



Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
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Date of Grievance : 16/8/2013  
Date of Order : 23/12/2013  
Period Taken : 129 days

**IN THE MATTER OF GRIEVANCE NO.K/E/727/861 OF 2013-14 IN RESPECT OF SHRI RAKESHKUMAR R.JAIN OF SATIVLI, VASAI (E)-401 208, DIST-THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT ILLEGAL THREAT OF DISCONNECTION ON THE BASIS OF PROVISIONAL ASSESSMENT ORDER U/S 126 OF ELECTRICITY ACT**

Shri Rakeshmukar R. Jain,  
Gala No.10, Bokadin Industrial Estate,  
Sativli (E),  
Vasai [E], - 401 208, Dist-Thane  
Consumer No. 002170785986

(Here-in-after  
referred  
as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited through its  
Dy. Exe.Engineer, Vasai Road [East] S/Dn.,

(Here-in-after  
referred  
as Licensee)

Appearance :- For Consumer - Shri Harshad Sheth, Consumer Representative  
For Licensee - Shri Purohit, Nodal Officer  
Shri Satish Umbarje, Dy. Exe.Engineer

(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

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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] In this matter the papers contending above grievances were sent by the  
forum vide No. EE/CGRF/K.0394 dated 16.8.2013 to the Nodal Officer of Licensee.  
In response, the Officers of the licensee attended and filed reply dated  
31.8.2013, however on 3/9/2013 corrigendum to it filed. Further clarifications  
submitted on 22/11/2013 and 16/12/2013. In the same fashion consumer's  
representative submitted rejoinders on 2/9/2013, 24/9/2013, 29/10/2013, and additional  
reply on 9/12/2013.

3] We heard both sides at times. During hearing, consumer's represented by  
representative Mr. Hashad Sheth and for licensee Nodal Officer Shri Purohit –  
Executive Engineer, Shri Satish Umbarje, Dy. Exe. Engineer, along with Asst.  
Accountant Mr. Vaze made submissions. We have gone through the grievance  
application, rejoinders and explanations filed by the consumer's representative, reply  
filed by the Officers of licensee, further corrigendum and details submitted from time  
to time by licensee. On the basis of arguments advanced on its basis following factual  
aspects are disclosed:

a] Admittedly consumer is having supply to its industry LT-V. Consumer is  
assessed as per tariff applicable issuing bills regularly till 10/11/2011 and those bills  
are already paid,

b] There was inspection of the unit by sub-Engineer, Sativli-2, Section on  
10/11/2011 and noted that consumer has utilized the supply for commercial purpose  
though it is provided for industrial use and even had clubbed gala nos. 8,9 and  
supply was taken therein. Accordingly, this particular report is considered by  
Assessing Authority i.e. Deputy Executive Engineer MSCDL Vasai Road (E),  
Sub.Divn. who concluded that it was unauthorised use of electricity, hence issued

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provisional assessment order dated 8/12/2011 u/s. 126 of Electricity Act and directed the Consumer to pay an amount of Rs.3,61,990/-. Even directed the consumer to file oral or written representation if any and avail the opportunity of personal hearing if he is disagreeing with the provisional assessment order. Further clarified that the final order will be passed within 30 days from the date of provisional assessment order.

c] It is the contention of the consumer that before the Assessing Authority the hearing was held on 20/12/2011. Written representation was given which was accepted by assessing authority.

d] The consumer contended that inspite of hearing was held on 20/12/2011, there was no final assessment order is passed.

e] It is contended that demand notice is issued by Officer of licensee on 27/5/2013, demanding due amount and stating that if amount is not paid it will result in disconnection. It is contended that under this consistent threats of disconnection, the consumer was forced to pay amount demanded to the tune of Rs.3,61,990/- on 13/6/2013 and on the very day, objection is given towards it to the Dy. Exe.Engineer and even to the IGRC. Further letters given to Dy. Executive Engineer and IGRC on 6/7/2013 and one more letter to IGRC on 29/7/2013. However, there was no any Redressal of grievance from licensee.

f] Consumer then approached to the forum on 16/8/2013.

g] As stated above, the Officer of Licensee initially filed say but issued corrigendum to it. Consumer too filed rejoinder in that light and additional reply.

4] In this matter, though initially, consumer came with the contention that only on the basis of provisional assessment order, action is being taken as per letter dated 27/5/2013, threatening disconnection, such action is not legal and proper. It is contended that order of provisional assessment order suffers from so many legal defectives, it is not as mandated u/s. 126 of Electricity Act Regulation and Conditions

of Supply issued by licensee, there is no final assessment order. While replying to it on 31/8/2013, licensee submitted that final assessment order remained to be issued within the period of a month. Further, it is contended that as consumer has paid the amount, it was treated that claim is admitted. However corrigendum is issued to the said reply by licensee vide letter dated 3/9/2013 and contended that the Final Assessment Order is passed on 1/6/2012 and its copy is already included in the documents enclosed to the reply dated 31/8/2013. Accordingly as per corrigendum, Officer of Licensee contended that reply dated 31/8/2013 is to be read in that light. Accordingly, though initial case of consumer was towards flaw in provisional assessment order, but subsequently, as licensee came up with corrigendum stating that final assessment order, consumer assailed it too on various grounds, contending that it is an order brought up subsequently, there is no service of it, on the consumer and this particular order cannot be acted upon.

5] The disputed points are of legality and correctness of provisional assessment order and final assessment order. Those are crucial. It is contention of the consumer that those orders are not in tune with the provisions contained in Section 126 of Electricity Act. Those are not passed in time frame. Secondly, it is contended that even conclusion drawn about unauthorized use of electricity is not correct. Inspection is not done by Assessing Authority. It is contended that when these orders are not in tune with the legal provision and the directions issued from time to time by licensee hence those cannot be enforced. In this light, it is contended that at the most the case of consumer will be about the '**normal billing dispute**' and hence considering this aspect, consumer is entitled to get refund of the amount deposited by him, along with interest.

6] Assessing Authority, as contended by the Licensee, passed final assessment order. Copy of it is provided along with the reply filed in this matter and the said final assessment order is of 1/6/2012 hence it cannot be said that it is brought up. It was linked to other file hence corrigendum, issued. C.R. submitted that this particular

Order is not served on the Consumer and this order he claimed to be a subsequently brought up.

In this regard we tried to ascertain factual position from the Licensee. The Officers of Licensee placed on record the extract of Outward Register and movement register, showing that this particular final assessment order in fact was dispatched and collected by the section office. As contended by C.R., only dispatch is not sufficient. He claimed that it is to be shown that it is served on the Consumer. He submitted that if at all any such order is served, then only the Consumer will get an idea what is stated therein and where to challenge. Accordingly he contended that this Order is brought up order, it is not at all served.

7] The Officers of Licensee are not able to place before this Forum any material showing that this particular final assessment order is served on the Consumer. The Outward Register is not speaking about the acknowledgement of such order received by consumer, simply, it is stated that those are sent by hand delivery to section officer. Copy of hand delivery Register placed on record showing that actually it is handed over to Section Office. It is tried to be stated that Sectional Engineer was supposed to serve it, on the Consumer. However, further link of chronology of actually serving it, on the Consumer by the Sectional Officer, is, not placed before us. We tried to enquire from the Officers whether they have verified the record and what was their conclusion. They submitted that they are not able to lay any hand on said actual service of final assessment order. They are not coming with the case that order is served on the Consumer. We find one order is claimed to be prepared, contending that it is u/s 126 of Electricity Act, it's service on the Consumer is not demonstrated or supported. Hence we have to consider whether it can be said that order of final assessment served on the Consumer whereby the Consumer can approach appropriate Authority, may be the Appellate Authority u/s 127 or any other higher Court within the time prescribed. Further we have to consider whether such unserved order can be enforced against the Consumer.

8] On behalf of Licensee it is submitted that proceeding u/s 126 is peculiar one, Assessing Authority is an independent officer empowered to deal and against his order there is provision of Appeal u/s 127. It is submitted that already Hon'ble Supreme Court decided the aspect how the Forums cannot interfere in the Orders u/s 126. 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, referred, it is clearly mentioned therein 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. It is contended that 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 defects and 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 permissible to this Forum to enter into the scrutiny of legality and validity of the final assessment order passed by Assessing Officer whose authority not disputed.

9] We find legal position is clear. If prima facie it is found that this is a matter u/s 126 of Electricity Act, then in the light of MERC Regulations, this Forum will not be entitled to take up the matter. However, it is necessary to ensure that in fact, it is a complete action u/s 126, prima facie. No doubt, u/s 126 there is a procedure step by step for passing final assessment order and serving it on the Consumer so that there will be a remedy for the Consumer to approach Appellate Authority u/s 127 of Electricity Act.

During the course of arguments Ld. C.R. relied on the following orders passed in the representations by Hon'ble Abdusmen Mumbai and Nagpur in support of grounds alleged which are already noted above in the discussion.

- i] Representation No.64/2003 decided by Ombudsman Mumbai
- ii} Representation No.71/03 decided Ombudsman Mumbai
- iii] Representation No. 106/12 decided by Ombudsman Nagpur
- iv] Order passed by National Consumer Dispute Redressal Commission in appeal No.2042/2007 dated 5/10/2007.

As against this Officers of licensee referred to the Judgment of Hon'ble Apex Court i.e. UP Power Corporation (Supra) and judgment of Bom. High Court Reliance Energy Ltd.V/s. Chief Engg. (Electrical) PWD., 2007 (3) Bom. Cases Reporter and contended that these authorities are appropriately replied to the allegations made by the C.R. and even to the reliances placed by the C.R.

Considering the Judgment of Hon'ble S.C. and our High Court, we find position is totally made clear and hence reliances of Ld. CR will not over right the judgments of Apex Court and Bom. High Court.

We are clear, in the light of U.P.Power Corporation Ltd. (Supra) judgment of Hon'ble Supreme Court that we cannot express any view, on the legality of the Orders passed u/s 126, i.e. Provisional assessment or final assessment order as orders herein are passed by Officer having the authority. Even such orders cannot be interfered by the licensee. Any procedural defect or legal defect in passing final assessment order will give right to challenge it in an Appeal u/s 127 and hence, we are not able to give any finding on that aspect.

10] Though matter brought before Forum only on the basis of provisional assessment order, but development is noted on receiving the reply of Licensee about final assessment order passed. However, service of final assessment order is disputed stating that there is no service at all and Consumer is not aware of it. Hence in this light, we are required to find out whether prima facie there is a service of final

assessment order on the Consumer. In this matter, for the first time in the reply of the Licensee, copy of FINAL ASSESSMENT ORDER enclosed but admitted that FINAL ASSESSMENT ORDER remained to be issued. However, corrigendum is filed to the said reply and stated that FINAL ASSESSMENT ORDER was issued. This aspect is challenged by consumer stating that it is an order which is brought up. Consumer's representative submitted that alleged Order of final assessment is not served on the consumer. In respect of serving of final assessment order, there is no material on record placed by the Officers of Licensee. They are not able to support that in fact there is a service. They failed to place before the Forum prima facie service of FINAL ASSESSMENT ORDER on the consumer. Accordingly, action is sought by the Licensee against the Consumer for recovery of amount on the basis of unserved final assessment order. For a limited extent, we are required to note, the aspect that grievance is about recovery being done without serving any final assessment order. It is clear if at all any action is to be taken, resorting to section 126, it is to be prima facie shown that order passed u/s 126 served on the Consumer. As, such service is not demonstrated, it is an act of enforcing the order which is not served and we find this is a prima facie aspect just needs to be considered.

11] Suffice it to say, the grievance before us limited to the extent of unserved final assessment order u/s 126 is being used for implementation and dealing the Consumer which on the face of it is found not legal. Hence we are required to observe that unserved order u/s 126 cannot be enforced or implemented by the Licensee against the Consumer. In this light, the act of the Licensee towards the move for disconnection is found not in tune with law till there is appropriate order u/s 126 and served on the Consumer. Hence it is to be set aside and Licensee is to be directed not to disconnect the supply of the Consumer till there is appropriate service of order u/s 126 on the Consumer.



12] This matter could not be decided within the prescribed time as both sides from time to time added contentions and lastly such contentions are submitted on 16/12/2013.

In view of the above the grievance of the Consumer is to be partly allowed. Hence the Order

**ORDER**

The grievance of the Consumer is partly allowed. The Licensee not to disconnect the supply of the Consumer till final assessment order u/s 126 of the Electricity Act is validly served on the Consumer. The excess amount already deposited on 13/6/2013 of Rs. 3,39,541/- by the consumer be adjusted in the ensuing bills, adding therein the interest on the said sum from the date of said payment as per bank rate.

Date : 23/12/2013

**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”*

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- 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.

Filename: Judg in 861-13 Rakshkumar R  
Directory: C:\Documents and Settings\Admin\My Documents  
Template: C:\Documents and Settings\Admin\Application  
Data\Microsoft\Templates\Normal.dotm  
Title: MAHARASTRA STATE ELECTRICITY DISTRIBUTION  
CO  
Subject:  
Author: M.S.E.D.Co.Ltd.  
Keywords:  
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