

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/AZ/AUR/U/667/2018/07
Registration No. 2018020041**

Date of Admission : 14.02.2018

Date of Decision : 17.04.2018

M/s. Prem Cold Storage, : COMPLAINANT
Plot No. A-118, MIDC, Shendra,
Aurangabad 431001
(Consumer No. 491479075250)

VERSUS

The Executive Engineer (Admn) : RESPONDENT
Nodal Officer, MSEDCL, Rural Circle,
Aurangabad.

Complainant Representative : Shri HA Kapadia
Respondent : Smt. Y.B. Nikam, EE (Admn),
Rural Circle, Aurangabad

CORAM

Smt. Shobha B. Varma, Chairperson
Shri Laxman M. Kakade, Member Secretary
Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

1) The applicant M/s. Prem Cold Storage, Plot No. A-118, MIDC, Shendra, Aurangabad is a consumer of Mahavitaran having Consumer No. 491479075250. The applicant has filed a complaint against the respondent, the Executive Engineer i.e. Nodal Officer, MSEDCL, Rural Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 14.02.2018.

Brief History of the case :-

2) The Petitioner has filed the complaint on 14.02.2018 raising following contentions:-

The petitioner has claimed that, he is proprietor of above named company situated at plot No. A-118, MIDC, Shendra, Dist. Aurangabad. The petitioner is sourcing electricity supply from Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as MSEDCL).

Respondent is authorized and Responsible officer of MSEDCL Company which is engage in distribution of electricity in MIDC Shendra and other part of state of Maharashtra.

3) That, in view to start a cold storage plant and on receipt of certificate of registration from District Industries center and plot from MIDC authorities , the petitioner submitted application to Respondent for release of electricity connection of 07 KW for construction purpose at plot No. A-118, MIDC, Shendra, Aurangabad.

4) That, on receipt of sanction and payment of requisite amount of Rs 10,700/, Respondent released electricity connection for construction purpose on 01.12.2015.

5) That, after completion of construction activities, the petitioner submitted application on 05.10.2015 along with details of load and other required documents for release of 11kv HT connection with contract demand of 190 KVA and connected load of 171Kw.

6) That, after carrying out inspection and verifying all the documents, Respondent issued sanction letter on 27.11.2015. The petitioner was asked to carryout work by paying 1.3% supervision charges. The petitioner was also asked to pay Rs. 1,91,277/ , towards various charges.

That, after payment of Rs. 1,91,277/-, execution of agreement and completion of all other formalities, 11kv HT connection was released to the petitioners premises on 25.03.2016

7) That, Respondent, after release of 11kv HT connection i.e. from April - 2016 issued bills as per HT-IN i.e. industrial tariff. However after observing that the MERC has sanctioned special tariff for cold storage installed for keeping Agriculture and processed products, submitted application on dt. 30.05.2016 and requested Respondent to issue bills as per newly approved HT Agriculture tariff i.e. HT V.

8) That, after submission of application dt.30.05.2016 for issuing correct bill as per MERC tariff order, Respondent vide letter No. 2644 dt.06.06.2016 directed his Executive Engineer Rural Division to verify purpose of use of electricity and to submit his report accordingly.

9) That, the Executive Engineer, as per directives issued by Respondent inspected the premises of the petitioner and after observing type of machineries installed and verifying purpose of use of electricity , submitted his report to the Respondent.

10) That, on the basis of inspection and report submitted by Executive Engineer, Respondent changed the tariff of the petitioner from HT I N to HT V i.e. from Industrial to Agriculture.

11) That there was no dispute regarding bills issued by Respondent nor regarding purpose of use of electricity till receipt of December 2017. The complainant was in receipt of bill dt. 02.02.2018 for the month of Jan.2018 in which the tariff was abruptly changed from HT Agriculture to HT Industrial. Copy of bill for Jan 18 is annexed.

12) The petitioner was shocked to receive a letter dt.09.02.2018 issued by Respondent along with assessment bill of Rs. 27,27,573.60 issued under section 126 of EA 2003 . Copy of bill dt. 06.02.2018 and letter dt. 09.02.2018 are annexed.

13) That, the petitioner on receipt of impugned bill of Rs. 27,27,573.60/, immediately visited the respondent office on 11.02.2018 and submitted his protest letter. On discussion with concerned officer, it was revealed that, the said assessment bill was issued as per inspection report of Addl. Executive Engineer Flying squad, Aurangabad. Copy of letter dt. 11.2.2018 is annexed.

14) It is alleged that, no intimation of so called visit of Addl. Executive Engineer of dt. 20.09.2017 was given to him neither any copy of spot inspection report was handed over to the petitioner, nor to any of his representative who were working at site. The Addl. Executive Engineer could have easily called upon the petitioner or any authorized person in case any misuse of electricity or change in purpose of use of electricity was observed. However Addl. Executive Engineer deliberately

avoided to inform the petitioner and avoided to handover copy of inspection report.

15) That, there is no change in purpose of use of electricity supply nor there is any change in connected load and applicability as defined in MERC tariff order for cold storage plant. The premises of the petitioner is being used for storing agriculture products and other processed/Frozen products etc.

16) That, the Respondent, after carrying out inspection of the premises and on the basis of report submitted by Executive Engineer, Rural Division , Respondent changed the tariff of petitioner from HT-1(Industrial)to HT V(Agriculture) in the month of July 2016.

17) That, now on the basis of report submitted by Addl. Executive Engineer's, Flying squad unit, Respondent again changed the tariff from HT V (Agriculture) to HT Industrial. The above action of Respondent clearly shows that Respondent himself is not confident about the actual tariff required to be applied for cold storage plants.

18) It is claimed that, the action of Respondent is of nature arbitrary changing the tariff without hearing the petitioner is against the principle of Natural justice and therefore needs to be quashed.

19) That, the present dispute has arise due to non clarity in the mind of Respondent regarding correct tariff required to be applied to petitioner's cold storage plant. Since the issue is related to applicability of tariff, section 126 of EA 2003 does not attract.

It is pertinent to note that the assessment bill u/s 126 of EA 2003 was issued after period of four months which is violation of provision of EA 2003 and shows clear ill intention of Addl. Executive Engineer to extract money from the petitioner.

In view of above facts, the assessment bill dt. 09.02.2018 issued by the Respondent, without providing any documents to the petitioner is therefore required to be quashed. In addition to above the bill for the month of Jan.2018 issued by the Respondent by abruptly changing tariff from HT Agriculture to HT industrial category is also required to be quashed.

Hence it is prayed that,

1. Respondent may be directed not to disconnect electricity supply of the petitioner till final disposal of grievance
2. Respondent may be directed to produce copy of report submitted by Executive Engineer Rural circle on the application dt. 30.05.2016 submitted by the petitioner.
3. Respondent may be directed to produce the inspection report and other related documents submitted by Addl. Executive Engineer, Flying squad unit.
4. Respondent may be directed to withdraw the assessment bill issued u/s 126 of EA 2003.
5. Respondent may be directed not to conduct any hearing and issue final assessment bill till final disposal of the grievance filed before Hon'ble Forum.
6. Respondent may be directed to compensate the petitioner suitability for harassment and mental agony cause due to internal dispute of MSEDCL regarding applicability of tariff.

- 20) The respondent has filed say (Page No. 39) as under :-
1. The preliminary objections about the jurisdiction of Consumer Grievance Redressal Forum as per MERC Regulation 6.8 of 2006 is raised.
 2. That M/s. Prem cold storage Consumer No. 491479075250 is a MSEDCL consumer having its industrial activity at plot no. A-118, MIDC Shendra. As per the consumer application of dated 15.10.2015, there was no mentioned of cold storage for agricultural activity. The consumer load was sanction vide this office letter no. SE/ARC/HTBILLING/No.6118 Date 27.11.2015. In that load sanction, tariff of the consumer load was HT-1-N.
 3. That vide office letter No. SE/ARC/HT-Billing/No.1300 dtd. 8.03.2016 the supply to the consumer premises released on 11 KV level for HT-I-N tariff. On date 30.05.2016, the consumer has applied for change of tariff from HT-1-N to HT-V (Agricultural), The EE R-1 Division vide letter no. EE/RDN/TS/ A'bad /No, 3369/ dtd. 28.07.2016 submitted the spot inspection report of the Consumer. As per the spot inspection report of the consumer the tariff of the consumer was revised from HT-1-N to HT-V with effect from July-2016.
 4. That vide letter no Addl. EE/FS/Abad/R/No.64I dtd. 15.01.2018 Addl._EE Rural Flying-squad Aurangabad submitted the spot inspection and assessment report U/ S-126 of IEA 2003 in respect of the consumer.
 5. The Addl. EE Flying-Squad Aurangabad Rural on date 22.09.2017 carried out the spot inspection at the consumer premises along with the Consumer Representative Shri. Mayur N. Patil (Marketing Mgr) of

Prem Cold Storage. In the Spot inspection report it was clearly mentioned that though the tariff applied for consumer is HT-V but actual Supply is use for cold storage of seeds and Ice- cream. As tariff HT-V is only for cold storage i.e. Storing Agricultural goods, However the activity of consumer such as storing Ice cream attracts action u/s 126 of IEA 2003. Also the consumer has not informed to this office about storage of Ice-Cream and un-authorizedly used the cold storage for ice-Cream, The detail Spot inspection report along with photograph of ICE-Cream storage are enclosed.

6. It is submitted that from the spot inspection report it is clearly mentioned that out of total connected load of 171kw only 37 kw load use was for Ice-cream cold storage purpose. Hence the assessment is given U/S-126 is only for the cold storage load of Ice-cream.
7. That the Addl.EE. Flying Squad has taken the legal opinion vide his office letter no. Addl. EE/FS/R/No.456/Dated-25.09.2017 about the confirmation of case U/s-126. After confirmation from Legal Department the Addl.EE flying Squad has submitted the inspection and assessment report U/ s-126 of IEA 2003 to this office vide letter no. Addl.EE/FS/R/NO. 64I/Dated 15.01.2018.
8. That assessing officer Superintending Engineer ARC has issued provisional assessment bill U/ s - 126 vide this office letter no. SE/ARC/ ACCT/No. 698 Dated 09.02.2018 & hearing was arranged on dated 20.02.2018 regarding the provisional assessment. However due to some administrative reason the same hearing is postponed to dtd 05.03.2018 vide letter No. SE/ARC/ACCT/No.831 dtd 17.02.2018. It is prayed to dismiss the complaint.

21) The complainant submitted rejoinder (Page No. 68) on dtd. 13.03.2018 as under :-

1. It is submitted that, though the Respondent has handed over documents claimed by him, but not HT agreement.
2. It is submitted, that on submission of his application dt. 30.05.2016 for change of tariff from HT Industrial to HT B (Ag) .the premise was visited by the Executive Engineer Rural Div. No.1 and Dy. Executive Engineer Rural sub division jointly on 21.07.2016
3. That during inspection carried out on 21.07.2016, seeds bags of Makka & Onion were found stored in the cold storage.
4. The Superintending Engineer, on the basis inspection report dt. 21.07.2016 submitted by Executive Engineer Rural Division and Deputy Ex. Engineer, Rural Sub Division changed the category of tariff from HT Industrial to HT V (B) .
5. It is submitted that on the basis of this approval accorded by Superintending Engineer, all the monthly bills were issued by the Respondent as per HT-V(B) and the same were paid by the complainant.
6. The Deputy Ex. Engineer, Flying squad, who inspected the premises on 29.09.2017 also found storage of seeds in the premises. The Deputy Ex. Engineer, Flying squad also mentioned that the use of electricity for storage of seeds & Ice cream is 35 KW as against the total load of 171 KW. This observation also discloses that the out of total load 171 KW, 146 KW load (171-35= 146 KW) was used for other Agriculture products where as 35 KW including seeds storage was used for storage of seeds

and Ice cream. This alternatively confirms that there is no misuse of electricity and section 126 of EA 2003 does not attracts.

7. That, the present disputes has arisen due to confusion between the Superintending Engineer & Deputy Ex. Engineer Flying squad regarding applicability of tariff for cold storage and the complainant is being made victim of internal dispute of Respondent company. The Deputy Ex. Engineer, Flying squad, who is below the rank of Executive Engineer & Superintending Engineer is intentionally trying to grab the complainant under ambit of section 126 of EA 2003.
- 22) The respondent has submitted say (Page No. 79) to rejoinder on dtd. 23.03.2018 as under :-
1. That the consumer was having every opportunity of remedy to apply before the appellate authority provided in section 127 of the act 2003, instead of approaching to the right authority consumer has approached to the CGRF. But as per the rule 6.8 of MERC (CGRF & Ombudsman Regulation) 2006 the CGRF is not having the jurisdiction entertainment the complaint.
 2. That the consumer has not approached the appellate authority provided in section 127 of the act 2003 only to save the 50% of assessment amount to be deposited as mentioned in sec. 127 (2) with the authority.
 3. It is submitted that," the similar kind of issue is decided in WP No. 596/2017 by Hon'ble Bombay High Court may be considered.
 4. That as per the circular No. CE (Comm) /Tariff/ cold storage/ no.-4759, Dtd.05/03/2018, it is essential for any Pre-cooling Plants 81, Cold Storage units for Agriculture products /Process or otherwise has to

produce DIC - Certification or License from FSSAI authority for storage of Ag Product / Produce. Hence in this Case the Consumer has to produce such Certification for applicability & Tariff HT V-B.

5. Allegation about confusion of Respondent Officer are denied in toto.
Hence it is requested to dismiss the case.

23) The rejoinder (Page No. 84 to 91) filed by complainant on dtd. 27.03.2018 is as follows :-

1. That considering all previous spot inspection & reports change in tariff for cold storage unit was approved by all the concerned competent authorities of MSEDCL, except the Dy. Ex. Engineer (Flying squad). It alternatively confirms that the present dispute is related to applicability of tariff and does not attract section 126 of EA 2003.
2. It is submitted that, Deputy Executive Engineer, Flying Squad, Aurangabad who is junior in rank than Executive Engineer and Superintending Engineer visited complainants cold storage on 22.09.2017 and in view to extract money from us submitted his false, mischievous & incorrect report.
3. It is submitted that, the Deputy Ex. Engineer (Flying squad) Aurangabad visited our premises on 22.09.2017 and entered the premises without showing his identity as employee of MSEDCL. He pretended himself as a big businessman desiring to keep large quantum of Agriculture goods in cold storage plant and expressed his desire to look into the facility provided for storing goods in our cold storage plant. Further while doing so, he took photos on his mobile without permission of any of the authorized employee. Patil, who is working as a contract labour in

applicants unit to sign the spot inspection report pretending that the same is required for placing order on the complainant.

4. That, after carrying out inspection in such filthy & unauthorized manner, the Dy. Ex. Engineer, Flying squad deliberately avoided to handover any single document to any of our employee present date of inspection.
5. The complainant further states that after release of connection, many MSEDCL officer visited our premises for inspection, testing, meter reading purposes, but at no time complainant has restricted any of them.
6. That, the spot inspection carries following defects:-
 - A) While checking it is observed that, "as per billing record, tariff applied to the consumer is HT V B whereas actual supply used for cold storage of seeds & Ice cream. Tariff applicable for cold storage of ice cream is HT I Industrial, i.e. case falls u/s 126 of IEA 2003."
 - B) "Remedies action proposed:"
 - C) "Under observation for necessary action as per IE act 2003."
7. That, the Dy. Ex. Engineer, who himself was not confirm about applicability of tariff, forwarded his letter to Superintending Engineer after period of four months for issuing bill u/s 126 of EA 2003.
8. The complainant submits that he was in receipt of letter dt. 09.02.2018 Issued by Superintending Engineer, Rural Circle, Aurangabad alongwith provisional assessment order dt. Nil and bill dt. Nil. Issued u/s 126 of EA 2003 after period 137 days from dt. of carrying out Inspection.

Respondent has violated provision u/s 126 of IE Act 2003 and therefore also the bill issued u/s 126 is void and required to be quashed.

9. Now even if for the sake of argument, it is considered that seeds and Ice cream do not fall under Agriculture produce or processed products list, even then the percentage of load works out $100 \times 35 / 171 = 20\%$. This percentage of load cannot be said to be as predominant load.
10. That, in cold storage plant the temperature is controlled by Thermostat by which one can reduce or increase the temperature as per requirement of goods to be stored. The Dy. Ex. Engineer, Flying squad failed to understand the process of operating cold storage plants and therefore once again at para No.16 (Remedies action proposed) mentioned that applicability of tariff is under observation. However in spite of such uncertain condition, he put his remark as “case falls under section 126 of IEA 2003 only with the intention to extract money from the complainant.
11. The complainant submits that from above submission, it is crystal clear that present dispute is regarding applicability of tariff arise due to differ opinion of Dy. Ex. Engineer Flying squad and all other officers who are senior in ranking than Flying squad officer .
12. The Maharashtra Agriculture Produce marketing (Development & Regulations) Act 1963 which defines the term “Agriculture Produce as under :-

“Agriculture produce means all produce (whether processed or not) of agriculture, horticulture, animal husbandry, apiculture, fisheries, and forest specified in the schedule”

13. It is submitted, that cold storage plays an important role in various segments of economic activities for preserving the nutritional and economic values of various products produce by the agriculturist and other category. The Agriculturist situated in rural sector of state of Maharashtra are benefited by the pre-cooling and cold storage facility provided near to their farming areas as they are able to preserve and store agriculture produce and processed goods in the cold storages . The state Govt., in view to promote these units, is also providing incentives to the pre-cooling and cold storage units.

Hon'ble commission has also taken consistent view in accordance with Government policies and National Electricity policy in its various tariff orders issued time to time. The commission has broaden the tariff treatment of pre-cooling and cold storage which can be seen from tariff orders passed from 2009 onwards.

14.It is submitted that, Respondent has abruptly changed the tariff category from HT V(B) Agriculture HT Industrial from Jan. 2018 without informing the complainant or giving opportunity of hearing. This action on the part of Respondent is bad in the eyes of law and against the principle of Natural justice.

24) It is submitted by Respondent that as on 22.09.2017 designation of Shri Sonat was Additional Executive Engineer, Flying Squad of Respondent.

25) We have gone through complete record, we have heard both the parties at length., following points arise for our determination for the reasons to follow :-

Sr. No.	POINTS	FINDINGS
1)	Whether this Forum has jurisdiction to try the dispute ?	No
2)	If yes, whether the assessment bill issued under section 126 of Indian Electricity Act, 2003, requires to be quashed ?	Does not arise
3)	If answer of point No. 1 yes then, whether the complainant is entitle for compensation as claimed ?	Does not arise
4)	What order & costs ?	As per final order

REASONS

26) **Point No. 1** :- The parties are not at quarrel about following facts :-

1. That, the petitioner runs unit at Cold Storage at MIDC, Shendra on the given address & has sourced electricity from the Respondent initially connected load was at 171 KW.
2. On 25.03.2016 electricity connection was released to the complainant & industrial tariff was charged – HT –IN.
3. That, on 30.05.2016, application was submitted by the complainant to Respondent to issue him bills as per approved HT Agriculture Tariff i.e. HT-V.
4. That on spot inspection & machineries, use etc. tariff of complainant was charged from HT-IN to HT-V i.e. from Industrial to Agriculture.
5. That, on 22.09.2017 spot inspection was made by Shri Sonat, Additional Executive Engineer of the Respondent & on that basis

disputed assessment bill under section 126 for the amount Rs. 27,27,573.60 is issued by the Respondent.

The complainant has challenged the provisional assessment bill on dtd. 06.12.2018, appended with letter dtd. 09.02.2018 produced at Page No. 32, 33 & 34 .

27) Consumer Representative Shri Kapadia has raised arguments on various grounds as follows :-

- A) Proper procedure for Spot Inspection was not followed. i.e. he was not intimated, not properly represented & copy of Inspection report was not submitted to him.
- B) If as pr inspection report out of 171 kw, according to Respondent 35 Kw Load was found used for ice cream storage, still then the percentage of load $100 \times 35 / 171 = 20\%$ & this load can't be said as predominant load.
- C) Mr. Kapadia has also challenged that, Shri Sonat, Additional Executive Engineer was not authorized to inspect.
- D) Other irregularities - Inspection report, remarks & showing that Additional Executive Engineer himself was not confident about application of Section 126 of Indian Electricity Act,2003 & therefore made blanket observation, so according to him Section 126 of Indian Electricity Act 2003 is not applicable in the present case.

28) As against this Nodal officer, Shri Nikam for the Respondent has submitted that proper procedure for spot inspection was followed. Shri Sonat is authorized officer of Flying Squad to conduct spot inspection, it is found that, the tariff applied to complainant's plant is HT-V, however he has changed the use of Cold Storage & stored ice-cream also in addition to seeds. Tariff HT-V is only for Cold Storage storing agriculture goods, so storing of ice cream amounts to

unauthorized use covered under Section 126 of Indian Electricity Act 2003, so also it is submitted that since provisional and final assessment bill Rs. 27,27,573.60 is issued to the complainant, so CGRF has no jurisdiction to try the dispute as per R. 6.8 CGRF Rules.

29) On going through the complete record, it is seen that, on 22.09.2017 – Spot inspection was / made, report is at P. No. 48. It is observed that “As per billing record, tariff applied to the consumer is HT-VB whereas at actual supply used for cold storage of seed & ice cream. Tariff applicable for Cold Storage of Ice cream is HT-Industrial & case falls under Section 126 of Indian Electricity Act 2003.

30) As such provisional bill under Section 126 of Indian Electricity Act 2003 is issued dtd. 06.02.2018 & sent under coverage letter dtd. 09.02.2018 (Page No. 33 to 36). It was received to the complainant & hence on 12.02.2018, complainant has lodged his protest by issuing letter (Page No. 37) to the Respondent on 14.02.2018, present petition is filed.

31) That as per Section 126 of Indian Electricity Act 2003 hearing was conducted, & consumer was heard & final assessment order is passed on 22.03.2018 (Page No. 178 to 181), by which provisional assessment bill Rs. 27,27,573.60 is confirmed under Section 126 of Indian Electricity Act 2003.

32) In the back drop of provisional bill which was confirmed as final assessment bill under Section 126 of Indian Electricity Act 2003, Rule 6.8 of MERC Regulations 2006 (CGRF & Ombudsman) is attracted in the present case, which is reproduced here as follows.

“6.8 If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:

- (a) unauthorized use of electricity as provided under section 126 of the Act;
 - (2)(b) offences and penalties as provided under sections 135 to 139 of the Act;
 - (c) accident in the distribution, supply or use of electricity as provided under section 161 of the Act; and
 - (d) recovery of arrears where the bill amount is not disputed.”
- 33) Further Respondent, Nodal Officer in this respect has drawn our attention to the ratio laid down in the case, **The Executive Engineer, MSEDCL, Rural Division, Kolhapur & Others Vs Shri Suresh Shivram Savant in WP No. 596/2017 decided on 30 June 2017. Copy of it is produced at Page No. 79 to 82.** In that case, the electricity use was changed from domestic to commercial. Hence, bill under Section 126 of Indian Electricity Act 2003 was issued by MSEDCL for Rs. 12,790/- was under challenge in WP No. 596/2017.
- 34) The facts of the said case are similar to present dispute, at Para 9 of the case, following observations are made by Hon’ble High Court :-
- “9. Bare reading of the Regulation 6.8 shows that if any notice and or order passed by the petitioner under section 126 of the Electricity Act, that cannot be challenged before the Redressal Forum. Only on this point itself complaint filed by the respondent was not maintainable. Hence, order passed by the Forum is required to be set aside.”
- 35) On the basis of arguments addressed by both the parties advanced by both the parties of documents placed by them on record, it is clear that as on the date of filing dispute on 14.02.2018 before this Forum by the complainant, provisional bill of assessment dtd. 06.02.2018 together with notice of proposed hearing of 20.02.2018 was already issued & received to complainant before 12.02.2018. So

also after hearing the complainant final order & final assessment bill was issued by Respondent dtd. 22.03.2018. i.e. during pendency of the petitioner. So also, the production of documents claimed in the prayer clause is complied. In view of the above facts relief claimed in clause 6 of prayer clause is not maintainable. There was no disconnection of electricity supply made by the respondent. In view of Respondent has duly completed the process under section 126 of Indian Electricity Act, 2003, therefore the remedy lies under section 127 of the said Act. The petitioner therefore should have approached to proper authority i.e. the Electrical Inspector, under section 127 of Indian Electricity Act, 2003. The Electrical Inspector to examine as to whether the Superintending Engineer, Aurangabad Rural Circle was correct in determining that this case was of unauthorized use of electricity. Considering the ratio of order passed in WP No. 596/17 by Hon'ble High Court, Bombay, considering Rule 6.8 of Maharashtra Electricity Regulatory Commission (CGRF & Electricity Ombudsman) Regulation 2006, this Forum has no jurisdiction to try the dispute.

19) Not only that, in a recent case bearing representation No. 51/2017, by Hon'ble Ombudsman, Nagpur, the Hon. Ombudsman relied on the aforesaid decision & also made reference in para 12 made following observations as under:-

“12) Similarly, the Hon'ble Supreme Court of India, in its Order dt. 20.11.2011, in Civil Appeal No. 8859 of 2011, **The Executive Engineer & another – V/S - M/s. Sitaram Rice Mill, have maintained in para 7 of the order as follows :-**

“High Court transgressed its jurisdictional limitations while travelling into exclusive domain of the Assessing Officer relating to passing of an order of Assessment and determining factual controversy of the case.””

Considering the aforesaid decision, it is crystal clear, that this Forum has no jurisdiction to try the present dispute.

36) Under the circumstances, cases cited by consumer representative Shri Kapadia namely 1) Vinay Enterprises Vs Kerala State Electricity Board decided by appellate Tribunal for electricity in appeal No. 131/2013 decided on 07.08.2014 (Page No. 149 to 156), 2) MSEB Tariff rate applicable to Streetlight Services for Murbad & Additional Murbad Industrial area & recovery through Supplementary bill decided by Hon'ble MERC in case No. 24/2001 decided on 11th February 2003 (Page No. 157 to 164), 3) M/s. Tuljabhavani Cold Storage Pvt. Ltd. Vs MSEDCL Case No. 117/2015 & 118/2015 decided by Hon'ble MERC on 2nd January 2017 produced at Page No. 125. 4) Case NO. 121/14, MSEDCL, decided by Hon. MERC on 26th June 2015 produced at Page No. 172, are on different footing of facts & not applicable to present dispute.

37) In respect of the case of Dattaprasad Narayan Kulkarni Vs MSEDCL Representation No. 64/2013 was decided on 5th September 2013 (Copy produced at Page No. 165) by Hon'ble Ombudsman, Mumbai. Thereafter judgement of Hon'ble High Court of WP No. 596/2007 decided on 30 June 2017 & of Ombudsman, Nagpur dtd. 28.03.2018, in clear terms interpreted Section 126 & jurisdiction of aspect. So recent judgement view is applicable to present dispute.

38) Other two cases cited case of M/s. Tuljabhavani Vs MSEDCL, (Page No. 107) decided by CGRF, Baramati (Page No. 107) & of Harman Fino Chem decided by CGRF, Aurangabad on 04.05.2016 (Page No. 135) are not binding on this Forum.

39) For the aforesaid reasons, we hold that this Forum has no jurisdiction to try the dispute. The remedy for the petition is under Section 127 of Indian Electricity Act 2003 before Electrical Inspector. Therefore Point No. 1 is answered in the negative.

40) Considering that, this Forum has no jurisdiction to try the dispute, hence point Nos. 2 & 3 does not arise & answered accordingly.

Thus, in answer to point No. 4, we proceed to pass the following order :-

ORDER

- 1) The Petition is hereby rejected.
- 2) In case of disconnection, the Respondent to follow due procedure laid down under section 56 of Indian Electricity Act, 2003.
- 3) The Petitioner is at liberty to approach before Electrical Inspector under Section 127 of Indian Electricity Act 2003 in appeal against the assessment bill till 22.03.2018.
- 4) No order as to costs.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Laxman M. Kakade
Member / Secretary

Sd/
Vilaschandra S.Kabra
Member