



Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
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Date of Grievance No.K/E/733/868 : 30/09/2013  
Date of Order : 25/11/2013  
Period Taken : 62 days

Date of Grievance No.K/DOS/017/878: 14/10/2013  
Date of Order : 25/11/2013  
Period Taken : 42 days

**COMMON ORDER IN THE MATTERS OF GRIEVANCE NO. K/E/733/868 OF 2013-14 AND GRIEVANCE NO. K/DOS/017/878 OF 2013-14 OF G.M. MODULAR PVT LTD., OF SATIVALI, VASAI (E), DIST-THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING EXCESSIVE ENERGY BILL**

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

(Here-in-after  
referred  
as Licensee)

Appearance :- For Consumer - Shri Harshad Sheth, Consumer's Representative  
For Licensee - Shri Purohit, Nodal Officer,  
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 & Electricity 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).

- Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14
2. The Consumer is having Industrial supply from the Licensee. The Consumer is billed as per said tariff. Consumer registered grievances with the Forum on 30/9/2013 & 14/10/2013 respectively towards improper and illegal assessment u/s 126 and threat of disconnection on the basis of demand towards said assessment.
  3. The papers containing above grievances were directed to be served on Nodal Officer by Forum vide letters No. EE/CGRF/Kalyan/0425 dated 30/9/2013 and No. EE/CGRF/Kalyan/0453 dated 15/10/2013 to Nodal Officer of Licensee, respectively in these matters. The Licensee appeared through its Officers and filed reply in these matters from time to time, i.e. on dated 19/10/2013, 7/11/2013 in the first matter and on 29/10/2013 in the second matter.
  4. We heard Shri Harshad Sheth, Consumer Representative and Shri Purohit, Nodal Officer for Licensee.
  5. Considering the argument and material placed on record, following factual aspects are disclosed.
    - i. On 10/11/2011 Consumer's Electrical and Metering installation was inspected by the Licensee's Sub Engineer of Sativali-II Section and thereby Consumer was served with a provisional assessment order and bill on 8/12/2011 in connection with the action under section 126, to which Consumer objected on 15/12/2011. Accordingly its hearing was taken on 20/12/2011, however there was 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 was to pay within 15 days or to face consequences of disconnection 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

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 the said assessment and notice contending that there was no final assessment order and action is not correct.

- ii. Consumer then approached IGRC on 15/6/2013. However Consumer faced threat of disconnection of supply in the light of aforesaid notice of Licensee on 27/5/2013, hence he had approached this Forum on the very day by filing Grievance No. K/DOS/012/855 of 2013-14 and mentioned therein that supply is being disconnected. He had sought protection.
- iii. Said grievance No. i.e. K/DOS/012/855 OF 2013-14 is decided on 26/6/2013 observing that as there is no final assessment order u/s 126 there cannot be any action of disconnection or threat of it as per provisions contained in section 56(2), hence the notice issued by the Officers of Licensee to that effect set aside.
- iv. The aforesaid matter is dealt by this Forum on 26/6/2013, Consumer claimed that his dispute before IGRC was pending which was filed on 15/6/2013, no order was passed therein. On this count he approached this Forum by filing further Grievance no. K/E/728/862 of 2013-14 on 16/8/2013. In the said proceeding, he placed on record, the letter of Assessing Authority dated 2/7/2013 which bears a title as 'Final Assessment Order u/s 126 of Electricity Act'. It is replied by the Consumer's Advocate on 6/7/2013. It was contended that Consumer has again approached IGRC by letter dated 29/7/2013 enclosing the letter of Consumer's Advocate dated 6/7/2013. In the said matter, relief was sought about the recovery being insisted towards the Order dated 2/7/2013. Said matter is dealt by this Forum passing Order on 2/9/2013 observing therein that Consumer had made a grievance about the so called Order of final assessment dated 2/7/2013 writing a letter to IGRC on 29/7/2013 but matter before IGRC not concluded and Consumer had approached this Forum before completion of 60 days of complaint before

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 the IGRC. Consumer has filed the said complaint before this Forum on 16/8/2013. Accordingly, as it was within 60 days of approaching IGRC said grievance was disposed off.

v. Consumer again in the third round, approached this Forum on 30/9/2013, i.e. on completion of 60 days of his communication to IGRC. This grievance No. K/E/733/868 of 2013-14 registered on 30/9/2013 and both sides were asked to attend the matter. They attended by filing reply and rejoinders, etc.

vi. Consumer in the meantime, again filed one more grievance application which is registered as K/DOS/017/878 of 2013-14 on 14/10/2013 seeking interim stay for disconnection till grievance is resolved. It is contended that all the while, Consumer is submitting cheques to the Licensee for undisputed period but though cheques are not encashed and are returned, contending that payment is to be of full claim and partial payment cannot be accepted. Consumer claimed that seeking the total dues, the Licensee has addressed letter dated 10/10/2013 and sought the dues to the tune of Rs.24,91,770/- within 15 days from the date of receipt of it and further informed that if payment is not done, supply will be disconnected. Accordingly, this is an interim application which is part and parcel of the above Grievance No. K/DOS/017/878 of 2013-14.

6. Hence, both these Grievances are heard together and are being decided at a time. On behalf of Consumer, C.R. made submissions.

a) C.R. summarized his dispute which is shown under u/s 126 of Electricity Act. He contended that action of Licensee is hit on four grounds. One, though inspection of premises is taken on 10/11/2011, it is by Sub Engineer, Sativali-II Section who has no authority to inspect and to report. It ought to have been done by Assessing Officer. On this count, he relied on section 126 of Electricity Act along with Conditions of Supply issued by the Licensee

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 clause 25.6.2. Secondly, it is contended that such inspecting Officer had not maintained log book and not entered in it the details.

- b) Further he contended that as required u/s 126 of Electricity Act provisional assessment order is to be passed within 7 days of inspection which is not passed within 7 days, it is on 8/12/2011.
- c) Further he contended that as per the said provisional assessment order dated 8/12/2011, hearing of the matter was taken on 20/12/2011, the details were provided, arguments were advanced, but no final order was passed which was required to be passed within 30 days from the date of service of provisional assessment order. He added not passing such order within 30 days leads to inference that arguments advanced, material placed was acceptable to the then Assessing Officer hence no final assessment order was passed. It is passed after 18 months of provisional assessment order, arguments were advanced towards said final assessment order before the Assessing Officer on 20/12/2011, hence he ought to have heard it afresh considering the time gap of decision.
- d) It is further contended that on 2/7/2013 a letter is addressed to the Consumer but it lacks support of any legal provision to pass such Order after 30 days of service of provisional order.
- e) Lastly, it is contended that as per the Regulation 6.8 of MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 this Forum loses jurisdiction only, when there is a valid action u/s 126 of Electricity Act, following almost all aspects and that there is a supporting material to show in fact it is an act of unauthorized use of electricity. He contended that said clause 6.8 (a) of MERC Regulations is wide enough to cover the total requirements u/s 126 of Electricity Act.

- Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14
7. Ld. Nodal Officer made submissions stating that factual aspect pertaining to inspection, pertaining to provisional assessment order, hearing conducted as per the notice of provisional assessment order and then final assessment order dated 2/7/2013 is passed which are within the powers of authorized Officer. He reiterated that the hearing was given on 20/12/2011, reply was submitted by Consumer dated 13/12/2011 and therein he has not disputed the spot inspection conducted, not disputed contents of spot inspection report and the observations therein; accordingly those were not in dispute. He contended that as final assessment order is passed hence process u/s 126 is completed and under such circumstances Appeal u/s 127 of Electricity Act is the only provision available to agitate the grounds which are now agitated.
  8. Accordingly, Ld. Nodal Officer contended that further the final assessment order dated 2/7/2013 is after the gap of 30 days, bills are issued, those are added in the monthly bills, its recovery is sought and those are not paid, hence notice dated 10/10/2013 is issued giving 15 days time to pay the due amount, failing which action will be of disconnection and in pursuance of it, Consumer had already approached this Forum by filing one more grievance, i.e. No. K/DOS/017/878 of 2013-14 which is not tenable.
  9. Ld. Nodal Officer contended that the flaws which C.R. pointed out in the process followed u/s 126 of Electricity Act is not amenable, for any decision by this Forum. It is contended that those all are procedural lapses and legal flaw, to be dealt by concerned authority, i.e. Appellate Authority u/s 127 of Electricity Act. Accordingly he contended that this Forum cannot entertain and decide the matter. Ld. Nodal Officer adopted his reply for rest of the arguments. **Ld. Nodal Officer further added that orders and action u/s 126 are of Officer assessing and he is notified by the Government whose actions are not amenable for challenge before the Civil Court and there cannot be any action from Licensee interfering in it. Similarly, it is not amenable for**

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 **decision by the Forum or even the Hon'ble Electricity Ombudsman.** For this analogy, he relied on the judgment of the Hon'ble Supreme Court dated 1/7/2013 in *Civil Appeal No.5466 of 2012 (arising out of SLP (C) No.35906 of 2011) – U.P. Power Corporation Ltd. & Ors. V/s Anis Ahmad.*

10.Ld. C.R. further added that right from the year 2004 as many as 7 circulars are issued by the Licensee stating how Assessing Authority to pass final order and what should be the contents therein and if those circulars are not followed, question comes up whether orders passed in breach of section and in breach of these circulars will be valid? C.R. submitted that the recent circular dated 9/2/2012 is also ignored by the Assessing Authority. Lastly C.R. submitted that in no case the so called letter dated 2/7/2013 can be said to be a final assessment order; hence there is no question of going in Appeal against it.

11.Ld. C.R. had even referred to the aforesaid judgment, relied on by the Nodal Officer, of the Hon'ble Supreme Court dated 1/7/2013 in *Civil Appeal No.5466 of 2012 (arising out of SLP (C) No.35906 of 2011) – U.P. Power Corporation Ltd. & Ors. V/s Anis Ahmad* and contended that Hon'ble Supreme Court in the said matter dealt the aspect under the provisions of Consumer Protection Act, definition of 'Consumer' and Consumer's 'dispute' which is not relevant here. He submitted that the reliance placed by Ld. Nodal Officer is not applicable to this Forum.

In this regard, we find that Hon'ble Supreme Court exhaustively dealt the Orders of authorities under the Electricity Act, more particularly u/s 126, 135, etc. and the jurisdiction of Consumer Forum under the Consumer Protection Act. Hon'ble Apex Court laid down the ratio, stating that if there is a final Order of assessment u/s 126 of Electricity Act or there is an action u/s 135, jurisdiction of 'Consumer Forum' under the 'Consumer Protection Act' will not survive. We find here provisions of Electricity Act followed by Regulations passed by Maharashtra State Electricity Regulatory Authority are peculiar and

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 the definition of 'Consumer' and definition of 'Grievance' as per the Regulations are important; rather those are having limited scope as compared to the provisions under Consumer Protection Act. Their Lordships in the analysis of legal position clarified that final assessment order is of a public servant under the Electricity Act authorized by the Government and hence it is not amenable for raising any dispute. We find this aspect has its own importance when such disputes are raised before this Forum,

12. During the arguments, Ld. C.R. heavily relied on 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."*



Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14

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 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.Ld. C.R. had relied on the Order passed by Hon'ble Electricity Ombudsman, Mumbai in Representation No.71 of 2013 dated 1/10/2013, M/s. Galaxy Auto Axles Pvt. Ltd. v/s MSEDCL wherein Hon'ble Electricity Ombudsman at length in para no.9 referred to various provisions which Licensee is to follow while dealing the matters u/s 126 and ultimately, in para no.10 considered the factual aspect of inspection done by Dy. Exe.Engineer, Flying Squad and Assessment Order is of Dy. Exe.Engineer (Adm.). In para no.11, Hon'ble Electricity Ombudsman noted as under:-

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14

*“... the said bill was issued, without giving details of working as per Annexure –K1 of the Conditions of Supply, by the Exe.Engineer (Adm.) who is not Assessing Officer, designated by the State Government as per Condition 24:1:3 of Conditions of Supply. There is no order of provisional assessment passed by any Assessing Officer u/s 126 (2) of the Electricity Act, 2003, read with Condition No.. 24.4 and Annexure – K-2 of the Conditions of Supply. Consequently, issuing of Order of Final Assessment, within 30 days from the date of provisional assessment after giving opportunity of hearing to the Appellant u/s 126 (3) of the Act, read with Condition No.24.4 of the Conditions of Supply and making Appeal against the Order of final assessment u/s 127 of the Act do not arise. “*

Further, Hon’ble Electricity Ombudsman observed that Regulation cannot be allowed to be taken as a blanket license by any unauthorized official to issue any bill of any amount at any time, beyond the limitation time of 7 days and without giving any details of working, disregarding provisions of Section 126 of Electricity Act and Regulations.

In this regard reference is to be made to judgment of our Hon’ble High Court, i.e. Division Bench - *Reliance Energy Ltd. And Anr. vs Chief Engineer (Electrical), Pwd ... on 27 July, 2006, 2007 (3) Bom CR 935, 2006 (6) MHLJ 479* relied on by the Nodal Officer. In the said judgment, their Lordships considered section 126(1) and requirement of inspection to be done by Assessing Authority. Their Lordships in detail considered the legal position and laid down that it is not necessary on the part of the Assessing Authority himself to inspect but report prepared by Authorized Officer u/s 135(2) of the Electricity Act can be relied by him. We find section 126(1) which reads as under is crystal clear:-

*“126 (1) 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.”*

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14

It clarifies that inspection can be by the Assessing authority or he may rely on **the inspection of records maintained by any person**. In the present matter, inspection was done by Sub Engineer of Section, i.e. one of the Officers of Licensee in that area and relying on it, Assessing Officer has passed provisional assessment order. Whether said inspection report is sufficient or how it is to be dealt is the aspect to be decided by Assessing authority while passing the order and if there is any flaw in it, it can be challenged before the Appellate Authority u/s 127 of Electricity Act.

14. We find the Division Bench judgment of our High Court allowed the report u/s 135 (2) for consideration by Assessing Authority u/s 126 of Electricity Act and it covers the aforesaid clause. i.e. 'after inspection of records maintained by any person' in Section 126. This precedent cannot be bypassed as it pertains to interpretation of Section. Secondly in the Judgment of Apex Court dated 1/7/2013 in *Civil Appeal No.5466 of 2012 (arising out of SLP (C) No.35906 of 2011) – U.P. Power Corporation Ltd. & Ors. V/s Anis Ahmad*, there is a clear mention that against the final assessment order u/s 126 of Electricity Act, which is passed by public servant, there cannot be any dispute before the Forum. We find the peculiar observation of their Lordships in the said judgment speaks that there is an independent machinery available to challenge the final assessment order taking almost all pleas available under the Act including all procedural defect, legal flaw. Accordingly if once there is a final assessment order u/s 126 which is amenable for appeal u/s 127 then in the light of bar created under the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, i.e. clause no.6.8, and aforesaid judgment of Hon'ble Supreme Court, it will not be possible to enter into the assessment of legality and validity of the Order passed by Assessing Officer whose authority not disputed. The judgment of Apex Court is applicable to the present matter. In the Orders of Hon'ble Electricity Ombudsman referred above, i.e. in the first case,

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 conclusion is arrived at on the basis that there is no provisional assessment order and final assessment order. This being the prima facie material it bars jurisdiction of this Forum as per Clause 6.8 of MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 which 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) ....”*

In the above second case dealt by Hon’ble Electricity Ombudsman, there is no provisional assessment order passed by Competent Officer, But in the present matter, there is a provisional assessment order, there is a final assessment order by Officer having authority, however, dispute is raised about delay in passing such Orders and the procedure which is followed while passing the Orders. Respectfully we find that this is not a case of inherent lack of jurisdiction to the Assessing Authority to pass orders, i.e. provisional assessment order and final assessment order.

15. Suffice it to say, when such assessment Orders are of the competent person, then none of the procedural defects or legal defect while passing the Order confer jurisdiction to this Forum to deal it. At the cost of repetition it is to be mentioned that the above two judgments are the precedents of Hon’ble Supreme Court and Hon’ble High Court which cannot be ignored and on this basis we find that if there is any order passed by authorized officer and if there are any procedural or other legal defect, it is not amenable for discussion and decision by this Forum. Though reliance is placed by C.R. on the Orders of Hon’ble Electricity Ombudsman and contended that the Conditions of Supply and

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 circulars of Licensee not followed, hence the Orders u/s 126 of Electricity Act are not valid.

16.Ld. C.R. during the course of his arguments referred to the Order in Representation No. 106 of 2012 decided by Hon'ble Electricity Ombudsman , Nagpur, dated 5/3/2013 – M/s. Mint House v MSEDCL. In the said order on close reading it is seen from para no.22 that final assessment order was passed beyond the scope, i.e. by clubbing two meters / connections. No doubt, other part of discussion is towards the following of section 126 but aforesaid clubbing is vital in it. This differential point is not available in the present matter on considering the provision mandated in section 126 and above referred judgment of Hon'ble Apex court this precedent will not be helpful to the Consumer.

17.Ld. C.R. even relied on the order of National Consumer Disputes Redressal Commission dated 5/10/2007 in Appeal No.2042 of 2007 - Dakshin Haryana Bijli Vitran Nigam v Jagdish Chander & Gian Chand. Ld. C.R. has just provided part of that judgment and therein, it is disclosed that action was taken by Licensee without issuing any notice us/ 126 of Electricity Act or without passing any provisional order u/s 126 of Electricity Act and in this light, the National Consumer Disputes Redressal Commission observed that the said act of the company was arbitrary, unjustified, *de hors* of statutory provision and further view is expressed that concerned Officers of Company were required to be given a training and they should be made aware of the powers under the Act, so that there will not be any misuse in the future. We find said Order clearly speaks that if there is any action without passing provisional order or even by not issuing any notice then its fate is clear. However, in our present matter, already there is a provisional assessment order, there is a final assessment order and hence this precedent is not applicable.

18.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

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 the present dispute, which is in our hand, is on different factual aspects. In this matter no doubt there is an inspection by Sub Engineer, but there is an order of provisional assessment. 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 which is already reproduced above in para no.14.

19. We find that mandate of section 126 is of utmost importance. Anything, if done, limiting the said provision by the Licensee or any other authority, will be in contravention of legal command of the said section, hence the said argument is not acceptable. As against valid section, other provisions, if stated, those will not make the order without jurisdiction and effect of such breach of any other circular or provision will be an independent matter for decision by Competent Authority in appeal u/s 127 of Electricity Act.

20. If once it is held that Assessing Officer is having jurisdiction / power to pass Orders, then any Orders passed, if those are suffering from any procedural illegality or defect, those will be the Orders within the jurisdiction or powers and such Orders are amenable for Appeal and correctness of those is to be disputed u/s 127 of Electricity Act and no such aspect can be dealt by this Forum.

21. Now, pertaining to dispute covered in the Grievance No. K/DOS/017/878 of 2013-14, Ld. C.R. as stated above, contended that towards the provisional assessment action was commenced, it was challenged on 15/6/2013 with the IGRC; IGRC not decided the matter within prescribed time. Further, there is development in the matter and on 2/7/2013, letter is issued stating it a final assessment order. About it again the Consumer has complained to the IGRC by

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 writing letter on 29/7/2013 which is also not decided and on 10/10/2013 the Officers of Licensee issued a notice giving 15 days time asking the Consumer to deposit the total dues covering the disputed portion, The Ld. C.R. submitted that except the disputed portion, the Consumer from time to time submitted cheques for due amount; those were not accepted, he sent cheques at times by post, those were returned and the Officers of Licensee insisted for total payment of due amount demanded. In this regard, he contended that said action of the Officers of Licensee is in breach of provisions, i.e. section 56(1), proviso portion (b). the said proviso reads as under:-

*Provided that the supply of electricity shall not be cut off if such person deposits , under protest, -*

*(a) an amount equal to the sum claimed from him, or*

*(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

22. The tenor of this section is clear, it gives protection to the Consumer in case of dispute allowing him to deposit the amount demanded. As per clause (a) or as per clause (b) amount to be calculated on the average basis for period of six months, prior to the disputed period and such monthly average is to be considered for disputed period and is to be deposited. In such cases, however, whichever is less considering (a) and (b), is permissible.

In this matter, Ld. C.R. tried to contend that in respect of disputed amount the Consumer is not required to pay it but he is required to pay only undisputed portion for undisputed period regularly which he has complied but in spite of it notice of disconnection is issued. There is no dispute that towards undisputed portion the Consumer from time to time has forwarded cheques and those are not accepted by the Officers of Licensee on the ground that it is not towards total payment and partial payment cannot be accepted.

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14

Ld C.R. in support of his contention that Consumer is not required to pay towards disputed portion, heavily relied on the Order of Hon'ble Electricity Ombudsman, Mumbai in Representation No. 31 of 2011 dated 14/3/2011 - M/s. R.L. Steels v/s MSEDCL. In the said matter para no.8 clearly speaks about the implication. Hon'ble Electricity Ombudsman in the said matter noted that as Consumer has paid four instalments towards the disputed bill and apparently the said amount is more than the charges calculated for each month on the basis of average electricity bills per month paid towards six months preceding period of disputed bill hence the Licensee is not entitled to disconnect the supply. Accordingly we noted that finding is not speaking about the liberty given to the Consumer not to pay the disputed amount. Ld. C.R. further relied on the Order of Hon'ble Electricity Ombudsman, Mumbai dated 18/4/2013 in Representation No.24 of 2013-M/s. Galaxy Auto Axles v MSEDCL. At the interim stage, the matter was taken up to the Hon'ble Electricity Ombudsman from the Order of CGRF and in para no.7 of the Order, this particular aspect covered u/s 56(1) proviso portion (b) of Electricity Act read with clause 8.3 of MERC Regulations is dealt. In the said matter Hon'ble Electricity Ombudsman observed that provision mandates that supply shall not be cut off if the Consumer deposits under protest the electricity due from him for each month calculated on the basis of average charges of electricity paid by him during the preceding six months pending disposal of his grievance before the Forum. The Hon'ble Electricity Ombudsman further noted in the said matter that Appellant has paid 50% of supplementary bill and therefore such amount paid, is, equal to or more than the average per month charged of electricity paid by him during the preceding six months and hence the Licensee is not entitled to disconnect the supply. This particular Order is also not speaking in support of the arguments advanced by Ld. C.R. Accordingly the interpretation of Ld. C.R. is not acceptable. We find once that main Grievance No. K/E/733/868 of 2013-14 is being decided finally. This grievance merges in it.



Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14

23. In view of the above discussion we find that the grievance of the Consumer in both the matters cannot be upheld. Though the Consumer has raised various issues pertaining to section 126, orders passed without keeping the time schedule stated in section 126 and other legal informatics, which are available for decision in an Appeal u/s 127 of Electricity Act. There is an order of final assessment u/s 126, it cannot be dealt even by Civil Court as per section 145 and no authority can grant any injunction by way of interim relief. Hence these grievances are to be dismissed.

24. It is necessary to mention that all the while the Consumer had approached the IGRC, one of the platforms made available, from 15/6/2013 but IGRC not passed any Order within 60 days or even thereafter. During pendency of the dispute before the IGRC the matter aggravated, further order of final assessment is passed, this was also brought to the notice of IGRC on 29/7/2013 but there is no order and abruptly the Consumer received the letter dated 10/10/2013 of the Licensee seeking payment of due amount and in default face disconnection. Accordingly, Consumer was forced to approach this Forum by filing Grievances No. K/DOS/017/878 of 2013-14. We find it was very well within the powers of IGRC to either way decide the matter but it kept the dispute pending without any decision. This Forum cannot shirk its responsibility to decide the matter and we in a required spirit within a short time address this point, heard this matter and is being decided as the notice is issued by the Officers of Licensee on 10/10/2013 for payment and in default, disconnection

25. During pendency of dispute before IGRC the IGRC not responded and when matter was brought before this Forum, we tried to explore the possibility of deciding the matter even prior to the 15 days time prescribed in the notice dated 10/10/2013 but as the matter could not be concluded the Licensee was directed not to resort to the action of disconnection as matter is being finally decided and now we find that such notice dated 10/10/2013 speaks about 15 days time is

Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 over. We are not able to grant any stay to the action of Licensee. Said notice dated 10/10/2013 has become infructuous. If any action is required to be taken by the Licensee it is at liberty by issuing a fresh notice demanding the amount giving 15 days time for payment and to take a coercive action in default. In other words for any further action of disconnection, the Licensee is required to issue a fresh notice.

26. The first matter could not be decided within time as second one filed in between.

Hence the Order.

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

(i) The grievances of the Consumer, i.e. Grievances No. K/E/733/868 of 2013-14 and No. K/DOS/017/878 of 2013-14 is hereby dismissed.

(ii) Notice dated 10/10/2013 of Licensee has become infructuous, hence the Licensee, if it intends, may issue fresh notice and act as observed above by giving 15 days time.

Date : 25/11/2013

**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”*

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.