter Consumer's representative Mr Harshad Sheth attended, had made submissions. On behalf of Licensee Nodal Officer, Shri Purohit and Dy. Exe.Engineer, Mr. P.V. Patil attended and they made submissions.
5. Considering the argument and material placed on record, following factual aspects are disclosed.
6. Consumer had received a provisional bill on 8/12/2011 in connection with the incident of section 126 to which Consumer objected on 15/12/2011. Accordingly its hearing was taken on 20/12/2011, however there is no final assessment order. But on 27/5/2013 Dy. Exe.Engineer, Vasai issued a letter communicating that as per provisional bill, Consumer has not paid the dues to the tune of Rs.23,07,360/- which he has to pay within 15 days or to face consequences and it is u/s 56 (1) of Electricity Act.

Consumer had addressed letter objecting to it on 13/6/2013. One more letter he has addressed to the Assessing Authority on 15/6/2013 and he has challenged the said assessment and notice contending that there is no final assessment order and action is not correct.

Consumer then approached IGRC on 15/6/2013. However Consumer faced disconnection of supply in tune with aforesaid notice of Licensee on

17/6/2013. On the very day he has approached this Forum mentioning in para 8 of his application that supply is disconnected. He sought protection.

On 18/6/2013 this matter was taken up and it was about to be decided but it was brought to our notice that Consumer's authorized person, Mr. Harshad Sheth was not available hence matter was kept on 19/6/2013 and on 19/6/2013 we directed that this matter be taken up for hearing on 25/6/2013 on the point of maintainability of the grievance and interim application. Accordingly on behalf of Licensee reply is presented and in reply it is contended that action is correct; it is as per provisional assessment order and this complaint is hit u/s 126 of Indian Electricity Act. Accordingly matter is totally argued by both sides towards its final disposal. We find that now there is no any necessity for deciding interim application and this matter is to be finally decided on its merit including the interim relief.

7. During the course of argument, question was raised about tenability of this grievance. Admittedly the Consumer has approached IGRC on 15/6/2013 but faced disconnection on 17/6/2013 and hence he approached this Forum. Nodal Officer who is also the Chairperson of IGRC during hearing made it clear that order is not yet passed by IGRC. Accordingly now it is clear that Consumer is facing a problem, not having any efficacious remedy available with the IGRC hence he approached this Forum alleging that it is an act in breach of the provisions of law, i.e. section 56. It is contended that though amount is demanded as per the notice dated 27/5/2013 which was as per provisional bill issued u/s 126, however that proceeding has not brought to an end by passing any final order. Consumer has objected that hearing was taken but final order is not passed without passing a final order amount is demanded and punitive act is resorted to. He contended that no such action can be taken u/s 56 (1) and he is not having any other remedy. It is clarified during hearing that if it is said action is u/s 126 then an appeal is provided u/s 127 when there is a final assessment

order. In this matter it is contended that there is no final assessment order hence he cannot approach any authority u/s 127. Accordingly it is contended that said act is now required to be dealt by this Forum.

8. On behalf of Licensee they maintained that action is taken as per the provisional assessment and no fault can be found in it.
9. On behalf of Consumer it is submitted that Forum is entitled to entertain the grievance before expiry of the period as specified in 6.5 of MERC Regulation . it is also contended that as per 6.8 of MERC Regulation this Forum can consider prima facie the applicability of section 126 & section 135, of Electricity Act. Further it is contended that as per 8.3 of MERC Regulation interim relief can be granted by this Forum. Representative of Consumer has relied on the judgment of Hon'ble Ombudsman Nagpur in grievance No.106/2012 dated 5/3/2013 wherein Hon'ble Ombudsman came to a conclusion that matter dealt was not coming under section 126 but applying it action was taken by the Licensee which is not correct. Even C/R has heavily relied on the order of CGRF Nagpur in Case No.1/2011 dated 4/1/2011 wherein notice of disconnection is held illegal, and it is quashed granting interim relief.
10. At this stage, a mute question available for our decision whether this complaint can be entertained and dealt. We find what is disputed before us is the letter dated 27/5/2013 whereby amount of Rs.23,07,360/- is demanded within 15 days or to face the consequences of disconnection. This particular action is u/s 56(1) of Electricity Act basing on provisional assessment u/s 126 of Electricity Act. It is brought to our notice that as per section 126 provisional assessment order is to be followed by the final order and time of 30 days is prescribed for passing such final order from the date of service of provisional order. Further there is a provision for appeal within 30 days of the order of the final assessment u/s 127 which Consumer may resort. It is submitted that all these opportunities are

available and till then no any penal action of dis-connection can be taken or no such notice of dis-connection can be issued. Accordingly, submission is made that notice issued on 27/5/2013 is not legal and proper. We are clear in our mind that Licensee has commenced an action u/s 126, provisional assessment order is passed, and admittedly there is no final order yet brought on record or there is any contention that such final order is passed. Reply of Licensee is totally clear on this aspect. It is stated that matter remained unattended from 20/12/2012 to 26/5/2013. In this light we find that matter pertaining to the process of action u/s 126 is in progress; it has not yet matured in finality, i.e. no final assessment order is passed. If any final assessment order is there, it gives a cause of action for Consumer to go for an appeal within 30 days and if as per final order, there is no compliance cause of action available to the Licensee to go for action as per section 56 of Electricity Act. Accordingly we find that we at this stage are not to decide any aspect pertaining to validity of process going on u/s 126 and even we cannot decide the legality of provisional assessment order or its quantum. Question is when there is no final assessment order, can there be any action u/s 56 and of dis-connection. We find that aspect of dis-connection for the amount involved u/s 126 will be possible only after the final order. Appellate Authority gets jurisdiction u/s 127 to entertain appeal against the final order of assessment. Under such circumstances, we find that the notice issued u/s 56 of Electricity Act dated 27/5/2013 is not correct; it is based on provisional assessment bill which cannot be enforced in absence of any final order u/s 126, hence we find the action taken by the Licensee on this count towards dis-connection is not correct and as this complaint is limited to that aspect of dis-connection and its reconnection this complaint is well within our scope and it is now required to be allowed. Notice dated 27/5/2013 issued by the Officers of Licensee is to be quashed and supply disconnected is to be directed to be restored.

We make it clear that we have no any jurisdiction to deal with merit of any action u/s 126, merit of provisional order or quantum involved therein. Our observation is only limited to notice issued u/s 56 towards the cost which in fact has not matured.

In view of the above this grievance is to be allowed.

Hence the order.

O-R-D-E-R

- a) Grievance application of Consumer is hereby allowed.
- b) Action of Licensee towards dis-connection is hereby set aside, the notice issued on 27/5/2013 is also set aside
- c) Licensee is directed to re-connect Consumer's supply without any delay as soon as this Order is received.
- d) Licensee to report compliance within 8 days from the date of receiving this Order. Let copy of this Order be handed over to the Consumer or his representative for submitting it to the Officer of Licensee concerned on which Officers are to act.

Date : 26/06/2013

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.

“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”