

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

**Case No. CGRF/AZ/AUR/R/668/2018/08
Registration No. 2018020042**

Date of Admission : 14.02.2018

Date of Decision : 02.05.2018

Smt. Shabana Begam Ataullakhan Pathan : COMPLAINANT
S. No. 13, Ambadas Nagar,
Sillod 431112
Dist. Aurangabad.
(Consumer No. 495511444747)

VERSUS

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

Complainant Representative : Shri HA Kapadia
Respondent : 1) Shri YB Nikam, EE (Admn),
Rural Circle, Aurangabad
2) Shri Adhikar, Dy.EE,
Sub Division, Sillod.

CORAM

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

CONSUMER GRIEVANCE REDRESSAL DECISION

1) The applicant Smt. Shabana Begam Attaullakhan Pathan, S. No. 13, Ambadas Nagar, Sillod 431112, Dist. Aurangabad is a consumer of Mahavitaran having Consumer No. 495511444747. 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:-

1. That, the petitioner is residence of Sillod and is sourcing electricity supply from Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as MSEDCL).
2. Respondent is authorized and Responsible officer of MSEDCL Company which is engaged in distribution of electricity in MIDC Shendra and other part of state of Maharashtra.
3. The complainant has submitted application for release of single phase connection for residential purpose at her above mentioned premises. After payment of requisite charges, Respondent released the connection on 10.10.2016.
4. In view to earn money for her livelihood, the complainant started house hold business of running a small hotel from her premises. Since the electricity consumption was below 300 units per month, Respondent issued

all bills as per Residential tariff and the same were paid by the complainant regularly.

5. The complainant has submitted that, there was no dispute regarding bills and payment till August 2017. All the bills issued by the Respondent were paid by the complainant.

6. That Since the electricity consumption of the complainant increased above 300 units, the Respondent changed the tariff of complainant from Residential to commercial from the month of Sept. 2017 onwards and the same was accepted to the complainant.

7. The complainant has submitted that, the bills issued by respondent as per commercial tariff for the month of Sept. 2017 & Oct. 2017 were paid by the complainant.

8. That, the complainant was shocked to receive a bill of Rs. 1,01,040/- for the month of Nov. 2017 which includes adjustment bill amount of Rs. 95,380.31. No details were provided along with the bills nor any clarification was made by the Respondent after making enquiry at their Sillod office.

9. That, the complainant, therefore filed a complaint on 14.12.2017 in the office of Respondent and requested to issue revise bill.

10. The complainant has submitted that instead of redressing grievance, Respondent once again issued a bill of Rs. 1,01,290/- in the month of Dec. 2017.

11. The complainant has submitted that inspite of continuous follow up for issue of revise bill, Respondent, without giving any notice disconnected the electricity supply of the complainant on 19.01.2017. The complainant was forced to pay payment of Rs. 30,000/ to get the supply restored. The

complainant paid the said amount under protest and submitted letter accordingly.

12. It is submitted that the Respondent are pressurizing the complainant for making balance payment and are also threatening to disconnect electricity supply on non payment of amount.

The complainant has prayed that,

1. The Respondent may be directed not to disconnect electricity supply of the petitioner till final disposal of grievance
 2. The Respondent may be directed to withdraw the debit bill adjustment amount of Rs. 95,380.31
 3. The Respondent may be directed to issue revise bill after deducting interest and DPC amount.
- 3) The Respondent has filed say on dtd. 26.02.2018 (Page No. 22) stating that,
1. That, on application of the complainant for residential connection & on due compliance, electric connection was supplied by Respondent on 10.10.2016.
 2. It is found during inspection dtd. 19.07.2017, that the complainants electric residential connection was used by her for electric supply of her hotel named "Royal -Ajantha".
 3. That, the bill under section 126 of I. E. Act, 2003 (Hereinafter for short purposes referred I. E. Act, 2003 for Rs. 95,380/- was issued & served to the complainant. That on 02.02.2018, the complainant has lodged her protest in her application, thereby not accepting the bill. That the bill being under section 126 of I. E. Act, 2003 hence jurisdiction of this Forum is excluded.

4. In additional say (Page No. 58), the respondent has submitted the hotel under use by the complainant is of large size of which photos are produced on record.
- 4) The complainant has submitted rejoinder (Page No. 61) raising following facts:-
1. That, the MYT tariff order dt.03.11.2016 passed by Hon'ble Commission incase No. 48/2016 .The residential tariff (LT-1B) is also applicable to consumers who are carrying out small business from part of their residence.
 2. MSEDCL, based on MERC tariff order, has also issued a commercial circular No. 275 dt. 18.11.2016. As per this order, if consumption units are exceeded beyond 300 units the consumer is not eligible for residential tariff, but be charged for tariff otherwise with intimation to consumer.
 3. It is stated that single phase electricity connection was taken by the complainant on 10.10.2016 for residential purpose and thereafter the complainant started a small hotel from residential premises for her livelihood. The monthly electricity consumption from date of release of connection i.e. from Oct.2016 till March 2017 was below 300 units and also below 3600 units in financial year 2016-17.
 4. That, the electricity consumption recorded in the month of April 2017 was 236 which is below 300 units. However, as the complainant decided to add Refrigeration equipment in May 2017, the electrical consumption started increasing from May 2017 onwards.
 5. It is submitted that Respondent visited the premise of the complainant on 19.07.2017 and prepared electricity inspection report. During the inspection all the seals provided to the meter were found intact and the

meter was found recording electricity consumption correctly. The remark on inspection report reads as under.

“ सदरील घरगुती मीटरचा वापर हॉटेलसाठी पण वीजवापर चालू होता.”

6. The complainant has submitted that after carrying out the inspection on 19.7.2017, Respondent, without informing the complainant, changed the tariff from Residential to commercial and started issuing bills from Sept.2017 onwards as per commercial tariff. However, as her monthly electricity consumption was increased above 300 units, without waiting for intimation from Respondent, she started paying electricity bills issued as per commercial tariff from Sept.2017 onwards.

7. That, the complainant was shocked to receive bill of Nov.2017 in which Rs. 95380.31 was shown as bill adjustment. No details were provided by the Respondent. However, at para (4) of the reply dt. 26.02.2018, Respondent has stated that, the said amount is included as per provision of section 126 of EA 2003 and same is based on load connected .

8. The complainant has submitted that No provisional bill, as per provisions of section 126 of I. E. Act, 2003 was received by the complainant nor any final order of assessment was issued by the Respondent till date. This action on the part of Respondent violates the basic provision of section 126 of I. E. Act, 2003 and therefore, section 126 does not attract.

9. The complainant has further submitted a letter dt. 02.02.2018 against the bill of Nov. 2017 & received to the Respondent on 05.02.2018. It was replied by the Respondent.

The above fact discloses that the Respondent, instead of admitting mistake , are trying to justify the wrongly issued bill under section 126 of I. E. Act, 2003 and are trying to extract money from the complainant.

5) The Respondent has submitted additional say dtd. 13.03.2018 (Page No. 66) as under :-

1. As per Section Officer inspection report AE, Sillod (U) on dtd. 19.07.2017 the consumer was found using electricity illegally for commercial purpose instead of residential one as applied at the time of connection. The electricity was demanded through A-1 Form for residential purpose and actually using for commercial purpose as hotel Royal Ajintha belonging to the consumer. The consumer had will fully violated the I. E. Act, 2003 under section 126.
 2. The said consumer has been using electricity dishonestly for the business of hotel. For such an unauthorized use of electricity, He / She has no moral right to claim the relief.
- 6) We have gone through the application, say, rejoinder & all documents placed on record by both the parties. We have heard both parties at length. Following points arise for our determination with our findings thereon for the reasons to follow:-

Sr. No.	POINTS	FINDINGS
1)	Whether this Forum has jurisdiction to try the dispute ?	Yes
2)	If yes, whether the disputed bill of Rs. 95,380.31 is required to be revised?	Yes
3)	What order & costs ?	As per final order

REASONS

7) **Point No. 1** :- Admittedly, since the date of taking connection till July 2017, there was no dispute, that the complaint has taken connection for residential use at Survey No. 13 of Sillod City.

8) The Respondent has inspected the spot on 19.07.2017 & prepared spot inspection report (Page No. 36). It goes to show that use by consumer found commercial (R to C) permitted load – 1 KW. Meter No. 13733865 was found normal. The remark column following observations are made.

1) “For 6 months”.

2) “सदरील घरगुती मीटरचा वापर हॉटेलसाठी पण वीजवापर चालू होता.”

It is signed by Respondent Officer & Representative of Consumer.

9) It is seen from the letter dated 10.08.2017 (Page No. 49) issued by, the Respondent to Assistant Engineer communicating about unauthorized use of electricity by Smt. Shabana Begam & to serve to her bill under section 126 of I. E. Act, 2003. Copy of the said bill under section 126 of I. E. Act, 2003 (Page No. 50) though is produced on record, however acknowledgement by consumer is not forthcoming, so no evidence to show service of the said bill to the consumer.

10) According to Respondent here is a case under Section 126 of I. E. Act, 2003, so jurisdiction of this Forum is excluded as per Rule 6.8 of MERC (CGRF & Ombudsman) Regulations 2006. Now, let us point out as when & how jurisdiction of this Forum is excluded. For that purpose, let us reproduce Section 126 of I. E. Act, 2003.

PART XII - INVESTIGATION AND ENFORCEMENT

Section 126: (Assessment): --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is

indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

²⁰[(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

²¹[***]

²²[(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b)” unauthorised 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

²⁴[(iv) for the purpose other than for which the usage of electricity was authorised; or

(v) for the premises or areas other than those for which the supply of electricity was authorized.]

11) The ratio laid down in a recent case decided by Hon. Ombudsman, Nagpur in a case of **M/s. Nath Biotech V/s The Superintending Engineer, Aurangabad. Representation No. 51/2017**, decided on 28th March 2018 at Para 13 is material:-

“13) On the basis of the discussions during hearing and the documents placed on record, it is clear that the respondent MSEDCL have completed the process of Section 126 of the Electricity Act, 2003. The appellant therefore, should have approached the proper authority, that is, the Electrical Inspector, under Section 127 of the Electricity Act, 2003. The Electrical Inspector may examine whether the Superintending Engineer (Urban), Aurangabad, was correct in determining that this was a case of unauthorized use of electricity. I am therefore, not inclined to consider other issues raised by the parties on the merits of the case.”

“11) An Order, dt. 30.06.2017, of the Hon’ble High Court, Bombay in Writ Petition No. 596 of 2017, para 9 which reads as under, is relevant to this case.

“Bare reading of 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.”

“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 traveling into exclusive domain of the Assessing Officer relating to passing of an order of Assessment and determining factual controversy of the case.”

12) Rule 6.8 of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 speaks as under :-

“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.”

13) Considering ratio of the aforesaid cases, in this case, no notice / order passed and served to the petitioner, so Rule 6.8 is inapplicable.

14) A joint and harmonious reading of provisions under section 126 of I. E. Act, 2003 would indicate that an inspection should precede assessment. The licensee is obliged to follow principles of natural justice & grant reasonable hearing under Section 126 (3) of I. E. Act, 2003. Section 126 (3) of I. E. Act, 2003 further provides that if the Assessing Officer comes to the conclusion that there has been unauthorized use of electricity he shall provisionally assess the electricity charges

payable & such order is required to be served on the person concerned, who will be entitled to file objections, if any before the Assessing Officer, who will pass final order of assessment after affording a reasonable opportunity of hearing to such person, within thirty days from the date of such order of provisional assessment.

15) As regards case in hand, it is pertinent to note that spot inspection report dtd. 19.07.2017, on the basis of which disputed bill is issued does not refer about proposed action under Section 126 of I. E. Act, 2003. Further the bill dtd. 17.07.2017 (Page No. 49 & 50) alongwith coverage letter dtd. 10.08.2017 issued by Respondent to his officer, is not served to the petitioner. No such acknowledgement is forthcoming. Neither provisional notice & order is issued, nor objections are called from the consumer. So, also provisional bill under Section 126 of I. E. Act, 2003 is also not served to the consumer. Opportunity of hearing is not given to consumer before issuing the disputed bill of November 2017. Final order of assessment is not passed. So, not giving opportunity to the consumer amounts to violation of principles of natural justice & it is arbitrary action initiated by the Respondent. Therefore, there is violation of mandatory requirement as prescribed under Section 126 (3) of I. E. Act, 2003. Then, the entire action taken by the Respondent against the petitioner is vitiated. On the basis of such action assessment can't be imposed against the petitioner.

16) Be the fact as it may, it is further seen from the bill issued by Respondent to the complainant dtd. 07.09.2017 (Page No. 8) that this bill for the period August 2017 was issued as per Residential tariff and it was paid by the consumer vide receipt dtd. 16.09.2017 (Page No. 9). Then, bill dtd. 10.10.2017 (Page No. 10) for September 2017 was issued as per commercial tariff for Rs. 4080.00 & it was also paid by the complainant vide receipt dtd. 20.10.2017 (Page No. 11). Third bill dtd. 08.11.2017 for Rs. 5870.00 (Page No. 12) for the period dtd. 20.09.2017 to

24.10.2017 was also issued as per commercial tariff & it was paid by the consumer vide receipt dtd. 16.11.2017 (Page No. 13). Then the bill dtd. 05.12.2017, (Page No. 17) issued by the Respondent for the period 24.10.2017 to 18.11.2017, as per commercial tariff & made a demand of Rs. 101070.00. Such demand though was made for first time but there is no reference on the bill that it is issued under section under section 126 of I. E. Act, 2003. Considering the acceptance of above bills at commercial tariff the Respondent is estopped from issuing bills under section 126 of I. E. Act, 2003. That, an application dtd. 14.12.2017 (Page No. 14) submitted by the complainant, her request for spot inspection was considered by the Respondent & on 14.12.2017 again spot inspection was made, however the meter was found normal. The spot inspection report is produced at Page No. 12. However, considering commercial use of complainant bill of Rs. 101070/- is calculated by the Respondent. This report carries sign of the officer of the Respondent & representative of consumer, but does not refer application of section 126 of Indian Electricity Act, 2003.

17) That on 02.02.2018, the complainant has lodged her protest about bill of November 2017 for the amount of 1,01,040.00. It was replied by the Respondent on very day communicating that the said bill is issued for Rs. 95380.00 under section 126 of I. E. Act, 2003 as per connected load. Reply is produced at Page No. 54.

18) Considering the above discussion, so also the ratio laid down in the above referred cases, it is clear that in this case action taken by the Respondent against the petitioner gets vitiated for want of giving opportunity to her for want of Section 126 (3) of I. E. Act, 2003. So the dispute is not covered under Section 126 of I. E. Act, 2003, as such this Forum has jurisdiction to try the dispute on merits. We accordingly answer Point No. 1 in the affirmative.

19) **Point No. 2 :-** Once it is found that though the complainant has changed use from Residential to Commercial i.e. unauthorized use, however, the Respondent has not followed proper course to apply under Section 126 of I. E. Act, 2003. Consumer Representative, Shri Kapadia has pointed out Commercial Circular No. 275 dtd. 18.11.2016 which is as under:-

“Consumers undertaking business or commercial /industrial/ non residential activities from part of their residence whose monthly consumption is 300 units / month and annual consumption in previous financial year was upto 3600 units. The applicability of this tariff to such consumers will be assessed at the end of each financial year. In case the consumption has exceeded 3600 units in previous financial year, the consumer will thereafter not be eligible for the tariff under this category but be charged at the tariff otherwise applicable for such consumption, with prior intimation to him”

20) Consumer Representative Shri Kapadia has submitted that, the consumer is running small Hotel in her residential premises & units consumed initially were below 3600 units per financial year, so on exceeding limit of 3600 units, tariff of Commercial rate may be applied.

21) It is seen from the photos (two) (Page No. 57) of complainants Hotel, that it is not small holding, but it is Hotel run by her on large scale in the name “Royal – Ajantha” . So, the aforesaid circular is through not applicable to present dispute; However, once, the bill dtd. 10.10.2017 (Page No. 10) for the period 21.08.2017 to 29.09.2017 for Rs. 4,080/- & the bill dtd. 08.11.2017 (Page No. 12) for the period 29.09.2017 to 24.10.2017 are issued by Respondent after inspection dtd. 19.07.2017 at commercial tariff & those bills are paid by the Consumer & accepted by the Respondent vide receipts dtd. 20.10.2017 (Page No. 11) & dtd.

16.11.2017 (Page No. 13). So, now Respondent is estopped from claiming the bill under Section 126 of I. E. Act, 2003. So, now the only recourse left with Respondent is to charge commercial tariff to the petitioner from the date of detection of change of use i.e. 19.07.2017. Hence the disputed bill of November 2017 (Page No. 17) for Rs. 95,380/- is not found legal & correct & required to be quashed. Hence, we answer point No. 2 in the affirmative & proceed to pass following order in reply to Point No. 3.

ORDER

- 1) The Petition is hereby allowed.
- 2) The debit bill of Rs. 95,380.31 (Page No. 17 & 50) is hereby quashed & the Respondent is hereby directed to issue revised bill as per Commercial Tariff from the date of detection i.e. 19.07.2017 without interest & DPC amount.
- 3) Parties to bear their own cost.
- 4) Compliance be reported within 30 days.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Laxman M. Kakade
Member / Secretary

Sd/
Vilaschandra S.Kabra
Member