



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 18/11/2013
Date of Order : 07/12/2013
Period Taken : 19 days

IN THE MATTER OF GRIEVANCE NO.K/DOS/020/889 OF 2013-14 IN RESPECT OF MR. ISRAR AHAMAD KHAN OF WALIV, 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

Mr. Israr Ahamad Khan,
House No.2618, Behind Seed Pharma,
Pelhar, Waliv,
Vasai [E] – 401 208, Dist-Thane
Consumer No. 001940781881

(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

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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 18/11/2013 for illegal threat of disconnection on the basis of provisional assessment order u/s 126 of electricity act.
3. The papers containing above grievance were provided by Forum vide letter No. EE/CGRF/Kalyan/0491 dated 18/11/2013 to Nodal Officer of Licensee. Matter was brought for urgent relief, it was taken immediately and scheduled on 25/11/2013 for reply and hearing. The Licensee filed its reply on 25/11/2013. The Consumer filed further reply on 2/12/2013.
4. We heard both sides. C.R. made submissions on behalf of Consumer and Shri Purohit, Nodal Officer on behalf of Licensee.
5. This matter is filed by the Consumer bearing Consumer No. 001940781881. It is an Industrial connection. Tariff applicable is **LT V B**. Supply is given on 5/1/2007. There is no dispute pertaining to the recovery of dues till May 2012. Even till May 2013 from time to time bills were issued and those are paid.
6. However, on 29/5/2013 the Sub Engineer of the Section of the Licensee in the said area inspected the Consumer's unit and noted that though supply is given for Industrial purpose but it is used for godown purpose which is commercial. Accordingly on the basis of the said inspection report, provisional assessment order is passed on 7/6/2013 vide letter no.04573 and said to be sent to the Consumer. In the said letter amount of Rs.83,760/- is claimed for the period from June 2012 to May 2013 treating that use was for commercial purpose though supply was given for Industrial purpose and it is unauthorized use of electricity . Supplementary bill is prepared on 20/6/2013 for said amount stating

that it is u/s 126 of Electricity Act covering the period from June 2012 to May 2013. It is explained that 20/6/2013 is not the date of the bill, but 20/6/2013 is the due date of payment.

7. In the record of papers produced by the Consumer it is claimed that Inspection Report is received by the Consumer on 6/11/2013 and on next date, i.e. on 7/11/2013 the Consumer approached the IGRC and even on the very day gave letter to Dy. Exe.Engineer disputing the aspect of payment, or action u/s 126 of EA. Again the Consumer has addressed letter to the Dy. Exe.Engineer on 11/11/2013.
8. The Consumer received the demand of said amount from the Licensee once again vide letter dated 14/11/2013 wherein payment is sought by 30/11/2013 failing which it will attract action of disconnection. The Consumer claimed that he has received the said letter on 16/11/2013.
9. As matter was urgent and as the Officers of Licensee was pressing it was decided to have urgent hearing and hence matter was fixed on 25/11/2013. On the said day, on behalf of Licensee reply filed, copy was made available to the Consumer and in the said reply the Licensee came up with the contention that already there is a final assessment order dated 6/7/2013. C.R. sought time to make his submissions as there is no service of the alleged final assessment order on the Consumer.
10. Accordingly matter taken up today on 2/12/2013 in presence of both sides. On behalf of Consumer, further submissions are given in writing on that date. Copy provided to the other side.
11. Ld. C.R. submitted that as per MERC Regulations clause no.6.8, *prima facie* it is to be considered by this Forum whether in fact section 126 of Electricity Act applies to the present case. He categorically pointed out how the aspect of load,

contract demand and consumption are not considered while coming to the conclusion that it is used for godown. He explained the process in the industry of the Consumer and claimed that average consumption is consistent and there is no question of any use in the godown. It is contended what is being used in godown is not stated, not clarified and the conclusion of use in godown or unauthorized use is not at all correct. Further it is submitted how the Assessing Authority came to the conclusion without looking into all these aspects is also not clear. Ld. C.R. submitted that provisional assessment order received by one of the employee but it was kept somewhere and it was not available. However, original acknowledgement of provisional assessment order was pointed out to C.R. stating that it is of the owner which is not disputed and hence no more comments are required in respect of provisional assessment order served.

12. Second part comes up, admittedly the Consumer has not filed any reply before the Assessing Authority and 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 6/7/2013 and 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 from the Licensee. The Officers of Licensee placed on record the extract of Outward Register showing that this particular final assessment order in fact was dispatched. 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 can take objection if he so desires. Accordingly he contended that this Order is brought up order, it is not at all served.

The Officers of Licensee are not able to place before this Forum any material that in fact this particular final assessment order is served on the Consumer. The Outward Register is not speaking about the acknowledgement

of such order received, simply, it is stated that those are sent by hand delivery. Hand delivery Register is not placed or record showing that actually it is handed over to the Consumer. However, it is tried to be stated that it was sent to Section and from Section, Sectional Engineer is supposed to serve it on the Consumer. However, further link of chronology of receiving letter, by Section and 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, its 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.

13. Ld. C.R. at length made submissions how Order passed is not as per section 126 of Electricity Act, he contended that provisions are not followed as per the command of the Section. It is contended that in fact whether there is an unauthorized use of Electricity is not confirmed by the Assessing Officer. There is a contention of Licensee that use of Electricity was done in godown and hence, it falls under commercial category though supply is for Industry. He claimed that this particular contention is not at all correct as it is not supported with any material, such as what was there in the godown and ratio of the supply utilized for godown as compared to the connected load. Accordingly he tried to assail the orders contending that Orders are suffering from procedural defect as well as legal defect.

On this count, 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 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 said 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*, it is clearly mentioned 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.

14. We find legal position is clear. If *prima facie* it is found that this is a matter u/s 126 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. 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 service of final assessment order on the Consumer. In this matter, for the first time in the reply of the Licensee, Consumer noted about such alleged Order of final assessment of which there is no service. 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 expressed inability to say that there is a service of such Order. Accordingly, now 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. We are clear in the light of aforesaid judgment of Hon'ble Supreme Court that we cannot express any view on the legality of the Order passed u/s 126, i.e. final assessment order. 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. 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

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supply of the Consumer till there is appropriate service of order u/s 126 on the
Consumer.

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

Hence the Order

O-R-D-E-R

The grievance of the Consumer is partly allowed. The Licensee not to disconnect the supply of the Consumer till order u/s 126 is validly served on the Consumer

Date : 07/12/2013

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”

- 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: 889-Israr Ahamad Khan
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