



**CONSUMER GRIEVANCE REDRESSAL FORUM**  
**M.S.E.D.C.L., PUNE ZONE, PUNE**

**Case No.04/2018**

**Date of Grievance : 15.01.2018**

**Date of Order : 15.03.2018**

In the matter of tariff differential bill.

Shri.Rajesh Rawal,

**Complainant**

Hotel Sapana,

(Herein after referred to as Consumer)

H.No.573/7, J.M.Road,

Shivajinagar, Pune -411005.

**Versus**

The Executive Engineer,

**Respondent**

M.S.E.D.C.L.,

(Herein after referred to as Licensee)

Kothrud Division,

Pune .

**Quorum**

**Chairperson**

**Mr. B.D.Gaikwad**

**Member/Secretary**

**Mrs.B.S.Savant**

**Member**

**Mr.A.P.Joshi**

**Appearance**

**For Consumer**

Mr.Surendra Purohit, (Representative)

**For Respondent**

Mr.Amit A.Bartakke,EE, Kothrud Dn.

**Mr.B.K.Sawade**,AEE, Deccan S/ dn.

Mr.J.N.Limaye, AE, JM Road

- 1) The consumer has filed present grievance application under Regulation o.6.4 of the MERC (CGRF & Electricity Ombudsman) Regulations-2006.
- 2) Being aggrieved and dissatisfied by the order dated 15.12.2017 passed by IGRC Ganeshkhind Urban Circle, Pune, the consumer above named prefers the present grievance application on the following amongst other grounds.

- 3) The papers containing the above grievance were sent by the Forum to the Ex. Engineer, Kothrud Division vide letter no. EE/CGRF/PZ/04 of 2018/22 dated 29.01.2018. Accordingly the Distribution Licensee filed its reply on 20.02.2018.
- 4) Shri.Rajesh Rawal, Consumer has filed the present grievance against the order of the IGRC, Ganeshkhind Urban Circle, dt.15<sup>th</sup> **December, 2017** under which the Chairman, IGRC has rejected the grievance application of Shri Rawal "for want of jurisdiction". Under the said order, the Chairman IGRC has further held that as per MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation, 2006, authorities such as IGRC, CGRF, Ombudsman, Consumer Forum or MERC have no jurisdiction to entertain or deal with cases of unauthorized use of electricity as provided under Section 126 of the Electricity Act, 2003.
- 5) During the spot inspection of the unit by the Flying Squad, Nanded on **22.03.2016** the consumer was found using electricity unauthorizely under **Section 126** of the Electricity Act, 2003. The consumer was accordingly provisionally billed on **16/10/2017** for **Rs.79,02,970/-** (Rupees seventy nine lakhs two thousand nine hundred seventy only) for the period from **April, 2009 to September, 2017** in tune with the orders of the Dy. E.E. /FS/Nanded/77 dt.**22.03.2016**. Aggrieved by the order, the consumer preferred an Appeal on **04.11.2017** to the Assessing Officer (Under Section 126 of the I.E.Act, 2003) SDO, Deccan Sub-Division, MSEDCL, Shivajinagar, Pune against the said provisional order, which remained unresponded. This is how the present case is before CGRF for consideration.
- 6) During the course of hearing on **7<sup>th</sup> March, 2018**, it was clarified to the Consumer that so long as the case was under **Section 126 of the Electricity Act, 2003**, this Forum would have no jurisdiction to entertain it. The learned Representative for the consumer thereupon responded that the Licensee had by then withdrawn the order under Section 126 which was erroneously applied in this case. Mr. Amit Bartakke, , EE, Kothrud Division,

representing the Licensee, too confirmed that the Flying Squad had withdrawn the Section 126, initially invoked in this case, vide **Corrigendum Letter No. EE/FS/NND/357 dt. 18<sup>th</sup> January, 2018** addressed to the Addl. EE, MSEDCL, O&M, S/Dn. (4611), Deccan Gymkhana, Shivajinagar, Pune, under which the Addl. EE, Flying Squad, Nanded had advised that the squad wanted to change the assessment bill only for category difference from LT II-A to LT II-B as per letter dt. 18.01.2018. A copy of the said corrigendum letter dt.18<sup>th</sup> January, 2018 is filed on record. **Following withdrawal of the provisions of Section 126 of the Electricity Act, 2003, it was a clear case of tariff difference, and therefore, it was held that the CGRF, Pune could consider the application of the Consumer against the order dt. 15<sup>th</sup> December, 2017 passed by the IGRC, as referred to hereinbefore.** Based on this, the Learned Representative of the Consumer was advised to plead the case.

- 7) At the outset, the Learned Representative for the Consumer stressed that following withdrawal of the Section 126, the Licensee has no authority to recover tariff difference for the period exceeding 24 months from the date of detection. To substantiate his pleading, the Consumer Representative had placed his reliance on the case laws, which had been filed on record.
- 8) **It would be just and proper to refer the provision of Section 56 (2) of the Indian Electricity Act, 2003.** - *This section primarily deals with the discontinuation of supply in default of payment. Sub-Section (2) reads - "Notwithstanding anything contained in any other law for the time being in force, **no sum due from any consumer, under this section, shall be recoverable after the period of two years** from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."*
- 9) *The learned consumers representative placed reliance on the Electricity Ombudsman (Mumbai) order in Representation No. 21 of 2008 between M/s. Jay Bajrang Agro Processing Pvt. Ltd. (Appellant) Vs. MSEDCL (Respondent) – decided on 5<sup>th</sup> May,*

2008 - wherein it was held that the Respondent Distribution Licensee can resort to recover the arrears in terms of Section 56 (2) but the recovery would be limited to only for the maximum period of 24 months and not beyond, in another order in Representation No. 27 of 2006, between M/s. Nand A/15 (Appellant) Versus Tata Power Co. Ltd. (Respondent), decided on 18<sup>th</sup> July, 2006, Para (24) and (25) of the said order are reproduced hereunder for ready reference of all the concerned -

“24. In view of the above, the Respondents cannot draw support from the provisions under Section 56 (2) of the Act by not issuing the supplementary bill in time and take liberty to say that the amounts become due only when the supplementary bill is issued and avail further period of two years to recover the amount. The Forum, while not making its observation while protecting the interest of the Distribution Licensee, has not attempted to look through the letter and spirit of the provisions of the Act and more specifically the Section 56 (2).

25. The issue of the bills belatedly by the Distribution Licensee and that too because of their own mistake cannot be approved to provide additional leverage to the distribution licensee against the consumer protection in the light of the provisions under Electricity Act, 2003. **It should also be understood that Section 56 (2) balances the interests of both, the Distribution Licensee and the Consumer.** On one hand it empowers the Distribution Licensee to disconnect supply of the electricity in case of neglect to pay, on the other hand, the responsibility is cast upon the Distribution Licensee to claim and recover the arrears within two years from the date when such sum becomes first due. Two years is quite an adequate period available to the Distribution Licensee to raise the bill towards the arrears if remained unclaimed for any reason, which in this case, was due to manual error. In such situation, it would be unreasonable to interpret the provision of Section 56 (2) in a manner to give a blanket authorization to the Respondent without any time limit to claim the old arrears, if any. Moreover, upon issue of the bills in keeping with the provisions of the Section 56 (2), the Distribution Licensee is free to recover the same by any remedy permissible under law including by way of suit as provided under Section 56 (1) of the

*Electricity Act, 2003. This gives sufficient latitude to safeguard the interest of the Distribution Licensee. It is also an admitted position that the claim of the Distribution Licensee does not extinguish even beyond the period of limitation but only the remedy gets barred."*

- 10) It appears that identical views are also taken by the Electricity Ombudsman (Mumbai) in other Representations No. 7/2009 and 16/2016 referred to in the written submission dt. 7<sup>th</sup> March, 2018 made by the Consumer during the course of hearing of the complaint.
- 11) The record also indicates that after withdrawal of Section 126 of the Electricity Act-2003, the Respondents have issued revised bill for Rs.6,93,140/- representing Tariff Change for the total consumption of the 6,61,469 units covering the period from April, 2009 to September, 2017, covering the period of eight years six months. In response to the notice dt. 29.01.2018 from CGRF, Pune Zone, Pune, the EE, MSEDCL, Kothrud Division, filed its say dt. 12.02.2018, which is summarized below -
- 12) On 03.12.2015 the Flying Squad Nanded has inspected the Consumer No. 170010929841, PC 1 BU 4611. Accordingly, provisional bill under Section 126 of the Electricity Act was issued to the consumer for Rs.79,02,970/- vide letter No. AEE/Deccan/824 dt. 16.10.2017 for the period from April, 2009 to September, 2017. AEE, Deccan SDN had issued letter No. 945 dt. 27.11.2017 regarding objections raised by the consumer for the bill issued to him. However, following receipt of letter No. AEE/FS/ND/357 dt. 18.01.18 from the Additional Executive Engineer, Flying Squad, Nanded, the consumer was issued revised Provisional Assessment of Bill for tariff difference between the category LT II A 3ph (below 20 KW) to LT II B 3ph (20 KW-50 KW) amounting to Rs.6,93,140/- covering the said period from April, 2009 to September, 2017.
- 13) In view of arguments advanced by both the parties and the decisions of Electricity Ombudsman, we are the opinion that the recovery would be limited only for the maximum period of 24 months and not beyond. It is

therefore necessary to restrict the recovery for the period of 24 months from the date of detection which took place on the inspection of the Flying Squad on 03.12.2015. We thereby allow present grievance partly and pass following order:

**ORDER**

- 1) The grievance is partly allowed.
- 2) The Respondent MSEDCL is directed to restrict recovery for the maximum period of 24 months preceeding the date of detection which is 03.12.2015.
- 3) The Respondent MSEDCL is directed to issue revised bill to the consumer within the period of one month from date of this order.
- 4) The compliance of this order shall be reported to this Forum within one month.
- 5) No orders as to cost.

Sd/-  
**A.P.Joshi**  
Member  
CGRF:PZ: PUNE

Sd/-  
**B.S.Savant**  
Member/Secretary  
CGRF:PZ:PUNE

Sd/-  
**B.D.Gaikwad**  
Chairperson  
CGRF:PZ:PUNE

Note :- The consumer if not satisfied may filed representation against this order before the Hon.' ble Ombudsman within 60 days from the date of this order at the following address.  
Office of the Ombudsman,  
Maharashtra Electricity Regulatory Commission,  
606/608, Keshav Bldg.Bandra Kurla Complex, Bandra (E), Mumbai-51.