



Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
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Date of Grievance : 02/09/2013  
Date of Order : 29/10/2013  
Period Taken : 57 days

**IN THE MATTER OF GRIEVANCE NO. K/E/730/865 OF 2013-14 IN RESPECT OF CHETANA VIJENDRA PATEL OF SATIVALI, VASAI [E] – 401 208, DIST THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL**

Chetana Vijendra Patel,  
Unit No.6, Bldg. No.2,  
Rajprabha Udyog Nagar,  
Waliv, Vasai (E)-401 208, Dist-Thane  
Consumer No. 001840881284

(Here-in-after  
referred  
as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited through its  
Dy. Exe. Engineer, Vasai Road (East) Sub Division

(Here-in-after  
referred  
as Licensee)

Appearance : - C.R. – Shri Harshad Sheth  
For Licensee - Shri Satish Umbarje, Dy. Exe.Engineer  
Shri Vaze, Asst. Accountant

(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 2/9/2013 for Excessive Energy Bill.
3. The papers containing above grievance were sent by Forum vide letter No. EE/CGRF/Kalyan/0409 dated 3/9/2013 to Nodal Officer of Licensee. The Licensee filed its reply on 23/9/2013.
4. We heard Consumer's Representative and the Officers of Licensee on 21<sup>st</sup> Oct. 2013.
5. On the basis of arguments advanced and material placed before the Forum following factual aspects are disclosed:-
  - a) Consumer is having Industrial connection and he is dealt u/s 126 of Electricity Act. Referring to the Provisional Assessment dated 21/8/2012 passed on the Inspection conducted by Jr. Engineer (Quality Control) dated 14/7/2012, while giving the details of Consumers he quoted purpose of industry as 'Packaging and Godown' and while giving remarks, fifth remark pertains to 'supply found given for packaging and godown purpose, no manufacturing in gala'.
  - b) On the basis of Inspection Report of Jr. Engineer (QC), Assessing Authority passed provisional assessment order on 21/8/2012 working out the amount to the tune of Rs.1,88,900/- as per his best judgment. The said order is on record. It speaks that it is addressed to the Consumer and sought reply within 7 days. Service of the said order is denied by the Consumer but it is asserted by the Officers of Licensee. Reference of this order is seen in the letters of the Consumer dated 7/1/2013 & 8/1/2013. On this aspect, the C.R. explained that on perceiving the threat of disconnection and demand raised in the bill of December 2012 the said order was secured and

it is referred. This is the aspect of dispute. It is also seen that along with the said provisional assessment order bill for Rs. 1,88,900/- was issued but there was no any recovery. Further it is added in the regular bill dated 15/12/2012 which is for the period from 1/11/2012 to 1/12/2012. The Consumer has contended, demanding the said amount in the bill, the Officers of Licensee started threatening disconnection for want of payment, hence he addressed letter dated 7/1/2013 seeking the relief of paying regular bills and disputing the provisional bill and prayed therein not to cut off the supply. Thereafter the supply of Consumer was disconnected and it led to the Consumer applying to the Licensee on 8/1/2013 offering payment under protest and seeking re-connection. Accordingly, the amount as demanded along with re-connection charges deposited on 8/1/2013 and supply was re-connected.

c) Consumer thereafter approached IGRC by filing application dated 1/7/2013 with the grievance. Said grievance is not dealt within 60 days hence on 2/9/2013 the Consumer approached this Forum.

6. Now it is contended by the Consumer that the action, on the finding of unauthorized use of electricity, is, not correct, Change of category shown is not in tune with required procedure, if at all such category was to be changed then notice was required to be given and no such notice is given, matter will not fall under Section 126 of Electricity Act. Even the requirements of Section 126 of Electricity Act are not followed.
7. In this matter, section 126 of Electricity Act is referred, the provisional assessment order is placed on record on which Consumer claims that said order not received by her. But it is appearing in her letters dated 7/1/2013 and 8/1/2013. Though this is disputed aspect, one thing is clear that there is no final assessment order **passed** or such order placed on record or was served on the Consumer, till the date of dis-connection. No doubt, in reply, by Licensee it is

contended that said final assessment order, whether passed or not is being verified from record. Though such reply is given on 23/9/2013, till the date of hearing, i.e. 21/10/2013, the copy of such final assessment order is not placed on record. It is to be now presumed that there is no such final assessment order passed or if passed, it is not served on the Consumer. There is no reference of such final assessment order passed in any of the records brought before us. If at all had it been served on the Consumer, definitely she would have re-acted on it or referred to it in these proceedings. Consumer all the while till 8/1/2013, disputed the claim of Licensee and deposited the amount under protest referring to the Order dated 21/8/2012 of provisional assessment only. No doubt, if any matter falls u/s 126 of Electricity Act and final assessment order is passed, this Forum cannot exercise jurisdiction, as there is provision of appeal u/s 127 of Electricity Act. In this matter, as there is no final assessment order and without such final assessment order there is an action of disconnection and hence we are required to find out whether this Forum can pass any Order pertaining to that aspect.

8. The scheme of section 126 of Electricity Act is clear. It commences from the inspection and followed by Inspection Report, then provisional assessment is to be done on its basis or 'after inspection of records maintained by any person' and coming to a conclusion that it is an unauthorized use of electricity. It is to the best of judgment of Assessing Authority. It needs to be served on the Consumer, giving time of seven days for reply. Thereby, the Consumer will be entitled to raise objection. Thereafter final assessment order is to be passed giving reasonable opportunity to the Consumer, within 30 days of service of provisional assessment order. Such final assessment order is amenable for appeal u/s 127 of Electricity Act but such Order will not be enforceable.
9. As noted above, in this matter though there is order of provisional assessment, there is no final assessment order. Liability u/s 126 of Electricity Act arises only when final assessment order is passed. There is no provision in the said section

to disconnect the supply only on the basis of provisional assessment order. In this matter, recourse is taken to recover the amount shown in the provisional assessment order, adding it to the regular bill of December 2012, that too, in the absence of any final assessment order. Accordingly, adding amount, in the monthly December 2012 bill, pertaining to provisional assessment order, is not in tune with legal provisions. In short, amount of provisional assessment order is not recoverable by any means until final assessment order is passed. Such aspect is clearly clarified by the Licensee in its 'Conditions of Supply'.

10. In this matter, as stated above, Consumer came up with the contention that the action u/s 126 of Electricity Act itself is not correct as re-classification dealt is not permissible, secondly it is contended that requirements of section 126 of Electricity Act are not followed. To highlight it, it is contended that provisional assessment order is not served, final assessment order not passed, there is no any reason assigned why re-classification is accepted and details of working of the figure of provisional assessment is not provided. In short, attack is on the valid action u/s 126 of Electricity Act.
11. In support of the above aspect towards re-classification which cannot be resorted to without giving notice to the other side, C.R. relied on precedents of Hon'ble Electricity Ombudsman of Nagpur and Mumbai. Those are as under:-
  - a) On behalf of Consumer C.R. placed on record different orders of Hon'ble Electricity Ombudsman, Nagpur:
    - (i) Representation Nos. 25 to 27 of 2013, decided on 31/5/2013. These orders are speaking about the illegal change of category done,
    - (ii) Representation No.43/2013 dated 8/8/2013 wherein aspect was of charging the Consumer in respect of repairs of transformer, treating it a commercial activity though connection was of industrial supply

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(iii) Representation No.49 of 2012 decided on 3/8/2013. It is pertaining to re-classification of category.

All these matters are not dealt u/s 126 of Electricity Act or said Section was not involved in those matters.

(iv) Representation No.110/2012 dated 14/2/2013 wherein it was made clear that the matter was not u/s 126 of Electricity Act.

(v)Representation No.43 of 2012 – Order dated 16/8/2012. It is also not dealing with any action u/s 126 of Electricity Act.

b) Reliance is placed on Order passed by Hon'ble Electricity Ombudsman, Mumbai in:-

(i) Representation No.140/2009 dated 2/2/2010 – M/s. Atul Impex Pvt Ltd v/s MSEDCL, it was also pertaining to classification of category and section 126 of Electricity Act is not involved in it.

(ii) Representation No.5 of 2011 decided on 5/3/2011 which also pertains to classification and decided on the basis of aforesaid case of M/s. Atul Impex Pvt Ltd v/s MSEDCL.

**Hence all above Orders of Hon'ble Electricity Ombudsman, Nagpur & Mumbai are not applicable to the present matters in hand.**

12. During the arguments, Ld. C.R. heavily relied on another Order of Hon'ble Electricity Ombudsman, Mumbai in Representation No. 64 of 2013 dealt u/s 126 of Electricity Act. it is contended that relying on this precedent that almost all requirement of section 126 of Electricity Act are to be followed along with the Licensee's Conditions of Supply, i.e. visit to the site should be by the Assessing Officer and provisional assessment order is to be issued within 7 days and giving reasonable opportunity to the Consumer, final assessment order is to

be passed within 30 days of provisional assessment order. He contended that all requirements are not followed in the matter and hence this precedent is applicable. On close reading of this precedent, more particularly, para no.7, facts disclosed are as under:

*“7. Respondents argued that a Board of Appellants residential bungalow clearly shows that there was a commercial activity. it was therefore, inspection 24/10/2012 and a bill of Rs. 1,04,183.56 was issued u/s 126 of Electricity Act for two years. upon query and on perusal, of MSEDCL Conditions of Supply, the Respondents considered that inspection of the Appellant’s premises was carried by the Jr. Engineer (QC) who is not the Assessing Officer designated as per condition no. 24.1.3 of Conditions of Supply. the impugned bill for Rs. 1,04,183.56 was issued by Asst Accountant, who is also not Assessing Officer. Order of provisional assessment u/s 126 (2) of the Act not passed and served upon Appellant. no opportunity of hearing was given to Appellant as per section 126 (3) of the Act. there is no order of final assessment.”*

On the basis of these factual aspects, in para no.9, Hon’ble Electricity Ombudsman observed as under, referring to Regulation 6.8 (a) of CGRF Regulations as under:-

*“...There is nothing on record to show whether any order of provisional assessment (Annexure-K1) was served on the Appellant, within 7 days from the date of inspection, as stipulated in Condition no. 24.3.3 of the Conditions of Supply and whether any Order of final assessment (Annexure-K2) was served after giving an opportunity being heard to the Appellant, within 30 days as stipulated in Condition no. 24.4 of the Conditions of Supply. the impugned bill of Rs. 1,04,183/- was issued belatedly 15.11.2012, by an Asst. Accountant, who is neither the Assessing Officer as per condition 24.1.3 nor, did he inspect the premises*

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*of Appellant as per Condition no. 24.2.1 of the Conditions of Supply. the Respondent has not submitted or stated anything to contradict this position except merely saying that matter of unauthorized use of electricity is excluded from the jurisdiction of the Forum as per Regulation 6.8 (a) of CGRF Regulations. The said Regulation cannot be allowed to be taken for granted by any unauthorized official to inspect Consumer's premises and issue bill of any amount at any time without giving details of working as per Annexure K-1 and without observing the limitation of time of seven days, as stipulated in Condition No.24.3.3 of Conditions of Supply. the impugned bill of Rs.1,04,183/- dated 15/11/2012, towards alleged unauthorized use of electricity is therefore, liable to be and is hereby quashed and set aside. Amount recovered, if any, against the said bill shall be refunded to the Appellant with interest at the Bank Rate of Reserve Bank of India. The Forum shall keep the said provisions in mind for deciding the similar case in future for passing reasoned orders as per Regulation 8.4 of CGRF Regulations, 2006."*

13. The observations of Hon'ble Electricity Ombudsman noted above are clear and required to be noted and to be followed. However, it is necessary to note that in the present dispute, which is in our hand, is on different factual aspects. In this matter no doubt there is an inspection by Jr. Engineer (QC), but there is an order of provisional assessment. No doubt, there is a dispute about service of that provisional assessment order, but existence of Order is very much seen. Authority of Officer who passed such provisional assessment order is nowhere disputed. Hence, precise question of jurisdiction comes up if there is any order of a competent person issuing the provisional assessment order, then can it be dealt by the Forum? At the cost of repetition, it is to be observed that MERC (CGRF) Regulation No.6.8(a) is clear in itself. It reads as under:-



*“If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:*

*(a) unauthorized use of electricity as provided under section 126 of the Act;*

*(2)(b) ...;*

*(c).....; and*

*(d) ....”*

Accordingly it is seen that this section bars jurisdiction when any matter is taken up under the said section treating it as an unauthorized use of electricity. In this matter, it is dealt stating that particular ground and followed by provisional assessment order by the Authorized Officer on the basis of Inspection Report of Jr. Engineer. Though there is a dispute about service of this notice, it is a different question which is to be inquired into whether there is a service or not or whether there is a proper service. There is no bar for passing provisional assessment order basing on such report. These are all aspects for consideration by the appropriate Appellate Authority. Hence, the aforesaid precedent is not applicable as there was no provisional assessment order itself in that matter. Considering the spirit of the Regulation cited above towards bar of jurisdiction we are required to abide by the said Rule noting that there is Order of provisional assessment by Assessing Officer. Accordingly, we find that aforesaid precedent is to be followed in all its spirit, if there is no any valid provisional assessment order but in this matter, we are required to consider and note that there is a valid provisional assessment order. This precedent will not be of any assistance to the Consumer considering the peculiar facts.

Aspect of re-classification dealt is the finding of Assessing Officer who passed the Order of provisional assessment. Basically jurisdiction of such Assessing Officer is of importance. If once it is held that he is having jurisdiction / power to pass Orders, then any Orders passed if they are suffering

from any illegality or defect, those will not be Orders without jurisdiction or powers and such Orders are amenable for Appeal and correctness of those is to be disputed u/s 127 of Electricity Act, that too, when final assessment order is passed.

14. As stated above in this matter, Consumer was made to pay the amount as per provisional assessment order though it is not followed by final assessment order. Payment is done under protest and it was under threat of disconnection as pleaded by the Consumer. Hence, the recourse taken by the Licensee to implement provisional assessment order under threat of disconnection and forcing the party to pay the amount, is, not legal and proper. Said amount becomes recoverable only when there is a final assessment order. There is no provision in section 126 of Electricity Act for disconnection of supply for want of payment of the amount worked out in the provisional assessment order. Hence payment received under such threat is not legal and permissible. Such overt act is not provided u/s 126 of Electricity Act. At the most, when any disconnection is to be said to be resorted to then 15 days clear notice is required u/s 56 of Electricity Act which is not followed in this matter.
15. This Forum has no jurisdiction to comment on the validity of provisional assessment order or amount worked therein. But relief is required to be considered only in light of the fact that recovery of the amount done, only on the basis of provisional assessment order and when there is no final assessment order, final assessment order is amenable for Appeal and no provisional assessment order can be pressed into service for recovery of the amount which is done in this matter. This, in no way, can be read as any view expressed about the illegality of following a procedure u/s 126 of Electricity Act pertaining to passing of provisional assessment order. The relief is to be granted as Order of provisional assessment not enforceable, it is implemented under the threat of disconnection that too without passing any final order. Hence though

provisional assessment order is not available for comment and decision, but act thereafter, of the recovery of the said amount under threat that too without passing any final order, very well, can be dealt by this Forum. The act of Licensee to recover the dues under the threat of disconnection shown in the provisional assessment order is not legal. Even 15 days notice of disconnection is not given. Such notice of 15 days will be valid only recovery sought is as per the legal order or final assessment order. Accordingly, to the extent of recovery of amount as per provisional assessment order, that too, under the threat, is found not legal and proper, relief is to be granted to that extent.

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

Hence the Order

**O-R-D-E-R**

- a) The grievance of the Consumer is hereby partly allowed.
- b) The amount paid by the Consumer under protest as per the provisional assessment order passed is under the threat of disconnection which is not legal. It is not recoverable unless final assessment order is passed. Licensee to refund it with interest as per the R.B.I. Bank Rate from the date of deposit.
- c) This order be complied within 45 days from the date of receipt of the order and compliance report is to be submitted within 60 days from the date of receipt of this Order.

**Date : 29/10/2013**

**I Agree**

**I Agree**

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

**(Chandrashekar 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”*

- 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.