

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

Case No. CGRF(NUZ)/045/2007

Applicant : M/s. KSL Realty & Infrastructure Ltd.,
Plot No. 101/1, Survey no. 101,
Walkar Road,
Empress Mill Gate No. 4,
NAGPUR – 440 018.

Non-applicant : MSEDCL represented by
the Nodal Officer-
Executive Engineer,
Mahal Division, NUZ,
Nagpur.

Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

2) Shri S.J. Bhargawa
Executive Engineer &
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 27.08.2007)

The present grievance application has been filed on 01.08.2007 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 here-in-after referred-to-as the said Regulations.

The grievance of the applicant is in respect of non –applicant's inaction in effecting change of name as a

consumer with reference to the applicant's application dated 18.04.2007 and in respect of non-sanction of additional 900KVA and 1400 KVA contract demand respectively as per the applicant's application dated 08.02.2006 & 28.02.2007. His grievance is also in respect of non-applicant's denial to effect change of name as per earlier application dated 19..04.2005 on an erroneous ground. According to him change of name should have been effected from the second billing cycle.

He has also challenged the non-applicant's action purportedly taken under the provisions of Section 126 of the Electricity Act, 2003 since, according to him, there was no un-authorized use of electricity made by the applicant.

The applicant has sought for following reliefs from this Forum.

- 1) MSEDCL be directed to sanction and release additional 1400 KVA contract demand as per applicant's application dated 28.02.2007.
- 2) MSEDCL be penalized for delay in load sanction @ Rs.1000/- per day of delay as per section 43 (3) of the Electricity Act, 2003.
- 3) MSEDCL be directed to effect change of name with respect to application dated 18.04.2007.
- 4) MSEDCL be directed to provide compensation to the applicant as per MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations,2005 here-in-after referred to as SOP Regulations as detailed in para 9 of the grounds of this application.

- 5) MSEDCL be directed to provide compensation of direct losses amounting Rs. 6 crores to the applicant as detailed in para 15 of the grievance application.
- 6) MSEDCL be directed to accept the regular monthly payment amounting Rs. 3,08,902.50 against current of energy bill for the month of June 2007.
- 7) MSEDCL be directed to withdraw the penalty charged in energy bills for exceeding the contract demand.
- 8) MSEDCL be directed to revise the tariff of the applicant and to charge non-residential tariff from the date 08.02.2006 when the applicant informed the MSEDCL that the power shall be utilized for commercial activities and it should be further directed to withdraw the wrong bill issued under section 126 of the Act.
- 9) To issue an interim order under Regulation 8.3 of the MERC (Supply Code and Other Condition of Supply) Regulations, 2005 hereinafter referred to as the Supply Code Regulations directing MSEDCL not to disconnect the supply.

The applicant had earlier approached the non-applicant for redressing his grievance by filing various applications for change of name and for sanction of additional load. However, no remedy was provided to his grievance by the non-applicant. Hence, the present grievance application.

The intimation given to the non-applicant in the past much prior to a period of two months prior to 01.08.2007

is treated to be the intimation given to the Internal Grievance Redressal Cell (in short, the Cell) and as such, the applicant was not required to approach the Cell again before coming in to this Forum. Hence, his present grievance application came to be received and registered in this Forum as present case no. 45/2007.

The matter was heard at length on 21.08.2007.

The applicant's case was presented before this Forum by his nominated representative one Shri R.B. Goenka.

The Executive Engineer, Testing Division, NUZ, MSEDCL, Nagpur and the Executive Engineer, Mahal Division NUZ, MSEDCL, Nagpur presented the case on behalf of the non-applicant Company.

It is the submission of the applicant's representative that the applicant purchased the property from M/s. Central India Spinning & Wvg. Co. Cloth Division with a sanctioned contract demand of 100 KVA. The applicant applied for change of name to MSEB (now MSEDCL) vide application dated 19.04.2005. But the MSEDCL refused to accord the change of name vide its letter dated 21.04.2005. It said that there are arrears amounting to Rs. 292.03 lacs outstanding against the premises. The applicant was informed that he will have to clear these outstanding dues before change of name is effected. The applicant filed a Writ Petition before the Hon'ble High Court against the proposed recovery of arrears of old consumer by MSEDCL Vide Writ-Petition no. 1305/2006 with a prayer that pending the hearing and final disposal of this petition, the Hon'ble High Court be pleased to direct the respondent no. 2 (MSEB) to supply electricity to the

premises of the petitioner on such terms and conditions as the Hon'ble High Court may deem fit and proper. The Hon'ble High Court issued an interim order on 25.09.2006 and allowed the interim relief in terms of prayer made in clause (c) of the petition subject to the petitioner giving undertaking that they shall pay the dues as may be decided in the petition while disposing the same within 30 days from the date of the disposal of the petition. Accordingly, to the petitioner submitted his undertaking under affidavit to the Hon'ble High Court on 04.10.2006.

The applicant submitted application for additional load of 900 KVA over and above existing contract demand of 100 KVA vide his application dated 08.02.2006. In this application it was clearly mentioned that the applicant needs power for construction work. The applicant further applied for sanction of additional contract demand of 1400 KVA for I.T. Park vide his application dated 28.02.2007 alongwith all the relevant documents including a copy of Hon'ble High Court's Order. But the MSEDCL did not accept this application, vide its letter dated 30.03.2007, stating that the applicant should first effect change of name. Normally, change of name application and application for power should be accepted together. The applicant submitted all relevant documents still the MSEDCL intentionally delayed the matter and rejected application for enhancement of load which could have been processed along with change of name application. The applicant submitted another application dated 18.04.2007 for change of name alongwith all documents. But no action has

been taken till the date of filing this grievance application even though reminder was also submitted on 18.06.2007.

The applicant also informed the MSEDCL that power is being utilized for commercial purpose with a request to charge tariff as per MERC's (in short Commission's) order accordingly. The applicant is using the available power of 100KVA contract demand for commercial purposes which was well informed to MSEDCL as per the past correspondences but even then the MSEDCL issued a wrong provisional assessment bill under section 126 of the Electricity Act, 2003 for Rs. 16,44,300=70 vide letter dated 28.06.2007. The applicant's representative also strongly contended that the MSEDCL illegally added amount of provisional assessment bill in the applicant's regular energy bill for the month of June 2007. The applicant requested the non-applicant to keep the amount of provisional bill under section 126 separate from the current bill and requested to accept payment of current energy bill amounting to Rs.3,08,902=50. The MSEDCL did not accept regular payment of monthly energy bill. The applicant also submitted objection on provisional assessment bill as per section 126 vide his letter dated 17.07.2007. The applicant again requested MSEDCL vide his letter dated 30.07.2007 to accept the monthly payment of June, 2007 and also submitted letter along with a Xerox copy of cheque since original cheque was not being accepted.

Quoting the above details of chronological events, the applicant's representative argued that MSEDCL should have effected change of name as per the applicant's application dated 19.04.2005 from the second billing cycle as per SOP

Regulations. The ground mentioned by MSEDCL about arrears of past energy bills outstanding against the premises was in correct and illegal. Hence, compensation @ Rs.100/- per week or part there of delay after the second billing cycle from the date of his application dated 19.04.2005 should be paid to the applicant as per clause 7 (ii) of Appendix "A" of SOP Regulations. The Hon'ble High Court issued order on 25.09.2006 asking MSEDCL to issue load sanction after the applicant gives undertaking which was duly submitted by the applicant. The MSEDCL, however, did not accept the application filed by applicant on 28.02.2007 for enhancement of contract demand of 1400 KVA. He added that there is no provision in the SOP Regulations as well as in Supply Code Regulations that old dues are to be cleared prior to enhancement of load.

He continued to submit that as per Section 43 (1) of the Electricity Act, 2003, every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises within one month after receipt of the application requiring such supply. As per section 43 (3) of the Act, if a distribution licensee fails to supply electricity within the period specified in Sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default. Relying on this provision, the applicant's representative strongly argued that the distribution licensee i.e. the non-applicant should be penalized @ Rs. 1000/- per day for not supplying the electricity within one month from the date of application which was duly received by it on 16.12.2006 till the date of actual supply. The

applicant's representative also submitted that MSEDCL has violated the legal provisions contained in Regulation 4.1 of SOP Regulations which provides that the distribution licensee shall give supply of electricity to such premises within one month after receipt of the application requiring such supply. Hence, it is his say that the non-applicant is liable to provide compensation to the applicant as per Appendix "A" of SOP Regulations for not meeting the prescribed standard of performance. In particular, the applicant's representative requested for awarding this compensation for delay in respect of non-inspection of the applicant's premises within the prescribed period of 10 days and for not intimating to the applicant charges to be borne by him within the prescribed period of 20 days. He also requested that additional compensation @ 100/- per week be awarded to the applicant beyond the prescribed period of one month from the date of receipt of application and payment of charges as provided in SOP Regulations. His another strong submission is that this compensation should be calculated till the date of connection.

He further stated that MSEDCL did not comply with the applicant's request dated 18.04.2007 for change of name till the date of filing of this application. Hence, compensation @ 100/- per week from the second billing cycle after 18.04.2007 should be paid to the applicant as per SOP Regulations.

Commenting upon the provisional assessment bill issued under section 126 of the Act, the applicant's representative strongly contended that this was illegal since MSEDCL was well informed about the use of power by the

applicant for commercial purpose. He has also objected to the non-applicant's action of adding this amount of provisional assessment amounting to Rs.16,44,300=70 in his current energy bill for the month of June, 2007. This, according to him, is against the provisions of the Act. His say is that under section 126 of the Act, he has a right to submit his objection to the assessing officer against the provisional assessment made by the non-applicant for alleged unauthorized use of electricity and the assessing officer has to issue final assessment bill after giving opportunity of hearing to him.

He added that, in the instant case, final assessment bill under section 126 has not yet been issued. Still the amount of provisional assessment has wrongly been added in his current energy bill in the month of June 2007. This action of the non-applicant has violated all the relevant provisions of the Act and MSEDCL is liable to be penalized under Section 142 of the Act. The MSEDCL is also not accepting payment of the current energy bill amount and on the top of it, there is a threat of disconnection on the erroneous ground of non-payment of energy bill amount.

The applicant's representative has stated that a notice of disconnection is already issued by the non-applicant on 08.08.2007 under section 56 (1) of the Act. This notice according to him, is illegal. He requested to quash this notice.

On the point of direct losses that are incurred by the applicant, his submission is that there is a provision to provide compensation for direct losses to an applicant as per Regulation 8.2 (c) of the said Regulations. The applicant is incurring direct losses of Rs. 2 crores per month on account of

bank interest since the applicant has not been able to sale the commercial spaces / flats to the prospective purchasers for want of release of power for their utility.

He reiterated that application for enhancement of 1400 KVA contract demand was submitted on 28.02.2007. This came to be rejected for want of effecting change of name by the applicant and the second application submitted on 18.04.2007 for change of name has not been decided till the date of filing of the application. This Act of MSEDCL not only violated the Supply Code Regulations and SOP Regulation but it was also violative of principles of natural justice and of the order of the Hon'ble High Court. Hence, MSEDCL is liable to compensate the applicant for direct losses from the second billing cycle after submission of load enhancement application and the change of name application. He prayed that compensation of Rs.6 crores towards direct losses be awarded to the applicant.

He lastly prayed that the relief's sought by him in his grievance application may be granted.

The non-applicant has submitted his parawise report dated 21.08.2007, a copy of which is handed over to the applicant's representative on 21.08.2007. He has stated in his parawise report and also in his oral submissions that the Dy. Executive Engineer, Flying Squad MSEDCL, Nagpur inspected the spot of M/s. Central India Spinning & Weaving Mills Ltd., bearing H.T. S.C. no. 410019000498 on 23.04.2007. It was detected by the Flying Squad that there was unauthorized use of electricity since electricity was being used for the purpose other than the one for which its usage was authorized and hence, as per Section 126 of the Act,

provisional assessment for the unauthorized use of electricity was made and a bill issued on 28.06.2007. Seven days' period was given for making payment of the provisional assessment amount of Rs. 16,44,300=70. A notice of disconnection of power supply has also been issued on 08.08.2007 under section 56 (1) of the Act asking the M/s. Central India Spinning & Weaving Mills Ltd the erstwhile owner & consumer to make payment within 15 days failing which supply of electricity shall be disconnected. He thus upheld action under Section 126 of the Act.

His submission on the point of change of name as per application dated 19.04.2005 is that decision thereon was communicated on 21.04.2005 informing that change of name cannot be effected unless the past arrears outstanding against erstwhile consumer M/s. Central India Spinning & Weaving Mills Ltd., (Empress Mill Nagpur) are cleared. He admitted that a Writ-Petition, being writ-petition no. 1305/2006, is pending in the Hon'ble High Court and also that an interim order is also passed by the Hon'ble H.C. as stated by the applicant's representative.

On the applicant's representative's submission about sanction of additional load of 900 KVA as per application dated 08.02.2006, he stated that the applicant was duly informed on 20.06.2006 to first effect change of name and then only this application can be processed further. As regards his subsequent application dated 28.02.2007 for sanction of additional contract demand of 1400 KVA for I.T. Park, his say is that the said application was replied on 17.03.2007 informing the applicant that he is asking for enhancement of

load in the name of M/s. Central India SPG. & WVG. Company and that his request cannot be considered. He denied that there was any delay caused by the non-applicant company. As regards the applicant's second application dated 18.04.2007 for change of name, the non-applicant's submission is that the applicant paid application processing fee of Rs.1000/- on 08.08.2007. His application for change of name was actually received on 21.04.2007. Hence, delay from 21.04.2007 upto 08.08.2007 is not attributable to the non-applicant. He informed this forum during the course of hearing that order sanctioning change of name has now been issued on 17.08.2007. According to him, there is no delay in this respect and no compensation is payable under SOP Regulations.

It is his strong submission that the matter of unauthorized use of electricity cannot be challenged before this Forum as this Forum has no jurisdiction to entertain such a grievance as laid down in the said Regulations. Hence, the issue of inclusion of provisional assessment bill amount of Rs.16,44,300=70 in the regular monthly energy bill of June 2007 cannot be challenged before this forum. The due date of payment of monthly bill of June 2007 was 30.07.2007. Since the amount of provisional assessment bill included in the current bill amount of June 2007 was not paid by the applicant before the due date of 30.07.2007, a notice of disconnection has been issued in the name of the erstwhile consumer M/s. Central India Spinning & Weaving Mills Ltd., in terms of section 56 (1) of the Act, by giving 15 clear days' notice for making payment to avoid disconnection of supply. Question of issuing energy bill in the name of the present applicant did not

arise till 17.08.2007 since the present applicant was not the non-applicant company's consumer. Hence, question of accepting payment of only current energy bill of June, 2007 did not arise.

The non-applicant has also quoted Regulation 10.5 of Supply Code Regulations and contended that the unpaid arrear amount accumulated by the erstwhile consumer will have to be charged on the premises now in possession of the applicant and these charges stand transferred to the new owner and hence, they are recoverable by the distribution licensee. This was also informed to the applicant. He reiterated that the present applicant's application for additional contract demand of 1400 KVA for I.T. Park was not considered since the applicant was not his consumer.

On the huge amount of arrears outstanding on the Paper Division and Cloth Division, he contended that a legal opinion was sought from the Chief Legal Advisor in Mumbai and hence, process of change of name was kept under pendency. The Chief Legal Advisor, vide his letter 4754 dated 27.07.2007, opined that change of name may be effected subject to the out come of pending writ-petition in the Hon'ble High Court. The Legal Advisor also opined that the arrears of old consumer should be shown as arrears of the new consumer in details and it will specifically be written that the said arrears would be subject to the outcome of the writ-petition no. 1305/2006. The Advisor categorically further informed that the order of the Hon'ble High Court will have to be honored on the applicant giving an undertaking and indemnity bond.

He lastly prayed that this grievance application may be rejected.

The following issues need to be decided by this Forum in the present case.

- 1) Non-effecting of change of name in pursuance of application dated 19.04.2005.
- 2) Non-sanction of additional load of 900 KVA in pursuance of application dated 08.02.2006.
- 3) Non-sanction and non-release of additional 1400KVA contract demand as per applicant's application dated 28.02.2007.
- 4) Non-effecting change of name with reference to applicant's application dated 18.04.2007.
- 5) Applicability or otherwise of SOP Regulation in respect of providing compensation to the applicant in the matter of non-change of name and non-sanction of additional contract demand.
- 6) Issue of unauthorized use of electricity made by the applicant and of inclusion of provisional assessment bill amount in the applicant's current bill of June, 2007 and matter pertaining thereto.
- 7) Issue of penalty for delay in load sanction as per Section 43 (3) of the Electricity Act, 2003.
- 8) Applicant's request for awarding compensation of Rs.6 Crores towards direct losses.
- 9) The propriety and legality or otherwise of notice of disconnection of the applicant's power supply as per the non-applicant's notice dated 08.08.2007 issued under Section 56 (1) of the Act.

Let us take the first issue for adjudication.

In this respect, in the first place, we find from record that the application dated 19.04.2005 for change of name was submitted by one M/s. KSL and Industries Limited. The present grievance application has been filed in the name and style of M/s. KSL Realty and Infrastructure Limited which is apparently quite different from M/s. KSL and Industries Limited. Nothing has been explained in his written and even in oral arguments by the applicant's representative as to how M/s. KSL Realty and Infrastructure Limited has come in place of M/s. KSL and Industries Limited. These two appear to be two distinct entities separate from each other. There is also no utterance from the applicant's representative that both these companies or entities are one & the same. Hence, the propriety and legality of making a grievance by the present applicant in respect of change of name proposed in the past by M/s. KSL and Industries Limited in April 2005 is questionable. Neither has this been explained in any way by the applicant's representative. The property in question was originally purchased by M/s. KSL & Industries and hence, it is not understood as to how the present applicant has stepped in. Hence, we hold that the matter of considering an application dated 19.04.2005 for change of name made by M/s. KSL & Industries Limited raised by the present applicant is clearly not tenable. Moreover, the application dated 19.04.2005 made by the applicant M/s. KSL and Industries has duly been replied on 21.04.2005 by the non-applicant. M/s. KSL and Industries Limited has never come before us with a grievance

about non-effecting of change of name within a period of two years from 21.04.2005. The present grievance application has also been filed by a different person that too, much after the period of two years since 21.04.2004. As provided in Regulation 6.6 of the said Regulations, the Forum shall not admit any grievance unless submitted within two years from the date on which the cause of action has arisen. In the instant matter, the cause of action has arisen on 21.04.2005 when the application of M/s. KSL and Industries Limited was rejected by the Superintending Engineer, NUC. Hence, in terms of Regulation 6.6 as aforesaid, the grievance of the present applicant in respect of non-effecting change of name vide application of M/s. KSL and Industries Limited filed on 19.04.2005 is time-barred. Hence, the same cannot prima-facie be admitted by this Forum.

As regards issue no. (2), it is a matter of record that it was KSL and Industries Ltd which had filed its application dated 08.02.2006 for additional load of 900 KVA and it was not accepted by the non-applicant on the ground of non-effecting of change of name. Not even an iota of explanation is furnished by the present applicant as to how M/s. KSL Reality & Infrastructure Ltd has come in place of M/s. KSL and Industries. The present applicant has also not furnished any authority from M/s. KSL and Industries Ltd for agitating this issue before this Forum. It is also not known nor explained in any way that both the companies or entities are one and the same. Moreover, it is also the applicant's oral contention that as per Hon. High Court's Order dated 25.09.2006, it was a duty cast upon the non-applicant to have

issued sanction for additional load of 900 KVA. If, according to him, such is the position, then this issue cannot be entertained by us in terms of Regulation 6.7 clause (d) of the said Regulations. The text of which is as under.

“The Forum shall not entertain a Grievance where a representation by the consumer in respect of the same grievance is pending in any proceedings before any Court, Tribunal or arbitrator or any other authority or a decree or award or a final order has already been passed by any such Court, Tribunal, Arbitrator or Authority”.

Hence, grievance on this issue cannot be entertained by this Forum.

As regards issue no. 3, it is a matter of record that the present applicant has filed an application dated 28.02.2007 for enhancement of contract demand by 1400 KVA which was duly received by the concerned Engineer. It is necessary to see whether this application complied with all the requirements as laid down in Regulation 4 particularly Regulation 4.1 of Supply Code Regulations. Clause (ix) of Regulation 4.1 specifically provides that the applicant is required to make payment of processing fee as per schedule of charges approved by the Commission under Regulation 18. Such an application without payment of application processing fee cannot be treated as a duly completed application in terms of Regulation 5.1 of the Supply Code Regulations. As laid down in Regulation 5 of Supply Code Regulations meant for processing of application, the authorized representative of distribution licensee has to take action of studying the technical feasibility of giving required supply and inspecting the premises after he

receives a duly completed application containing all necessary documents and information in accordance aforesaid Regulation 4.1 above.

In the instant case, it is an admitted position that the applicant has not yet made payment of this processing fee which is Rs. 1000/- as approved by the Commission. Hence, the applicant's application dated 28.02.2007 for enhancement of load of 1400KVA is still incomplete. Hence, no compensation under SOP Regulations is payable by the non-applicant. It is true that the non-applicant should have intimated the applicant about the deficiency of non-payment of the processing fee by the applicant after it received his application dated 28.02.2007. However, such a non-action on the part of distribution licensee cannot come to the rescue of the applicant. Regulations 4 & 5 of the SOP Regulations are mandatory Regulations. It is only after the applicant fulfills all the requirements thereof that the applicant's application can be treated as a duly completed application in all respects. It would have been a different matter altogether had the applicant offered payment of processing fee of Rs.1000/- to the non-applicant and the non-applicant had not accepted this fee. In that case, a different view would have been taken by this Forum. The fact remains that the applicant has not offered the processing fee nor paid it and hence, his application is not a duly completed application. The non-applicant is bound to sanction and release this additional 1400KVA contract demand once the applicant fulfills all the requirements of Supply Code Regulations. This the MSEDCL will do without insisting upon the applicant to make payment of past arrears

that were outstanding against the old consumer subject to the outcome of the writ-petition. Moreover, the petitioner M/s. KSL and Industries Ltd has raised this issue in his writ-petition No. 1306./2006 which is pending in the Hon. High Court for final decision. Hence, in terms of clause (d) of Regulation 6.7 of the said Regulations, this particular grievance cannot be entertained by this Forum. In the result, grievance pertaining to this issue cannot be entertained.

As regards issue no. 4 regarding change of name vide applicant's application dated 18.04.2007, it is a matter of record that the non-applicant has now issued order sanctioning change of name in favour of the present applicant vide his order dated 17.08.2007. This has been done during the pendency of this grievance application. Now let-us see whether there is any delay caused by the non-applicant in this matter and whether any compensation under SOP Regulations is payable to the applicant. The applicant's application dated 18.04.2007 for change of name has been received by the non-applicant on 21.04.2007. The processing fee of Rs.1000/- has been paid by the applicant on 08.08.2007. As elaborately explained in the observations made by this Forum on issue no. 3 above, the applicant's application for change of name is treated to be a duly completed application on 08.08.2007 when he paid the processing fee of Rs.1000/- alongwith completion of all other formalities. Since payment of processing fee has been made by him on 08.08.2006, the non-applicant was bound to effect change of name before expiry of the second billing cycle after the date of receipt of applicant as laid down in Regulation 9.2 of the SOP Regulations. Here also, date of

receipt of application means the date of receipt of duly completed application. Regulation 5.8 of Supply Code Regulations clearly mentions that an application shall be deemed to be received on the date of receipt of duly completed application containing all the necessary information / documents in accordance with Regulation 4 and one of the requirements of an application to be complete in all respects is about payment of processing fees of Rs.1000/-. The applicant made payment of processing fee on 08.08.2007 and the non-applicant has issued order sanctioning change of name on 17.08.2007. Evidently, there is no delay caused by the non-applicant in sanctioning the application dated 18.04.2007. Hence, question of awarding any compensation under SOP Regulations to the applicant in this respect does not arise at all. Since this grievance is now settled by the non-applicant, nothing survives in this respect.

As regards the 4th issue, we hold that no compensation under SOP Regulations is payable to the applicant. The reasons therefor have already been elaborated in the preceding paragraphs.

As regards issue no. 5, the contention of the applicant's representative is that there was no unauthorized use of electricity since he had already intimated to the non-applicant that he is using the existing sanctioned contract demand of 100 KVA for commercial purpose. His say is that because of this intimation, element of unauthorized use of electricity is no longer in existence. He has made his bonafides clear by informing the non-applicant that he is using electricity for a purpose other than the one for which its usage

was authorized. He also quoted provision of Section 126 (1) of the Act and stated that the Flying Squad inspected the applicant's premises on 23.04.2007 and detected that power is being used for the purpose other than the one for which usage of electricity was authorized. He strongly contended that much before the date of inspection of Flying Squad, the applicant himself had intimated the non-applicant that he is using power for commercial purposes although it was meant to be used for industrial purpose only. He, therefore, says that section 126 is not applicable in the instant matter. We are unable to accept these contentions. Amended explanation given below Sub-section 6 of section 126 of the Act defines the words "unauthorized use of electricity". Accordingly, unauthorized use of electricity means the usage of electricity.

- (i) by any artificial means; or
- (ii) by a means not authorised by the concerned person or authority or licensee; or
- (iii) through a tampered meter; or
- (iv) for the purpose other than for which the usage of electricity was authorized or.
- (v) for the premises or areas other than those for which supply was authorized.

In the instant case, it is an admitted position that there has been usage of electricity for commercial purpose when its original usage was authorized for industrial purpose. Even the applicant also admits this position. The argument of the applicant's representative that intimation was given to the non-applicant vide his application dated 18.06.2007 and even earlier about change in usage of electricity does not automatically regularize the unauthorized use of electricity. The applicant ought to have sought prior permission before

using the electricity for commercial purposes. Mere intimation like the one given by applicant cannot in itself constitute deemed permission from the non-applicant. Moreover, all the current bills issued to the applicant in the name of erstwhile consumer are containing charges based on use of electricity for industrial purpose. The applicant at no point of time seems to have informed the non-applicant with reference to these bills that tariff meant for commercial usage of electricity should be charged in place of usage of electricity for industrial purpose. The applicant kept silent after only intimating the non-applicant about change of usage of electricity. The scheme of the section 126 nowhere permits usage of electricity for the purpose other than the one for which the usage of electricity was authorized only on the basis of a mere intimation. The usage of electricity was thus clearly unauthorized. Hence, we hold that section 126 is applicable in the instant matter and the non-applicant has rightly held that the applicant has indulged himself in unauthorized use of electricity.

A point has been raised by the applicant's representative that the procedure laid down Section 126 has not followed and completed by the non-applicant. In that, he relied upon Sub-section (2) of Section 126 which lays down that the order of provisional assessment shall be served upon the person in occupation or possession of the premises in such manner as may be prescribed. It is his submission that the applicant is the occupier of the premises and as such order of provisional assessment should have been duly served on him. This has not been done and hence, the order of assessment is illegal. He has also stated that final assessment in terms of

section 126 has not yet been ordered in this respect. We hold that as per Regulation 6.8 of the said Regulations, this Forum has no jurisdiction to comment upon any aspect of grievance pertaining to unauthorized use of electricity as provided under section 126 of the Act. We are prime-facie of the view that the grievance referred to us squarely falls within the purview of unauthorized use of electricity as provided under Section 126 of the Act and as such, the same is excluded from the jurisdiction of this Forum. Hence, submissions made by the applicant's representative cannot be entertained by us. There is also a provision made in section 127 of the Act for filing of an appeal to the appellate authority prescribed there under. The applicant should have availed of this remedy instead of coming to this Forum.

Secondly, the matter of inclusion of provisional assessment amount in the current bill for the month of June, 2007 is also a part and parcel of the applicant's grievance pertaining to unauthorized use of electricity. Hence, the same cannot be entertained by us. Moreover, Regulation 15.2.4 of Supply Code Regulations clearly mentions that the consumer's bill shall include inter-alia the information specified in clauses (a) to (v) thereof. The word inter-alia is important. This indicates that the consumer's bill shall not only include the information in respect of clauses (a) to (v) but also of other matter of billing. It is in this respect that we hold that the current energy bill of a consumer can include other amounts like amount of arrears, amount payable by the consumer towards assessment in respect of unauthorized use of electricity etc. Moreover it is a matter of record that a separate

bill in this respect bearing No. 4115 is already issued by the non-applicant on 28.06.2007. Hence, the non-applicant's action of including amount of assessment in the current bill for the month of June, 2007 cannot be invalidated. There is a column of debit bill adjustment provided in the prescribed format of electricity bill. The non-applicant has shown amount of Rs.16,44,300=70 against this column. In view of above position, this particular grievance of the applicant cannot be entertained by this Forum.

We have already held that there is no delay caused by the non-applicant in this case in respect of change of name and sanction of additional contract demand of 1400 KVA. Hence, question of penalizing MSEDCL for delay in load sanction does not arise. Even otherwise, this power of penalizing distribution licensee under section 43 is not vested in this Forum.

As regards the issue of awarding compensation towards direct losses to the applicant, we observe in the first place that no supporting details have been given by the applicant as to how he has arrived at direct losses amounting to Rs.6 crores. Secondly and more importantly, the non-applicant cannot be held responsible for the losses that might have been incurred by the applicant. It has been abundantly made clear by us that there has been no delay from the side of the non-applicant either in the context of change of name or for that matter for sanctioning additional demand of 1400 KVA. We do not think it necessary to again elaborate on this matter. The applicant's request for award of compensation is clearly misconceived and it stands rejected.

As regards issue no 9, it is a matter of record that the notice of disconnection dated 08.08.2007 has been addressed and issued by the non-applicant to M/s. Central India Spinning & Wvg. Co. (Empress Mill Cloth Division, Nagpur). The argument of the non-applicant is that the present applicant was not his consumer and hence, the notice was not addressed to him. However, we disagree with the view expressed by him. Definition of word "consumer" made in clause (15) of Section 2 of the Electricity Act, 2003 is as under.

"Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;"

It is an admitted position that the present applicant is the lawful recipient of electricity and as such he has to be treated as a consumer of electricity in terms of this definition. It is also a matter of record the non-applicant has now issued order on 17.08.2007 sanctioning change of name in favour of the present applicant. Hence, it was legally necessary, to have served the present applicant with a 15 clear days' notice under section 56 (1) of the Electricity Act. Since this has not been done, we feel that there is a miscarriage of justice. Specific notice addressed to the present applicant has to be there since the non-applicant has now recognized the applicant as a consumer. Hence, we hold that no action of

disconnection of power supply can be taken against the present applicant in pursuance of notice dated 08.08.2007 which is bad in law. The non-applicant may issue a fresh notice to the present applicant. The fact remains that the applicant has not made payment of assessment bill towards un-authorized use of electricity. Hence, he is liable to the served with a notice in terms of section 56 (1) of the Act. In view of this position, we hold that the notice dated 08.08.2007 issued by the non-applicant is bad in law and it stands quashed.

It is a matter of record that there is a writ-petition, being writ-petition no. 1305/2006, pending in the Hon. High Court, Bombay. It is also a matter of record that Hon. High Court has passed an order dated 25.09.2006 granting interim relief in terms of prayer clause (c) of the applicant's petition subject to the petitioner giving undertaking that they shall make payment of dues as may be decided in the petition while disposing the same within 30 days from the date of disposal of the petition. The issue of payment of past arrears of the old consumer is thus sub-judice. The non-applicant also did not insist upon recovering past arrears of old consumer while sanctioning change of name in favour of the applicant. He also made a statement before this Forum that the applicant's request for additional load of 1400 KVA will be processed and considered as per rules without insisting on him to make payment of past arrears of old consumer subject to the outcome of the pending writ-petition no. 1306/2006.

Since all the issues in this case are answered by this Forum, nothing more survives in the matter.

In the result, the grievance application is partly allowed and it stands disposed off in terms of this order.

(S.J. Bhargawa)
Member-Secretary

(S.D. Jahagirdar)
CHAIRMAN

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's
NAGPUR URBAN ZONE, NAGPUR.**

Member-Secretary
Consumer Grievance Redressal Forum,
Maharashtra State Electricity Distribution Co.Ltd.,
Nagpur Urban Zone, NAGPUR