



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 : 30/05/2012

Date of Order : 26/07/2012

Period taken : 56 days

IN THE MATTER OF GRIEVANCE NO. K/E/612/723 OF 2012-2013 OF
SHRI CHANDRAKANT B. MORE, VILLAGE - DORE, POST - VANGANI
REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM
KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL .

Shri Chandrakant B. More
Village - Dore,
Post : Vangani, Tal : Ambarnath,
Dist – Thane : 421 503

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Badlapur 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 Agricultural (LT-IV) consumer of the licensee. The Consumer is billed as per Agricultural tariff. Consumer registered grievance with the Forum on 30/05/2012 for Excessive Energy Bill.

The details are as follows :

Name of the consumer :- Shri Chandrakant B. More

Address: - As given in the title

Consumer No : - 022010001408

Reason of dispute : Excessive Energy Bill

- 3) The set of papers containing above grievance were sent by Forum vide letter No EE/CGRF/Kalyan/0432 dated 30/05/2012 to Nodal Officer of licensee. The licensee filed reply vide letter No. SE/KC-II/Tech/2868, dated 21/06/2012 through Nodal Officer Kalyan Circle – II.
- 4) We the Members of the Forum heard both sides in the meeting hall of the Forum's office on 25/06/2012. Licensee represented by Nodal Officer Shri Giradkar, Shri V. H. Kasal, Asstt. Engr. Shi Dhomne Dy. Executive Engineer, and Consumer Shri Chandrakant B. More in person was present.
- 5) The brief facts of the grievance application are :

The consumer is having a farm located at Village Vangani, Dist : Thane. According to him he is a agriculturist. He has one Ag. pump of 5 H.P. installed in his farm.

The consumer further states that he is having 500 banana plants, one acre rice paddy cultivation, one acre vegetables, one acre grass for cattle,

half acre roses, 50 mango trees, 30 coconut plants, 30 chikku plants, 25 kadipatta plants, 500 different types of bamboo plants, which according to consumer is an agricultural activity.

It is the contention of the consumer that his consumer No. is 022010001408 which is classified under LT IV under agricultural connection and charged accordingly.

The consumer further states that his Son Prasad has different connection for nursery and categorically states that he does not sell these plants on the premises of the farm.

The consumer further submits that a Flying Squad unit of Licensee visited / inspected his farm on 17/02/2012 and issued a supplementary bill for A.G. pump.

It is the contention of the consumer that the Licensee has charged him under Section 126 of Electricity Act 2003 treating the additional activity of nursery as commercial activity and served a bill which is on higher side.

According to the consumer he has paid the said bill under protest. The consumer then approached I.G.R.C. but in vain. He, therefore, approached this Forum with a prayer to direct the Licensee to revise the supplementary bill and issue him the electricity bills as per tariff LT-IV.

- 6) Notice was issued to the Licensee who appeared and filed it's say as under
 - (a) The electricity supply was given to the consumer for A.G. pump having 5 HP load.
 - (b) On 17/02/2012 a Flying Squad of Unit – 2 Kalyan visited / inspected the premises of the consumer and observed that the consumer is using the electricity supply which is provided to him for agriculture purpose, is using it for nursery purpose.

- (c) The Licensee firmly stated that nursery is a commercial activity and electricity supply provided to the consumer is for agriculture purpose and hence it is breach / violation of agreement.
- (d) The Licensee further stated that we therefore have charged him under Section 126 of Electricity Act 2003 by imposing penalty which is fully justified.

Officers of Licensee supported it with a circular which is placed on record dt. 15/01/2011 of it's competent authority which shows the type of tariff applicable to nursery.

- (e) The Licensee therefore pleaded that accordingly a bill of Rs. 53,960/- was issued to the consumer which is a legitimate demand under Section 126 of Electricity Act 2003.

- (f) The Licensee therefore prayed to dismiss the grievance of the consumer.

7) After going through the records placed before us and the submissions made by both the parties our observations are :

- (a) The circular dated 15/01/2011 signed by Chief Engineer (Commercial) MSEDCL Prakashgad, Bandra in para 5 clause (2) it is mentioned that "If there is mix load i.e. Agricultural + Nursery and there is sell of plants at site then, separate connection should be taken for sell of plants and commercial tariff can be appropriate for this purpose."

The above clause specifically mentions that the sale of plants also should be on site then it be treated as commercial. However, the Licensee neither in it's inspection report or say nor in it's submission specified that the consumer sells the plants on site.

Though Officers of Licensee herein are relying on this circular of Chief Engineer (Commercial) for classifying consumer's use as commercial

though it is agricultural connection used for nursery and there is a sale on site. But sale on site is not reflected in this matter anywhere in report. Hence even as per the circular this matter is not falling under the category of 'commercial' as classified by the officers of Licensee. We make it clear at this stage that we are not expressing any view about the legality of classification shown in the circular which is relied by the officers, as classification is only agricultural as per MERC Regulation and scope of Agricultural is wide enough which may includes various activities concerned with Agricultural, dependent on Agricultural and ancillary activities considering the status of farmers in this country and state.

- (b) The Licensee has also failed to prove that the consumer has an extended or additional electricity supply for selling the plants at a separate counter at the same site.
- (c) Licensee has not placed report of Flying Squad and spot panchanama on record though sought by the Forum.
- (d) We have also noted that though the provisional bill is served on the consumer under Section 126 of Electricity Act 2003, no such provisional assessment order passed and no final order is passed and hence it can be said that action taken under Section 126 of Electricity Act 2003 is uncalled by changing the classification.
- (e) We also feel that before charging the consumer under Section 126 of I.E. Act 2003, basic requirements are not followed by the licensee such as :
 - i) No spot panchanama is on the record.
 - ii) No provisional assessment order is on the record.
- (f) Section 126 (1) of Indian Electricity Act 2003 reads as follows :

"If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after

inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.”

- (f) The said provision applies only when any allegation concerning electricity line, equipment, machine devices arises between licensee and the consumer and falls within the nature of provision elaborated in Section 126 of the said Act and if the assessing officer after following the basic due requirement as stated above comes to the conclusion that the consumer has misused the electricity supply or unauthorized use of electricity supply has taken place, then only the assessment can be made.
 - (g) However, the Licensee failed to prove that the consumer sales the plants on the site. Letter dated 28/02/2012 of Dy. Executive Engineer Flying Squad not speaks to that effect.
 - (h) We therefore, strongly feel that 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.
 - (i) 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.
- 8) Taking into consideration all the above points we are of the opinion that the bill issued by the Licensee having due date 06/03/2012 which is paid by the consumer is to be set aside. Hence we pass the following order :

O-R-D-E-R

- 1) The present grievance of consumer is allowed.

- 2) The assessment carried out by the licensee under Section 126 of Indian Electricity Act 2003 is hereby quashed.
- 3) Licensee is directed to revise the bill, the interest and the DPC if any, levied on the same amount is also hereby set aside.
- 4) Licensee is directed to revise the bill having due date 06/03/2012 issued to the consumer and amount paid by the consumer as per said bill which is excessive, to adjust in the next ensuing bills and compliance be reported within 60 days from the date of receipt of this order.
- 5) The Consumer if not satisfied 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”

- 6) 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 : 26/07/2012

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

(R.V. Shivdas)
Member Secretary
CGRF Kalyan

(Sadashiv S. Deshmukh)
Chairperson
CGRF Kalyan