

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

**Case No. CGRF/AZ/AUC/742/2019/27
Registration No. 2019060105**

Date of Admission : 18.06.2019

Date of Decision : 15.10.2019

Shri. Anil Trimbakrao Vangujare, : COMPLAINANT / PETITIONER

Survey No.23, 24, Plot No. 27, Block No. 10

N-4, Shri Varad Ganesh Cooperative Society Ltd.

Parijat Nagar N-4 CIDCO Aurangabad

(Consumer No. 490014732109)

VERSUS

Maharashtra State Electricity Dist. Co. Ltd.,: RESPONDENT

through it's Nodal Officer, EE(Admn),

Urban Circle, Aurangabad.

The Addl. Executive Engineer,

Chikalthana, Sub Division, Aurangabad

For Consumer : Shri B.Y. Somvanshi

For Licensee : Shri. Mohadikar
Addl. EE, Chikalthana Sub-Dn.

CORAM

Smt. Shobha B. Varma, Chairperson

Shri Makarand P Kulkarni, Tech. Member/Secretary

Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

- 1) The applicant Shri. Anil Trimbakrao Vangujare, Survey No.23, 24, Plot No. 27, Block No. 10, N-4, Shri Varad Ganesh Co-Operative Society Ltd., Parijat Nagar N-4 CIDCO, Aurangabad having Consumer No. 490014732109. The applicant has filed a complaint against the respondent through the Executive Engineer i.e. Nodal Officer, MSEDCL Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 18.06.2019.

The brief facts of the dispute are as under:-

- 2) The petitioner has challenged the bill issued by MSEDCL since November 2018 onwards. The electricity connection is released to the petitioner in Feb-2017 under Residential category. Without giving any notice/information, the MSEDCL has issued bill for the month of November 2018 for the amount of Rs. 40,690/- on the basis of Commercial category instead of Residential category. No opportunity was given to the petitioner. Though the consumer has communicated to the Respondent by a letter dt. 01.01.2019 that he is residing there, but the Respondent has not paid any heed to the request.
- 3) That the petitioner has used electricity from his residential connection to repair compound wall of residence. For this reason, penal charges are levied. That as per circular No. 243 dt. 03.07.2015, up to consumption of 500 units in case at residential connection, same rates be charged hence the charges requires to be levied is residential.
- 4) In November 2018, as on the date of inspection, the petitioner was residing there. Now, the construction is already completed, still the petitioner is charged at commercial rates.

- 5) No intimation was given to the consumer and procedure is not followed.
- 6) Hence prayed:-
 - a) To quash the action of the Respondent.
 - b) Wrong levy of charges may be excluded from the regular bill.
 - c) Not to impose interest since November 2018 & not to disconnect the electric connection.
- 7) The Respondent in their say (P.No.18) has raised following contentions:
- 8) That on 20.02.2017, Residential electric connection was released to the petitioner.
- 9) That on 09.10.2018 spot inspection was carried out by Assistant Engineer & reported that the residential electric connection is used for commercial purpose by the petitioner & hence section 126 of Indian Electricity Act, 2003 is applicable. Accordingly charges are assessed to Rs. 38,941.47 Ps.
- 10) That as per Regulation 6.8 MERC Regulations 2006, (CGRF & Ombudsman) jurisdiction of CGRF is ousted & to dismiss the complaint.
- 11) In the rejoinder (P.NO.24, 25) dtd. 13/8/19, it is stated by the petitioner that as per section 126, following things are required to be completed:
 - A) Spot inspection report & to give its copy to consumer;
 - B) Panchanama;
 - C) Provisional assessment order & provisional bill;
 - D) Provisional assessment order requires to be served to the consumer by RPAD;
 - E) Within 30 days of provisional order, final order is required to be passed;
 - F) Thereafter appeal under section 127 of Indian Electricity Act;

- 12) In their additional say (P.No.38), the Respondent has submitted that, provisional assessment bill was sent to the consumer, but he has refused to accept it. Opportunity was given to the consumer & procedure under section 126 of Indian Electricity Act, 2003 was completed. Since the consumer did not make any communication, the bill became final, hence the consumer is at liberty to submit appeal before Electrical Inspector.
- 13) In the application dtd. 09.10.2019 the petitioner has also claimed waiver of DPC & interest & compensation. The Respondent has objected for the said claim.
- 14) We have perused the pleading & documents submitted by both the parties on record. Heard Shri. B.Y. Somvanshi for consumer & Nodal Officer Shri. Khakse for the Respondent.
- 15) Following points arise for our determination & we have recorded its findings for the reasons to follow:-

Sr.No.	PRELIMINARY POINTS	ANSWER
1	Whether there is unauthorized use of Residential electric supply by the petitioner?	No.
2	Whether the bill of November-2018 under section 126 of Indian Electricity Act requires to be quashed?	Yes
3	Whether interest & DPC levied on bills be waived?	Yes
4	Whether the petitioner is entitle for compensation	No.
5	Whether order passed by IGRC is legal & correct	No.
6	What order & costs?	As per final order

REASONS:

- 16) **Point No.1 to 3:-** The spot was inspected on 09.10.2018, the inspection report is at P.No.20. In the remark column there is mention “ सदरील टिकाणी बांधकाम चालू आहे. ” “Take action under section 126”. It is signed by Assistant Engineer for MSEDCL & also by consumer representative.

Section 126 of Indian Electricity Act prescribes as follows:-

“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 judgment 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 unauthorised 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.]"

- 17) Based on Panchnama, letter with sign of Additional Executive Engineer (P.No.21) was issued citing that using Residential connection for construction is covered under section 126 of Indian Electricity Act, 2003. Provisional bill of Rs 35,378.00 for the period of February 2017 to

September 2018 of 2963 units was issued & petitioner was directed to submit his written objection within 15 days otherwise the bill would be treated as correct & would be made final. There is an endorsement about refusal of accepting the letter with date 17.10.2018 & bears sign undefined as to who is the signatory & of what designation. It is important to note that in case of refusal of service of hand delivery, the concern is required to affix it on the premises or send it by Registered Post Acknowledgement Due or to send it by e-mail. However, it was not done. Hence, it can't be said as proper service. Hence we hold that the provisional assessment bill & letter (P.No.21 & 22) is not served to the consumer.

- 18) Then on 14.11.2018, Additional Executive Engineer, Chikalhana sent letter (P.No.39) to the petitioner informing that the petitioner has not filed any objection even after receipt of letter dt.09.10.2018, so the provisional bill is made final it was & communicated that the petitioner may file appeal under section 127 of Indian Electricity Act 2003, by depositing 50% of due amount. It is important to note that neither separate final order with reasons is passed, nor there is service of the letter dt. 14.11.2018 & final bill made to the consumer. As such the letter dt. 14.11.2018 is issued without following procedure & without giving opportunity to the petitioner of being heard & can't be treated in itself as final order.
- 19) That, on 09.10.2018 spot inspection was made by Assistant Engineer & reported that the residential electric connection is used for construction (commercial purpose) by the petitioner & hence section 126 of Indian Electricity Act, 2003 is applicable. Accordingly, charges are assessed to Rs. 38,941.47 Ps. The inspection report (P.No.20) does not specify the

specific place of construction, the nature of construction, but it is only bare version, hence not acceptable. In this back-drop, the version of the petitioner is that, he was repairing compound wall of his house, at the material time. This version as is not specifically denied by the Respondent in their say at P.No.18. Coupled with it, on perusal of CPL (P.No.13 to 15) it is seen that, in the month of August-2018 consumption was 93 units, in September 2018 – 113 units, in October 2018 – 133 units, in November 2018 – 134 units. In absence of specific version of Respondent about construction, we feel that the version of petitioner about repairing compounds wall, supports with consumption of units as above & believable & therefore we accept it.

- 20) The consumer Representative, Shri.B.Y. Somwanshi, has pointed out to us Commercial Circular No.243 (P.No.43) dtd. 3rd July 2015 issued by MSEDCL wherein clause “K” stipulates as under

“Any residential LT consumer with consumption upto 500 units per month (current month during which the supply is being taken), and who undertakes construction or renovation activity in his existing premises, does not require any separate temporary connection, and would be billed at this residential Tariff rate;”

- 21) Considering the circular & the fact that in October 2018 & before & after that also consumption of the consumer (as pointed in earlier para) was below 500 units, so utilization of electric supply by the consumer for repairing compound wall does not amount to unauthorized use, as contemplated under section 126 of Indian Electricity Act, 2003. Considering the consumption, normal charges are required to be levied. It is found that neither there is unauthorized use made by the petitioner, nor the provisional & final order was served to the petitioner. Procedure

laid down under section 126 of Indian Electricity Act was not followed. No opportunity was at all given to the consumer to submit his case, which is in breach of natural – justice. Without serving these orders to consumer his electric connection was treated as commercial & charges laid down under Section 126 of Indian Electricity Act were imposed against him, which action on the part of Respondent is found illegal & unjustifiable. It is for the Respondent to bring their action to its logical end.

- 22) At this juncture, reference of judgment passed by Hon'ble Apex Court in Civil appeal No. 3370/2007 dt. 15.02.2018, MSEDCL V/s. The appellate Authority & Anr is important wherein, at para 21 following observation is made.

"In these circumstances, if the Board initiates any action against any person/consumer, then such action must be brought to its logical end in accordance with the procedure prescribed under the Act after affording an opportunity to such person/consumer."

- 23) Therefore, considering the ratio laid down in the judgment of Hon'ble Apex Court, here in this case opportunity was not given to the petitioner. If the action taken by the Respondent does not reach to its logical end, section 126 of Indian Electricity Act is not attracted. Not only that, there is no unauthorized use of electric connection by the consumer. It is seen from the letter dt. 14.11.2018 (P.No.39) & the provisional & final bill dt. 26.11.2018 (P.No.12) for the amount Rs.40690/- that it was issued on the basis of illegal action under section 126 of Indian Electricity Act, deserves to be quashed. It is also seen that the amount charged in the provisional & final bill was carried in the next bills December 2018 onwards (P. Nos. 9 to 11) which calculation is illegal. So also further bill appears to be

issued at commercial tariff rate which is also illegal. Further on the basis of such illegal action, No DPC & interest is chargeable. Considering the above discussion, we answer point No. 1 in the negative, Point No. 2 & 3 in the affirmative.

24) **Point No.4**:- True that, the action initiated by Respondent Officer, was without taking in to account provision under section 126 of Indian Electricity Act. Since there is no evidence to show deliberate action we do not feel it proper to grant any compensation. Instead we feel it just & proper to warn the erring officer not to commit such mistakes in future. We answer point No. 4 in the negative.

25) **Point No.5**:- It is found that IGRC has not considered the law on the subject properly, hence the order passed by IGRC is not found legal & correct and requires to be set aside & quashed. We answer Point No. 5 accordingly.

Sd/-

Shobha B. Varma
Chairperson

Sd/-

Vilaschandra S.Kabra
Member

Note: The Final Order is at Point No. 26 on Page No. 11/12

Dissenting Opinion Of

Shri. M. P. Kulkarni, Technical Member / Secretary in Case No. 742/2019

I have gone through the application, say, rejoinder & all the documents placed on record by both the parties. I have also heard Complainant Representative Shri. B. Y. Somvanshi & Respondent Shri. Mohadikar, AEE, Chikalthana Sub-division during the hearings. I disagree with the opinion presented by the Chairperson and Member, CPO of the Forum. I have already recorded my findings at the time of deciding preliminary point of jurisdiction &

recorded my opinion holding that the jurisdiction of the forum is excluded under R.6.8 of CGRF Regulations.

In view of my findings on account of exclusion of jurisdiction, merits of the dispute can't be considered. Hence, I disagree with the opinion of the Chairperson and Member (CPO) & I pass the following order:-

ORDER

- 1) The complaint is dismissed.
- 2) Parties to bear their own costs.

Sd/-

Shri. M. P. Kulkarni
Technical Member / Secretary

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- 26) Considering above discussion we proceed to pass following order on majority view of the Chairperson and Member (CPO) in reply to point No.6

ORDER

The complaint is hereby allowed in following terms:-

- 1) Order passed by IGRC dt.26.04.2019 in प्रकरण क्र. औशमं/अतांत्रिक/१८-१९/१०३ is hereby set aside & quashed & on its place following order is substituted.
- 2) It is hereby declared that the action taken by Respondent under section 126 of Indian Electricity Act, 2003, is illegal & set aside & quashed.

- 3) The bills of the consumer for November 2018 & onwards be revised by excluding the charges imposed under section 126 of the Indian Electricity Act, 2003.
- 4) Accordingly, the interest & DPC charges if any charged in the bill be waived.
- 5) Normal bills as per residential tariff from November 2018 & onwards be recovered & on receiving the bills consumer to pay within time.
- 6) The erring officer be warned not to commit such mistakes in future.
- 7) Prayer of compensation stands rejected.
- 8) Compliance be reported within 30 days.
- 9) Parties to bear their own cost.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Vilaschandra S.Kabra
Member