

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

**Case No. CGRF/AZ/AUR/R/669/2018/09  
Registration No. 2018020077**

Date of Admission : 27.02.2018

Date of Decision : 15.05.2018

The Chairman, : COMPLAINANT  
Sara Parivartan Co-op Society,  
Gut No. 234/2,  
Aurangabad 431001.  
(Consumer No. 490090015173)

**VERSUS**

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

Complainant Representative : Shri HA Kapadia  
Respondent : Shri YB Nikam, EE (Admn),  
Rural Circle, Aurangabad

**CORAM**

Smt. Shobha B. Varma, Chairperson  
Shri Laxman M. Kakade, Tech. Member/Secretary (Dissenting)  
Shri Vilaschandra S. Kabra Member.

**CONSUMER GRIEVANCE REDRESSAL DECISION**

1) The applicant The Chairman, Sara Parivartan Co-op Society, Gut No. 234/2, Aurangabad 431001 is a consumer of Mahavitaran having Consumer No. 490090015173. 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 27.02.2018.

**Brief History of the case:**

2) The petitioner is working as chairman of a cooperative society namely Sara Parivartan which is situated at Gut No. 234/1&2 , village Sawangi, Aurangabad. The petitioner is sourcing electricity supply from Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as MSEDCL).

3) Respondent is authorized and Responsible officer of MSEDCL Company which is engage in distribution of electricity in Aurangabad other part of state of Maharashtra.

**4) The petitioner has filed the complaint raising following contentions:-**

The petitioner submits that M/S Sara Builders, Aurangabad has constructed 742 Nos. of flats at Gut No. 234/1&2 situated at village Sawangi, Aurangabad. Out of total 742 No. of flats, 500 Nos. of flats have been sold to persons/ flat owners who are now residing in their respective flats.

5) The petitioner submits that as per provision in cooperative society Act, the M/S Sara Builder formed a cooperative society namely "Sara Parivartan Coop. society" which is looking after the work of day to day common maintenance. The society is also responsible for payment towards common electricity, water, security charges etc.

6) The petitioner submits that, application for providing separate connection of 2 KW for street lighting was submitted by the petitioner to the Respondent on 30.11.2015. Respondent after verifying purpose of use of electricity, issued sanction letter and asked the petitioner to pay Rs. 7700/ towards new connection. That, the Respondent after receipt of payment, released the LT connection on 05.01.2016. The sanction letter refers the purpose as "street light". The consumer No. and meter installed bears No. 490090015173 and 14440634 respectively.

7) It is submitted that, all the bills issued by the Respondent were paid by the petitioner regularly. There was no dispute neither regarding use of electricity nor regarding payment till the visit of Addl. Executive Engineer Flying squad, Aurangabad on 08.11.2017.

8) It is submitted that, that Addl. Executive Engineer without informing and giving any intimation visited the site of the petitioner on 08.11.2017 and prepared spot inspection report.

9) That, during inspection of dt.08.11.2017, seal of the meter, meter performance etc. were found in order. However in spite of above facts , the Addl. Ex. Engineer, put following remarks at para 17 & 18 of his inspection report which reads as under.

**Para 17 : Irregularities :**

1. While checking it is observed that as per billing record of Sept. 2017, current reading is 549 KWH whereas actual reading on meter is 41133. i.e. accumulated reading found on meter.
2. As per billing record tariff applied to the consumer is LT VI whereas actual supply used is for street light of housing colony.

**Para 18 : Remedial action proposed :**

1. Issue bill to the consumer as per correct reading with accumulated consumption 40584 units.
  2. Assessment proposed u/s 126 of IEA 2003.
  3. As per MERC tariff order change the tariff from LT VI to street light to LT I residential.
- 10) That, after carrying out inspection on 08.11.2017, the Addl Executive Engineer, Flying squad , handed over the copy of spot inspection report to the representative of the at site.
- 11) The petitioner has received a letter without outward No. and date/seal of MSEDCL Company but signed by Assessing officer (Name not disclosed), Deputy Executive Engineer, Flying squad, Aurangabad thereby.
- 12) The petitioner was asked to pay Rs. 10,79,401/- within seven days i.e. before 19.12.2017.
- 13) That even though the last date of payment was mentioned as 19.12.2017, the said letter was posted by the Assessing officer on 08.02.2018 i.e. after four months after carrying out inspection.
- 14) That, Assessing officer, after carrying out the inspection on 08.11.2017, did not issue provisional bill, nor call the petitioner for hearing. The Assessing officer, by totally violating all provision of section 126 laid down in IE Act, 2003 directly issued final assessment order after period four months. The action of Assessing officer shows clear intention of harassing the petitioner and deliberate attempt to extract money from the petitioner.
- 15) That the petitioner has submitted application for providing electricity connection to street lights installed at Sara Parivartan society area. Issuing of monthly electricity bills as per meter reading and as per relevant tariff is

jurisdiction of Respondent and not of consumer/ petitioner. The petitioner is surprised to note that Respondent is trying to pass burden of his own wrong doing on the petitioner and also trying to extract money by grabbing the petitioner under threat of section 126 of EA 2003 for his own wrong doing.

16) The petitioner states that the final assessment order, issued after period of four months, by violating all provisions of section 126 of EA 2003 needs to be quashed as section 126 does not attract in the present matter.

17) 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 provisional bill duly served, proceeding of hearings , details of assessment etc.
3. The assessment order issued U/s 126 may be quashed .
4. Respondent may be directed to test the meter and to issue revise bill as per its testing results.
5. The concerned office of Respondent company may be directed to pay Rs. 25000/ for trying to extract money from the petitioner under pretext of section 126 of EA 2003.
6. Respondent may be directed to pay Rs. 15,000/- for harassment and mental agony and Rs.10,000/- towards cost of filing the present petition.

**18) The Respondent has submitted say as under : -**

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 to entertain the complaint.

19) 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.

20) The Additional Executive Engineer (Flying Squad), MSEDCL Rural Circle/ The Assessing Officer on dated 08.11.2017 carried out inspection of consumer premises in presence of Consumer's Representative and found following irregularities -

21) As per billing record of September-2017, current reading is 549 KWh whereas actual current reading on meter is 41133 KWh i.e. accumulated reading found on meter.

22) The Additional Executive Engineer (Flying Squad), MSEDCL Rural Circle/ The Assessing Officer has sent the provisional assessment sheet along with K-1 proforma to O&M sub division on date 13.11.2017 and in the same letter communicated that the date of hearing is arranged on 18.11.2017 at 11.15 hrs.

23) However, the Consumer has not approached at Flying Squad office and hence, the Assessing Officer has issued Final Assessment Order on dtd 12.12.2017 amounting to Rs. 10,79,410/-.

24) As the case falls under u/s Section 126, hence it is requested to dismiss the petition.

**25) The complainant has submitted his rejoinder as under.**

**(A) Applicability of Tariff:**

That, it is responsibility of concern MSEDCL office to issue the bills as per correct tariff approved by MERC. However in present matter, the concerned office issued bills for street lighting provided in the premises of society as per LT VI instead of LT I B.

(B) **Mismatching of reading :**

That, the Dy. Ex. Engineer, Flying squad in his spot inspection report has mentioned that the bills are wrongly issued and there is difference in meter reading on bills and that on meter.

The meter reading is taken by MSEDCL staff and consumer has no role to play in taking meter reading.

The bills are also generated and issued to the consumer on the basis of meter reading by MSEDCL staff only .

That, consumer has no role in either taking meter reading nor in issuing bills nor in feeding correct tariff code at the time feeding new connection report to the computer system.

(C) **Violation of provision of section 126 of EA 2003:**

Flying squad did not handover any documents to the complainant nor to any of his representative on 08.11.2017. The Dy. Ex. Engineer, Flying squad, after carrying out inspection on 08.11.2017, wrote a letter on 13.11.2017 to Addl. Ex. Engineer, Rural Sub Division, Aurangabad and asked him to issue energy bill to the petitioner.

No provisional assessment order was issued / served to the petitioner.

That, the Dy. Ex. Engineer, Flying Squad, without issuing provisional assessment order and without communicating the date of hearing , went on to issue final assessment order which is totally bad in the eyes of law and against the provision of section 126 of EA 2003.

26) We have gone through the application, say, rejoinder & all documents placed on record by both the parties. We have heard both parties. Complainant Representative Shri H.A. Kapadia & Respondent Shri Y.B. Nikam, EE (Admin), Aurangabad Rural Circle. Following points arise for our determination & its findings are recorded for the reasons to follow:-

Sr. No.	POINTS	FINDINGS
1)	Whether this Forum has jurisdiction to try the dispute?	Yes
2)	Whether the final assessment order under section 126 of IE Act, 2003 is legal & Correct?	No
3)	Whether the impugned bill of final assessment order requires to be quashed ?	Yes
4)	Whether the petitioner is entitle for cost of Rs. 15,000/- for harassment & Rs. 10,000/- for mental agony & Rs. 25,000/- as claimed?	No
5)	What order?	As per final order

### **REASONS**

27) **Point No. 1 & 2 :-** The petitioner is Co-operative Society & electric connection for street light is sanctioned to the petitioner for 2.0 KW, on 30.12.2015, the demand note is at (Page No. 11). Admittedly petitioner is charged for commercial tariff LT-VI – Street Light connection. The bill for January 2018 to February 2018 is produced at Page No. 12.



28) On 08.11.2017, Flying Squad, Aurangabad made spot inspection at the petitioner's Society & submitted Spot inspection report (Page No. 13). In the said report at Para 5 – Tariff clause – following observations are made.

- 5 - Tariff a) Being applied - LT-VI Street Light.  
 b) Actually applicable LT I (B).

5- Sanctioned load is 2 KW.

17- "Type of installation & nature work – Street Light of Sara Parivartan Society. Column 17 & 18 - Carry following observations "While checking, it is observed that as per billing record of September 2017, current reading is 549 KWH, whereas actual current reading on meter is 41133 KWH i.e. Accumulated reading found on meter."

"As per bill record tariff applied to the consumer is LT VI street light of housing colony."

"Issue bill to consumer as per correct meter reading with accumulated consumption 40584 units."

"As per MERC Tariff order 2015 change the tariff from LT-VI to Street Light to LT –I B Residential." The inspection report is signed by Dy. Executive Engineer, Shri Sonat and Visiting parties & also by Consumer Representative respectively.

29) On the basis of the said inspection, final assessment bill of Rs. 10,79,410/- (Ten lakhs seventy nine thousand Four hundred ten) is issued to the petitioner which is under challenge."

30) Now, let us refer Section 126 – of IE 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.

(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:

[(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

<sup>24</sup>[(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.]

31) In a recent case decided by Hon’ble Electricity Ombudsman, Nagpur in representation **No. 51/2017, M/s. Nath Biotechnologies Ltd., V/s The Superintending Engineer,** following observations are made at Para 11, 12 & 13

“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.”*

“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.”

32) Here, in this case, it is transpired that after inspection dtd. 08.11.2017 - directly final assessment order dtd. 19.12.2017 under Section 126 of IE Act, 2003 is served to the consumer on 12.02.20018 (envelop Page No. 17 and assessment order Page No. 16). The final assessment order does not carry any Outward No. Provisional assessment order (Page No. 23) with request letter of Dy. Exe. Engineer to the Department for issuance of energy bill (Page No. 22) is produced, but no document is forthcoming, to show service of provisional order / notice to the consumer. The order of Provisional Assessment (Page No. 24) though refer the date of personal hearing scheduled on 18.11.2017, however, there is no document to show that it was served to the consumer. Thus, there is no compliance of Section 126 (2) & (3) of IE Act, 2003. Thus without giving opportunity of hearing to the consumer in this case, directly final assessment order is served upon him, it amounts to violation of natural justice & also violation of mandatory, provisions laid down under sub clause 2 & 3 of Section 126 if IE Act, 2003. Therefore, process laid down under section 126 of IE Act, 2003 is not complied with, therefore entire action taken by the Respondent

against the petition gets vitiated. On the basis of such illegal action, assessment can't be imposed against the petitioner. As such Section 126 can't be applied.

33) Rule 6.8 of MERC (CGRF & Ombudsman) excludes jurisdiction of the Forum in case of unauthorized use of electricity as provided under section 126 of IE Act, 2003, Here, since Section 126 of IE Act, 2003 has no application so, jurisdiction of the Forum is not excluded. As such we answer point No. 1.

34) Considering the said legal phenomena, now merits of the case are also requires to be seen. It is found on demand note that, it is street light connection & in this case, it relates to internal road of the petitioner society. Commercial tariff was made applicable (LT-VI) street light, but actual supply is for street light of housing colony. The said observations are sufficient to show that, it is not the case of unauthorized use, but it is only the case of change of tariff. It is the duty of the Respondent to apply proper tariff since initial stage. As such on merits also Section 126 of IE Act, 2003 has no application & final assessment order passed is found illegal & incorrect but it is only the case of change of tariff. As such Point No. 2 is answered in the negative.

**35) Point No. 3 :** - Once jurisdiction of this Forum is not excluded, then it is also necessary to examine as to whether there is unauthorized use & if it is found that there is unauthorized use, but procedure is not followed, then the recourse open is to remand the matter to give opportunity to the consumer. As regards case in hand, use of electric connection is not found changed i.e. Street Light. So, there is no unauthorized use, however tariff, LT-VI (Commercial) being wrongly applied by the Respondent, it is required to be corrected as LT-IB Residential & to that extent action proposed by the Respondent in the inspection report is required to be acted upon. From the above discussion, it is clear that the final assessment order for Rs. 10,49,410/- is illegal & incorrect, as such requires to be quashed.

36) About mismatching of meter reading, Consumer Representative Shri Kapadia has submitted that, it is the duty of the Respondent to take correct reading. Considering the spot inspection, wherein accumulated reading is found 41133 units. Considering current reading 549 units of September 17 issuance of bill is proposed for 40584 units with tariff LT-IB Residential. Though, the petitioner has claimed relief to test the meter & to issue bill according to test results, however, on going through inspection report (Page No. 13 to 15), the complete remarks of inspection of meter, it is found that the meter is checked by accucheck & it is found in working condition. So, the remarks are sufficient to show that correct reading is recorded on the meter. Fact remains that consumer has never requested to the Respondent by paying fees for testing the meter before filing the complaint. So, it is just and proper to issue the bill according to meter reading for consumption of 40584 units & it being internal roads of housing society as per LT-IB- Residential. As Such, we answer, point No. 3 accordingly.

**37) Point No. 4 :** - Here, it is found a case of not following process under section 126 of IE Act, 2003 by Respondent & non application of correct tariff. We do not feel it just & proper to grant any type of cost as claimed by the petitioner. However, the entire scenario about application of procedural aspect is found defective. Therefore, we issue direction to officers of Respondent to strictly follow process under section 126 of IE Act, 2003, only on application of mind & only wherever it is applicable, we answer point No. 4 accordingly.

---

**Note :** In reply to point No. 5 operative order is on Page No. 28

**Dissenting Opinion Of**  
**Mr. L.M. Kakade, Technical Member / Secretary in Case No. 669/18**

I have gone through the application, say, rejoinder & all documents placed on record by both the parties. I heard both parties. Complainant Representative Shri. H.A. Kapadia & Respondent Shri. Y.B. Nikam, EE (Admin), Aurangabad Rural Circle. I am not agree with opinions of Chairperson and CPO. Following are my findings against points raised by Chairperson & CPO :-

**REASONS**

1) **Point No. 1 :-** Respondent/ MSEDCL released LT Connection with consumer No. 490090015173 in the name of Chairman Common Meter, Sara Parivartan, Gut No. 234/2,Aurangabad on Dt. 05.01.2016 .

2) The Respondent stated that ,the Additional Executive Engineer, Flying Squad, Rural Circle Aurangabad / Assessing Officer on Dt. 08.11.2017 visited and carried out inspection of consumer premises in presence of consumer representative and prepared spot inspection report, consumer representative Mr. T.V. Patil also signed it. Additional Executive Engineer, Flying Squad observed irregularities & remarked as

*“( 2) Assessment proposed under section 126 of IE 2003.*

*(3) As per MERC tariff order 2015 charged the tariff from LT-VI street Light to LT-I (B) Residential. “*

3) The Respondent stated that, the Additional Executive Engineer, Flying Squad, MSEDCL, Rural Circle Aurangabad / Assessing Officer has sent the provisional assessment sheet along with K-I proforma to the Dy. Executive Engineer, Rural Sub Division-1 on Dt.13.11.2017 and requested to issue the bill along with assessment sheet to consumer, in the same letter communicated that date of hearing is arranged on Dt. 18.11.2017. The respondent stated that the

consumer has not approached at Flying Squad Office, hence Assessing Officer has issued final assessment order on Dt. 19.12.2017 of amount Rs. 10,79,410/-.

4) The complainant representative Shri. H.A. Kapadia stated that the Final assessment order issued after period of four months by violating all provisions of section 126 of EA 2003 needs to be quashed as section 126 does not attract in the present case.

He prayed that,

7. Respondent may be directed not to disconnect electricity supply of the petitioner till final disposal of grievance
  8. Respondent may be directed to produce copy of provisional bill duly served, proceeding of hearings , details of assessment etc.
  9. The assessment order issued U/s 126 may be quashed.
  10. Respondent may be directed to test the meter and to issue revise bill as per its testing results.
  11. The concerned office of Respondent company may be directed to pay Rs. 25000/- for trying to extract money from the petitioner under pretext of section 126 of EA 2003.
  12. Respondent may be directed to pay Rs. 15,000/- for harassment and mental agony and Rs.10,000/- towards cost of filing the present petition.
- 5) The contention of the Respondent / Distribution Licensee is that Assessing Officer has issued Final Assessment order on Dt. 19.12.2017 and case falls under section 126, as per rule 6.8 of M.E.R.C. Regulation 2006, CGRF is not having the jurisdiction to entertain the complaint.
- 6) The pertinent question is, Who has to look in to this question raised by the complainant representative ? How can CGRF have greater jurisdiction than the



competent authority designated under the provision of IE Act 2003 ?, CGRF is not a Civil Court having over all jurisdictions on all the matters.

7) The issue of jurisdiction of CGRF be discussed first, with directions as per IE Act 2003, Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 and through various orders passed by Hon'ble Court and Electricity ombudsman.

8) The Hon'ble Supreme Court of India, in order Dt. 20.10.2011, in civil Appeal No. 8859 of 2011, The Executive Engineer and another- V/S- M/s Seetaram Rice Mill in Judgment para 3 illustrates the objects and reasons for enacting the Act 2003, is reproduced as:

*“To ensure better regulatory, supervisory and revenue recovery system, as expressed in the objects and reasons of the 2003 Act, there was concerted effort in preventing unauthorized use of electricity on the one hand and theft of electricity on the other.”*

9) Maharashtra Electricity Regulatory Commission is constituted under section 82 of I.E. Act 2003. In exercise of the powers conferred on it by sub sections (r) and (s) of Section 181 read with Sub-Section (5) to (7) of Section 42 of the Electricity Act 2003, Maharashtra Electricity Regulatory Commission specified regulation 2006 through notification i.e. Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006.

10) *Indian Electricity Act 2003, Section 42 (5 to 7 ) are reproduced here*

*“(5) Every distribution licensee shall, within six months from the date of appointed or date of grant of license, which is ever is earlier establish a Forum for redressal of grievances of the*

*consumers in accordance with guidelines as may be specified by State Commission.”*

*“(6) Any consumer, who is aggrieved by non redressal of his grievance under Section (5) may make representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.”*

*“(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the state commission.”*

11) It is crystal clear from above that Forum shall work in accordance with the guidelines specified by State Commission i.e. as per MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006.

12) MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 Rule 6.8 is reproduced 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;*
- (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) 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. Seetaram Rice Mill, part is reproduced here

*“(53). It is a settled canon of law that the High Court would not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of India where statutory alternative remedy is available. It is equally settled that this canon of law is not free of exceptions. The courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the Civil Courts. The High Court in exercise of its extraordinary Jurisdiction under Article 226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy*

*(57) In the present case, the High Court did not fall in error of jurisdiction in entertaining the writ petition but certainly failed to finally exercise the jurisdiction within the prescribed limitations of law for exercise of such jurisdiction. Keeping in view the functions and expertise of the specialized body constituted under the Act including the assessing officer, it would have been proper exercise of Jurisdiction, if the High Court, upon entertaining and deciding the writ petition on a -jurisdictional issue, would have remanded the matter to the competent authority for its adjudication on merits and in accordance with law.*

*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.”*

*(59) For the reasons afore-recorded, the judgment of the High Court is set aside and the matter is remanded to the Assessing Officer to pass a final order of assessment expeditiously, after providing opportunity to the respondent herein to file objections, if any, to the provisional assessment order, as contemplated under Section 126(3) of the 2003 Act.”*

14) *The Hon'ble Supreme Court in the case of U.P. Power Corporation Ltd [2013 AIR (SC) 277] has held that the complaint against the assessment made by the Assessing Officer under Section 126 and Section 135 to 140 of the Act is not maintainable before the Consumer Forum. Similarly, the National Commission in the case of Walmiki Jadhav has also held that consumer forum lacks inherent jurisdiction to entertain the complaint in the case of theft of electricity and the forum in such circumstances have to keep its hand off the grievance. While deciding Representation No. 52 of 2014 by order dated 2<sup>nd</sup> September 2014 in the matter of the Esen Packaging it was also held that if the consumer is aggrieved by the final assessment order passed by the Assessing Officer, remedy of appeal under Section 127 of the Act is available.*

15) Hence the Hon'ble Supreme Court clearly directs through above order that the courts, including this Court, have taken the view that the statutory remedy, if provided under a specific law, would impliedly oust the jurisdiction of the Civil Courts. the complaint against the assessment made by the Assessing Officer under Section 126 and Section 135 to 140 of the Act is not maintainable before the Consumer Forum. National Commission in the case of Walmiki Jadhav has also held that consumer forum lacks inherent jurisdiction to entertain the complaint in the case of theft of electricity and the forum in such circumstances have to keep its hand off the grievance.

16) An Order, Dt. 30.06.2017, of the Hon'ble High Court, Bombay in Writ Petition No. 596 of 2017, Executive Engineer, MSEDCL, Rural Division Kolhapur – V/S- Shri Suresh Shivram Sawant and another , part is reproduced as under ,

*(4) By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 5.8.2016 passed by Maharashtra State Electricity Distribution Company Limited Consumer Grievance Redressal Forum, Kolhapur in Case No.7 of 201617 directing petitioner to refund sum of Rs.12,790/with interest @ 6% p.a. The Forum also held that the respondent is liable to pay electricity charges as the same is used for domestic purpose instead of commercial purpose*

- (5.) *The learned counsel for the petitioner submits that in the present proceedings, they issued notice to the respondent calling upon them to pay the electricity charges on the basis of commercial consumption instead of domestic as they learnt that the respondent was doing commercial activity on the same electricity connection. Thereafter petitioner issued notice cum order dated 24.11.2015 under section 126 of the Electricity Act, 2003 calling upon the respondent to pay sum of Rs.12,790/and penalty thereon. She submits that the said order was challenged by the respondent by filing complaint before Maharashtra State Electricity Distribution Company Limited Consumer Grievance Redressal Forum at Kolhapur. She submits that the complaint filed by the respondent itself was not maintainable in view of the Regulations framed under the Electricity Act i.e. Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2006. She submits that as per Regulation 6.8, there is a prohibition to entertain any complaint in respect of the orders passed under section 126 of the said Act. She submits that as the complaint filed by the respondent itself was not maintainable in law, impugned order is required to be set aside.*
- (6.) *On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. He submits that the complaint filed by them was according to law. He submits that the Forum considered the grievance made by the petitioner and held that the complaint was maintainable and hence, there is no question of entertaining the present petition solely on the ground of maintainability of the complaint. Therefore, there is no substance in the present Writ Petition and same is required to be set aside.*
- (8.) *The issue involved in the present Writ Petition is whether the complaint filed by the respondent before the Maharashtra State Electricity Distribution Company Limited Consumer Grievance Redressal Forum, Kolhapur is maintainable. For the sake of convenience, Regulation 6.8 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2006 is considered.*
- (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.:*
- 17) Hon'ble High Court, Bombay in this Writ Petition No. 596 of 2017 order passed recently very clearly interpreted "prima facie" word in MERC Regulation

Rule 6.8 i.e., 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, hence case is not maintainable

18) Order passed by Hon'ble Electricity Ombudsman (Mumbai) In Representation No. 19 Of 2018 In the matter of billing under section 126 of the E.A. 2003 In case of Sujata Prasanna Soparkar ..... Appellant V/s. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) ..... Respondent Date of Order: 28<sup>th</sup> February, 2018 , part is reproduced here,

*“(1) This Representation is filed on 25th January, 2018 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated 20th December, 2017 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).*

*(2) The Forum has dismissed the grievance by observing that the grievance is barred as per the provision of Regulation 6.8 of the CGRF Regulations as it attracts Section 126 of the Electricity Act, 2003 (the Act).*

*(3) Aggrieved by the order of the Forum, the Appellant consumer has filed this representation stating that the supply was given on 1st November, 2010 under Agricultural Tariff category for use of horticulture products. Appellant constructed 3 rooms in the year 2015 on the plot of which one was to store the fruits raw materials and tools, another for the Care taker and third one as spare. The Respondent carried out inspection on 24<sup>th</sup> August, 2016 and thereafter, in June 2017, issued supplementary bill of Rs. 6,16,600/-. On enquiry, it was revealed that it was assessment bill for 6 years under Section 126 of the Act. The MSEDCL has laid down the Conditions of Supply as per the provisions of the Act and on the basis of Conditions of Supply Regulations issued by the Maharashtra Electricity Regulatory Commission (the Commission). It lays down the procedure for issue of Provisional Assessment Order (PAO) and Final*

*Assessment Order (FAO) under Section 126 of the Act. No such procedure was followed before issuing the assessment bill. In the absence of FAO, the Appellant consumer could not file appeal as provided under Section 127 of the Act. The supply came to be disconnected and hence the Appellant was forced to pay 50% of the bill. The Appellant approached the Forum, however, the Forum has rejected the grievance relying on Regulation 6.8 of the CGRF Regulations. The Appellant has referred to the judgement of the Supreme Court in the matter of Executive Engineer V/s. M/s. Sri Seetaram Rice Mill as well as other orders passed by the Electricity Ombudsman (Mumbai) in this regard and prayed that action taken by the Respondent under Section 126 of the Act be Set aside and the amount paid be refunded.*

*(4) The Respondent MSEDCL has filed reply dated 24th February, 2018 stating that the Appellant consumer is having connection under LT-IV Agriculture tariff. The Assistant Engineer of the Respondent who carried out inspection in August 2016 has reported that the electricity is unauthorizedly used for residential purpose. The bill was thereafter issued as per the assessment under Section 126 of the Act. The Appellant consumer did not pay the bill, hence the supply was disconnected in September 2017. The Appellant paid the amount of Rs. 3,35,650/- on 7th October, 2017 and thereafter, the supply has been restored. The bill was issued for unauthorized use of supply and therefore, the action taken by the Respondent is correct.*

*(5) During the hearing, the Appellant pointed out that the supply is used for agricultural purpose, however, the Respondent issued supplementary bill without proper verification and without obtaining the signature of the consumer during the inspection. There is no proper explanation about the assessment worked out and no PAO and FAO was issued and served to the consumer. The Appellant, therefore, could not file the objection to the PAO. The Respondent has not passed the FAO and therefore, the Appellant could not file appeal under Section 127 of the Act and is left without remedy. The*

*Appellant therefore approached to the Forum. The Forum has not granted any relief, and has rejected the grievance as per Regulation 6.8. It is necessary to protect the interest of the Appellant consumer in such a situation by setting aside the supplementary bill.*

*(6) The Respondent MSEDCL, on the other hand, pointed out that since the supply was unauthorizedly used for residential purpose, the supplementary bill under Section 126 was correctly issued after inspection. The Respondent, however, agreed that consumer was not heard and the FAO has not been issued while sending the supplementary bill.*

*(7) Heard the parties. The Forum has rejected the grievance in view of Regulation 6.8 of the CGRF Regulations. It provides that if the grievance falls within the provisions of Section 126 of the Act for unauthorized use of electricity, the same is excluded from the jurisdiction of the Forum. During the hearing, the Respondent, however, fairly agreed that neither the PAO has been issued in this matter nor, after considering the objections, FAO has been passed.*

*(8) Section 126 of the Electricity Act, 2003, interalia provides as under: -*

*1. If 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 (3) The person, on whom a notice has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person,*



*pass a final order of assessment of the electricity charges payable by such person.*

*(9) The Appellant has relied upon the judgment of the Supreme Court in the matter of M/s. Sri Seetaram Rice Mill [2012 (1) ILR - CUT-554] in which the Supreme Court held that appropriate course of action for the High Court would have been to remand the matter to the assessing authority by directing the consumer to file his objections, if any, as contemplated under section 126 (3) and the authority to pass final order of assessment as contemplated under section 126 (5) of the 2003 Act.*

*(10) After some deliberations, parties agreed that the procedure as laid down under Section 126 of the Act will have to be followed in this case. The Respondent MSEDCL is, therefore, directed to take steps in accordance with the provisions of Section 126 of the Act. Needless to state that the Appellant consumer shall file the objections, if any, within the stipulated time as may be directed by the Assessing Officer and cooperate in the proceeding.*

*(11). This representation is accordingly disposed of."*

19) Order passed by Hon'ble ELECTRICITY OMBUDSMAN (MUMBAI) in this REPRESENTATION NO. 19 OF 2018 clearly directs regarding - if any procedure as laid down under Section 126 of the Act is not followed, the Respondent/ MSEDCL be directed to take steps in accordance with the provisions of Section 126 of the Act. Appellant consumer shall file the objections, if any, within the stipulated time as may be directed by the Assessing Officer and cooperate in the proceeding. Hence it is clear that instead of quashing the assessment bill under section 126 only on ground that if any procedure is not followed by the Assessing Officer, case be remanded to Respondent MSEDCL to take steps in accordance with the provisions of Section 126 of the Act.

20) 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 28<sup>th</sup> 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.”

21) Hon. Ombudsman, Nagpur in this case directed petitioner to approach Proper authority that is, the Electrical Inspector, and said that he may examine whether Assessing Officer was correct in determining that this was a case of unauthorized use of electricity.

22) Now consider the present dispute with ratio laid down / guidelines directions in above orders;

Consumer representative was present at spot inspection On Dt.18.11.2017, during which irregularities observed by Additional Executive/Assessing Officer Engineer Flying squad,. Consumer representative had also signed the report. From record it is observed that Additional Executive Engineer /Assessing Officer Flying squad sent letter to Dy. Executive Engineer R1 O&M Sub Division to issue energy bill to concern consumer along with provisional assessment sheet, but acknowledgement is not produced on record. Shri Kapdia H.A stated that necessary procedure has not been followed under section 126 EA 2003 and Assessing Officer issued Final assessment directly after period four months order. The letter of final assessment Dt. 19.12.17 amounting Rs 10,79,410 was received to consumer on Dt.12.02.2018 and he acknowledged it.

23) In present case the Assessing Officer has passed final order, the consumer has remedy under section 127 of the Electricity Act, 2003. The appellant therefore, should have approach to the proper authority, that is, the Electrical Inspector, under section 127 of the Electricity Act, 2003, The Forum has no Jurisdiction as per Order, Dt. 30.06.2017, of the Hon'ble High Court, Bombay in Writ Petition No. 596 of 2017, hence the case is not maintainable. The Forum has also no Jurisdiction to analysis procedurals parts of cases under Section 126, as MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 not conferred it. The rule 6.8 of Regulation 2006 is more towards excluding the jurisdiction of CGRF from cases under section 126. Also statutory alternative remedy is already available to appellant. It is very difficult to transgress in to the Jurisdiction of the competent authority under section 127. The Hon'ble Supreme Court and National Commission also not permit to try the cases under unauthorized use of supply.

24) In the present case ,the intention of consumer to file this complainant or other retakes before forum is only to save him from paying 50% of disputed bill before competent authority under section 127 i.e. Electrical Inspector. Hence I had not found any subsequent in the complaint made by consumer, Considering all facts point 1 is answered in the negative.

25) Point No. 2), 3) and 4) are not applicable since CGRF has no jurisdiction in this case.

Hence the order. (A) The Petition is hereby rejected. (B) The petitioner is at liberty to approach before Electrical Inspector under section 127 of IEA 2003 in appeal against assessment bill of Rs. 10,79,410/- Dt. 12.12.2017. (C) No order as to costs.

Sd/-

Laxman M. Kakade  
Technical Member/Secretary

---

38) Considering the aforesaid discussion & the majority view of the Chairperson & CPO, we proceed to pass the following order in reply to point No. 5.

**ORDER**

- 1) The Petition is hereby allowed in following terms :-
- 2) The final assessment order (Page No. 25 & 16) for Rs. 10,79,410/- is quashed.
- 3) The respondent is hereby directed to issue revised bill to the petitioner for consumption 40584 units by applying Residential Tariff (LT-I(B) ( As per inspection Report)
- 4) Respondent to comply within 30 days from the receipt of order & to report compliance.
- 5) Rest of the Prayer is rejected.
- 6) Parties to bear their own costs.

Sd/-  
Shobha B. Varma  
Chairperson

Sd/-  
Vilaschandra S. Kabra  
Member CPO