



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 09/12/2013
Date of Order : 24/12/2013
Period Taken : 15 days

IN THE MATTER OF GRIEVANCE NO. K/DOS/023/894 OF 2013-14 OF M/S. AGARWAL FASTNERS P. LTD. OF SATIVALI, VASAI (E)-401 208, DIST. THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT ILLEGAL DISCONNECTION

M/s. Agarwal Fasteners P. Ltd.,
Gala No.16, Kaveri, Tungar Ind.Complex,
Sativali, Vasai (E)-401 208. Dist. Thane
Consumer No. 002170277891

(Here-in-after
referred
as Consumer)

Versus

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

(Here-in-after
referred
as Licensee)

Appearance :- For Consumer - Shri Harshad Sheth, Consumer Repeesntative
For Licensee - 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 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 9/12/2013 for Illegal Disconnection.

3] The papers containing above grievance were sent by Forum vide letter No. EE/CGRF/Kalyan/0518 dated 9/12/2013 to Nodal Officer of Licensee. The Licensee filed its reply on 20/12/2013.

4] On hearing both the sides, considering the factual aspects are discussed. On the basis of arguments advanced following factual aspects are disclosed:-

a] Consumer is having industrial supply in gala no.14, was paying regular bills as per tariff till December 2012. Almost all arrears till then were paid as per bills,

b] On 16/1/2012 there was inspection of consumer's unit by Jr.Engineer Sub-Division of Sativli-1. During the inspection he noted that consumer has given unauthorized load extension in Gala Nos. 14 from gala no.16. On the basis of said Inspection report, Assessing Officer passed provisional Assessment Order on 18/1/2012 issued to consumer, demand is made therein of Rs.1,89,000/-. Further asked to clarify, if consumer is not agreeable to file oral or written representations within seven days. It is clarified that final assessment order will be passed within 30 days.

c] Letter was addressed by the consumer on 23.6.2012 to the licensee and thereby he sought details pertaining to provisional assessment order which was received in the 3rd week of June, 2012. The said letter is replied by the Officers of licensee on 4/9/2012 and asked consumer to attend for hearing on 11/9/2012 at 5.15 p.m. Towards it Consumer addressed letter dated 7/9/12 received by Officers of Licensee on 10/9/2012, in which further date of hearing was sought. It was noted by Assessing Officer but there was no reply from the Officers of

Licensee either asking for attendance on or any other date or closing the matter. Even the consumer has not enquired further about it.

d] Ultimately, it is contended that in the third week of October 2013, the Officers of Licensee, called the consumer and obtained signature with stamp on the final assessment order dated 1/6/2012.

e] It is contended that again consumer has addressed letters to the officers dated 19/11/2013 and 21/11/2013. These letters were in the light of bill issued by licensee dated 26/10/2013 for Rs.1,89,000/-. In the letter dated 19/11/2013 it is contended that final assessment order dated 1/6/2012 is not at all received. Letter dated 21/11/2013 addressed to Suptd Engineer speaks about giving one more opportunity of hearing on different grounds.

f] Further, it is contended that on 28/11/2013 supply was disconnected that too without giving 15 days notice as per Section 56(1) of Electricity Act.

On behalf of licensee, it is contended that though consumer is raising dispute about validity of provisional assessment order, validity of final assessment order and as opportunity is not given when final assessment order was passed or on the service of provisional assessment order. Those allegations are denied and contended that orders are properly in time served acknowledgments are obtained which can be seen from record. It is contended that dues were there right from January 2012 when provisional assessment order was issued, followed by final assessment order dated 1/6/2012. As the amount was not paid, it is added in the regular monthly bill of October 2013 which was to be paid on or before 11/11/2013 and as it is not paid the supply is disconnected on 28/11/2013. Accordingly Officers of licensee supported the action.

g] IGRF decide the complaint of consumer on 5/12//2013 and it's copy is received by this Office on 11/12/2013.

5] Now question comes up whether this Forum can enter into the disputed aspect, as to whether provisional assessment order is correct/proper, whether final assessment order is correct/proper, whether those are passed following the appropriate procedure laid down and even whether the alleged aspect, itself attracts the provision of section 126 of Electricity Act.

We find that these are the aspects which are required to be considered in the light of bar created for considering the order passed u/s. 126 of Electricity Act. There is express bar for Civil Court to take any cognizance of it and therein such claims cannot be taken up. However, there a provision for filing the appeal against the order of final assessment order u/s. 127 of Electricity Act. However, under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations 2005, Regulation 6.8. if prima facie, Forum finds that matter comes u/s. 126 of Electricity Act then jurisdiction is barred. No doubt on behalf of consumer, it is contended, very well this Forum, can , prima facie consider it and conclude whether it is coming or not u/s. 126 of Electricity Act.

6] Secondly, he submitted that in any case if at all any disconnection of supply is to be resorted, for want of payment of bill, then u/s. 56 the notice of 15 days is must which is not given in this matter hence action of Licensee, on that count is to be set aside. The illegal disconnection is to be rectified and connection is to be restored. No doubt, the matter is placed before us as urgent, hence taken up for urgent hearing.

7] It is submitted by the Officers of Licensee that action of disconnection is resorted to, as payment of amount which is overdue is, not done, as per the bill issued, prior to 11/11/2013. Hence disconnection is done but Officer was at pains to say that there is no any notice issued before resorting to the action of disconnection u/s. 56.

8] In this matter, though there is a challenge to the order of provisional assessment and final assessment, contending that those orders are not received but in fact it is noted by us prima facie that there is an acknowledgement from the Consumer side

about the receipt of these orders. No doubt, dispute is raised contending that copy of provisional assessment order given in the third week of June, 2012 and final assessment order I handed over in the last week of October, 2013, at that time, signature is obtained and stamp of Consumer was also put showing its acknowledgment mentioning previous date. Though various contentions are raised, we find whether in fact the orders are received in time or not, is a question but when acknowledgements seen, then any dispute pertaining to it, is, to be dealt by appropriate authority. This Forum prima facie required to consider whether there is any aspect of unauthorized use of electricity attracting section 126. If it appears, then this Forum has no jurisdiction to enter into that arena. Hence to the extent of service of final assessment order dated 1/6/2012 we find there is an acknowledgement and it is not possible for us prima facie to say the order is not served. Dispute, when it is served is an independent part to be dealt by appropriate authority, hence prima facie to that extent under section 126 we are not able to enter in it.

9] Secondly in respect of other arguments advanced, whether in fact section 126 applies, factual aspect herein are to be noted. While considering it, it is necessary to bear in mind that competence of Assessing Authority is not challenged. He is a person entrusted with the work of assessment and his duty is of public servant and hence if he has considered facts and passed order, then there is no scope prima facie, for this Forum to scan it and find out whether finding arrived at, is, correct or not. Accordingly, conclusion arrived at by the Assessing Authority, while passing order including final assessment order, this Forum cannot enter in that aspect. No doubt, about such lapses, representative of Consumer had referred to the orders of Hon'ble Electricity Ombudsman and even National Consumer Redressal Commission but already Hon'ble Supreme Court has concluded in Civil Appeal No.5466 of 2012 (arising out of *SLP [C] No.35906 of 2011*) *U.P. Power Corporation v/s Anees Ahmad decided on 1/7/2013* that in respect of the matters of under section 126 of Electricity Act, Civil Courts' jurisdiction is barred, even no Forum or Authority can enter in it. We find Civil Court jurisdiction is barred under the Electricity Act and

Hon'ble Apex court dealt the matter under Consumer Protection Act, its effect is clear. Even we find when the orders u/s. 126 of Electricity Act are barred for taking to Civil Court it cannot be inferred by any more that CGRF or any other Authority can deal it. As per the said judgment, there is no scope available for this Forum to enter in it.

10] Ld. C.R. advanced arguments that 'unauthorized use of electricity' attributed by Licensee is not applicable. We find the said contention is dealt by Assessing Officer and he concluded it is unauthorized use of electricity, he has passed provisional assessment order and further final assessment order. We find, it is not possible for this Forum to express any view on it. Otherwise, it will amount to entering into the merit of the orders passed. No doubt, other separate remedy is available by way of Appeal u/s 127 of Electricity Act. Almost all these grounds can be agitated before the Appellate authority, we cannot exercise the power of said Appellate Authority.

11] No doubt, during the course of argument, Ld. C.R. tried to point out that final assessment order is brought up, there was a correspondence and as per the letter of the Officers of Licensee, in reply to Consumer's letter dated 23/6/2012, he was asked to attend for hearing with documents on 11/9/2013, but he did not attend, in turn he sought adjournment by sending letter on 10/9/2013 which is neither replied nor rejected, but it is contended that already final assessment order was passed on 1/6/2012. Ld. C.R. contended that this fact ought to have been clarified by the Officer of licensee while writing letter dated 4/9/2012 but it is not done, in spite of it consumer was called for the hearing and hence this is a brought up order. No doubt, this aspect is strongly denied by other side and as noted above acknowledgement of final assessment order is placed on record, date of acknowledgement also speaks about it; hence we find prima facie, this aspect is not amenable for any decision by this Forum.

12] In view of the above towards the orders passed i.e. provisional assessment order or final assessment order, this Forum cannot consider the grievances.

13] Important aspect now comes up about the supply disconnected. No doubt, supply is disconnected on 28/11/2013, that too, when bill for Oct. 2013 was not paid on the date prescribed. Said bill dated 26/10/2013 is covering the period from 2/9/2013 to 2/10/2013 wherein the adjustment amount is shown to the tune of Rs.1,89,000- and this amount admittedly pertains to the final assessment order passed. It was not added in any other previous bills. The due date of payment of the said bill is of 11/11/2013 and as the amount was not deposited on that day, or prior to that day, supply was disconnected on 28/11/2013, that too, without issuing any notice of such intended disconnection. In other words, as per section 56 of Electricity Act, 2003, for taking such coercive action towards the recovery of dues, disconnection can be done but it should be on giving 15 days clear notice. In this matter, admittedly there is no such notice and in result, action of disconnection found in breach of section 56, hence action of disconnection needs to be set aside and direction is to be given for restoring the supply forthwith within 24 hours. This Forum in fact not dealing the validity of order passed u/s. 126 of Electricity Act but the action enforcing the payment u/s. 56 of Electricity Act without notice is being considered.

14] No doubt, in this grievance, there is a prayer for refund of connected load penalty etc. but we find matter brought before us, on the apprehension of disconnection, hence it is taken up for emergent hearing. Course is yet open to the Consumer to approach the Officers of Licensee for such refunds and officers are to consider it as per rules. It is not necessary to mention that in case such refunds are not granted then course is open for the Consumer to approach this Forum for such refund/adjustments. In result, this Grievance Application is to be partly allowed.

Hence the Order

ORDER

- a) The Grievance Application of the Consumer is hereby partly allowed. The action of the Licensee disconnecting supply of the Consumer dated 28/11/2013 is hereby set aside. The said act is in breach of provisions of law, i.e. section 56 of Electricity Act, 2003.
- b) Rest of the prayer towards refunds are not considered in this matter and the Consumer is at liberty to seek said relief approaching the Officers of licensee. In case claim not considered then remedy is available to approach this Forum, thereafter.
- c) As action of the Licensee towards disconnection of supply dated 28/11/2013 is found against the provisions of law, Licensee directed to restore it forthwith within 24 hours of receiving this order and to reply its compliance within one week, thereafter.

Date : 24/12/2013

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

Grievance No. K/DOS/023/894 of 2013-14

“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.

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