

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/111/2014

Applicant : Shri Vinod Puranchand Gupta,
314, Wardhamannagar,
Ashapura Coop. Hsg. Society,
C.A.Road
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(Distribution Franchisee),
MSEDCL,
NAGPUR.

Quorum Present : 1) Adv. Subhash Jichkar
Member.

2) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 5.7.2014.

1. The applicant filed present grievance application before this Forum on 7.5.2014 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. The applicant's case in brief is that previously applicant filed his grievance application bearing No. CGRF(NUZ)/55/11 alleging that M.S.E.D.C.L. team visited premises of the applicant on 24.3.2011 and issued bill for Rs. 307798/- Dt. 28.3.2011. On 10.6.2008 the applicant applied for load extension up to 14 kW for Commercial purpose with 3 Ph. meter. Applicant deposited Rs. 13161/- on

12.6.2008 as per demand. Applicant was paying electricity bill regularly. There was demand of Rs. 307798/- by M.S.E.D.C.L. and therefore applicant filed his first grievance application bearing No. 55/11 before this Forum.

3. In the said matter i.e. Case No. 55/11 it was the contention of the non applicant by filing reply Dt. 8.11.2011 that the matter is pertaining to Section 126 of Electricity Act 2003 and therefore according to regulation 6.8(a) of the said regulations, this Forum had no jurisdiction to entertain the grievance application. It was further pointed out that Flying Squad Unit of M.S.E.D.C.L. Bhandara inspected the premises of the applicant on 24.3.2011 and observed that supply was being used by the applicant for commercial purpose unauthorisedly from residential connection. Hence Flying Squad Unit prepared joint inspection report in presence of consumer's representative and requested him to sign but he refused.

4. Flying squad has prepared assessment u/s 126 of Electricity Act 2003 for the period from February 2008 to March 2011 amounting to Rs. 307798/-, for the difference of residential and commercial tariff and informed to the consumer as per letter Dt. 25.3.2011.

5. In that matter, Forum heard the arguments at that time and after perusal of record came to the conclusion that it is the case u/s 126 of Electricity Act 2003 and therefore this Forum has no jurisdiction to entertain the matter and therefore Forum dismissed the said application as per order dated 28.11.2011.

6. Applicant challenged order dated 28.11.2011 in case No. 55/11 before Hon'ble Electricity Ombudsman Nagpur vide representation No. 8/12 decided on 9.4.2012. In that matter, Hon'ble Electricity Ombudsman partly allowed the representation, set aside the order of the Forum Dt. 28.11.2011 and it is ordered that bill Dt. 28.3.2011 for Rs. 307798/- is quashed. Needless to say that Assessing Officer may proceed in the light of section 126 (3) of Electricity Act 2003.

7. After passing of the order by Hon'ble Electricity Ombudsman, Dy. Executive Engineer, M.S.E.D.C.L. Flying Squad, Bhandara issued letter dated 4.8.2012 to the effect that after passing of the order by Hon'ble Electricity Ombudsman Nagpur, hearing is carried out u/s 126 of Electricity Act 2003. During the hearing, consumer did not submit any authentic papers as mentioned in above references and Superintending Engineer, Nodal Officer, M.S.E.D.C.L. Nagpur also not submitted required papers and therefore provisional bill of Rs. 307798/- is ordered to be final assessment u/s 126 of Electricity Act 2003.

8. Applicant challenged this order before I.G.R.C. in Case No. 212/14 and I.G.R.C. dismissed it as per order dated 27.3.2014. Therefore applicant filed present case No. 111/14 before this Forum and claimed relief – 1) not to disconnect his electricity supply & 2) to issue directions to Distribution Licensee to calculate difference of amount for change of use from residential to commercial from July

2008 to March 2011 3) Direct Distribution Licensee to pay amount of Rs. 118761/- along with interest.

9. Non applicant denied the applicant's case by filing reply Dt. 20.5.2014. It is submitted that Assessing Officer has passed final order dated 4.8.2012 in the matter of assessment in respect of inspection Dt. 24.3.2011 after affording reasonable opportunity of hearing as above and finalized the provisional assessment issued u/s 126 in respect of inspection dt. 24.3.2011 for Rs. 307798/-.

10. Forum heard arguments of both the sides and perused the record.

11. There are various rounds of litigation in this matter. Needless to say that it is the second round of litigations. It is the contention of the applicant that Hon'ble Electricity Ombudsman Nagpur passed order Dt. 9.4.2012 in representation No. 8/12 and issued directions to M.S.E.D.C.L. in a particular way with liberty to Assessing Officer that Assessing Officer may proceed in the light of provisions of 126 (3) of Electricity Act 2003. It is the grievance of the applicant that in spite of order passed by Hon'ble Electricity Ombudsman Nagpur that order is not complied by the M.S.E.D.C.L. properly and therefore again applicant is intending to challenge final assessment bill before this Forum. Needless to say that if an order of Electricity Ombudsman Nagpur Dt. 9.4.2012 in representation No. 8/12 is not complied; applicant has no right to file fresh grievance application under regulation 6.4 of the said regulations before this Forum. Needless to say that if the order of Hon'ble Electricity

Ombudsman is not complied, remedy is provided u/s 142 of Electricity Act 2003. Instead of exhausting remedy provided u/s 142 of Electricity Act 2003, the applicant again filed fresh application before this Forum which is untenable at law according to section 6.4 of the said regulations. For non compliance of the orders of Hon'ble Electricity Ombudsman, remedy is not available to knock the door of this Forum. There is no provision in regulations authorizing this Forum with powers to execute orders of Hon'ble Electricity Ombudsman. Therefore in our considered opinion, present case does not fall within the ingredients of regulation 6.4 of the said regulations and hence on this sole ground grievance application deserves to be dismissed.

12. Secondly we have carefully perused order of Hon'ble Electricity Ombudsman which reads as under :-

“ORDER OF ELECTRICITY OMBUDSMAN”

- (a) Representation is partly allowed.
- (b) The order of the Forum dated 28.11.2011 is set aside.
- (c) The bill dated 28.3.2011 for Rs. 3,07,798/- is quashed. Needless to say that the Assessing Officer may proceed in the light of the provisions of Section 126 (3) of the Electricity Act 2003.
- (d) No order as to costs.”

Therefore in this order, Hon'ble Electricity Ombudsman also held that *“Needless to say that Assessing Officer may proceed in the light of provisions of Section 126 (3) of Electricity Act 2003”*.

13. Furthermore, after passing of the order by Hon'ble Electricity Ombudsman, Dy. Executive Engineer, Flying Squad, Bhandara issued letter dated 4.8.2012 addressed to Superintending Engineer, M.S.E.D.C.L. Nagpur and copy of the same is given to the applicant. We have carefully perused this important letter dated 4.8.2012 vide Annexure 19. This letter shows that after the order of Hon'ble Electricity Ombudsman, opportunity of being heard is sufficiently given to the applicant by the Assessing Officer. However, during the subsequent hearing applicant consumer did not submit any authentic papers as mentioned in the above reference. The wordings of letter dated 4.8.2012 vide Annexure 19 show that though sufficient opportunity of being heard is being given to the applicant even then applicant did not produce anything before Assessing Officer. Hence after hearing both the parties, Assessing Officer held that provisional assessment bill is the final bill.

14. So far as correctness, validity and legality of the final assessment is concerned, this Forum is not the Competent Authority. This Forum has absolutely no right to examine whether final assessment is right or wrong. If the applicant is aggrieved by the final assessment, remedy is provided u/s 127 of Electricity Act 2003. It is noteworthy that in para 12 of the order of Electricity Ombudsman Dt. 9.4.2012 in representation No. 8/12, it is held that **"It may be noted that no appeal has been provided against the order of provisional assessment and it is only the final order of assessment against which an appeal lies under section 127."** Therefore Hon'ble Electricity Ombudsman also observed that appeal

u/s 127 can be filed against the final order of assessment. Now final assessment order is already passed and therefore remedy is available to the applicant is only to file appeal u/s 127 of Electricity Act 2003. This legal position is expressly ordered in the order of Hon'ble Electricity Ombudsman also.

15. For these reasons, this Forum has absolutely no jurisdiction to entertain this grievance application.

16. Furthermore, according to regulation 6.7 (c) and (d) of the said regulations, Forum shall not entertain grievance whether representation by the consumer in respect of same grievance is pending in any proceedings before any Court, Tribunal or Arbitrator or any other authority, **or decree or award or a final order has already been passed by any such Court, Tribunal or Arbitrator or any other authority.** In this matter grievance is already decided by Hon'ble Electricity Ombudsman and hence according to regulation 6.7 (c) and (d) of the said regulations, grievance application is untenable at law and deserves to be dismissed. Hence Forum proceeds to pass following order : -

ORDER

- 1) Grievance application is dismissed.

Sd/-
(Anil Shrivastava)
MEMBER
SECRETARY

Sd/-
(Adv. Subhash Jichkar)
MEMBER