

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

**Case No. CGRF/AZ/AUC/759/2019/44
Registration No: 2019080021**

Date of Admission : 06.08.2019

Date of Decision : 30.10.2019

M/s Thole Engineering Works, : COMPLAINANT/PETITIONER
Shop No.4-18-20/P, CTS No.4,
Laxman Chawadi Mondha Road,
Aurangabad - 431001
(Consumer No 490014646873)

VERSUS

Maharashtra State Electricity Dist. Co. Ltd.,: RESPONDENT
through it's Nodal Officer, EE(Admin),
Urban Circle, Aurangabad.

The Addl. Executive Engineer,
Kranti Chowk, Sub Division, Aurangabad

For Consumer : Shri Akhtar Ali
For Licensee : Smt. Bhalerao
Addl. EE, Kranti Chowk 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 M/s Thole Engineering Works, Shop No.4-18-20/P, CTS No.4, Laxman Chawadi Mondha Road, Aurangabad – 431001 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 06.08.2019.

Brief facts of the dispute are as under:-

- 2) That, the complainant has taken three phase LT connection of 7 Kw for his factory situated at above mentioned address on 19.05.2016 bearing Consumer No. 490014646873 and applicable tariff is LT V. The complainant was engaged in manufacturing of kitchen trolleys and other engineering works. The unit of complainant is also registered under SSI with District Industries Center, Aurangabad. The complainant was regular payer of all electricity bills issued by the Respondent.
- 3) That, on account of financial problems and uncertain market condition the petitioner decided to close the manufacturing activities in the month of February 2018. The petitioner thereafter entered into leave and license agreement from 21.03.2018 with Mr. Ronak Pradeep Thole for running business sale of plywood etc.
- 4) That, representative of Respondent visited the premises of the complainant on 06.07.2018 and carried out inspection of petitioners premises. However copy of inspection report was not handed over to the Petitioner inspite of his request.

- 5) That the Complainant was in receipt of provisional assessment bill dt. 02.08.2018 for Rs. 2,29,167/- issued by Additional Executive Engineer, Kranti Chowk, Aurangabad against consumer No.490018327659.
- 6) That the complainant visited the office of Respondent in order obtain clarification regarding assessment bill issued against consumer No. 490018327659 on 09.08.2018 and explain the situation in details about nature of use of electricity in his premises.
- 7) That the complainant was shocked to receive final assessment order dt. 06.09.2018 (Received on 27.09.2018) for Rs. 2,29,167/- against Consumer No. 490014646873. The said order was passed without conducting hearing and without providing copies of documents like spot inspection report, assessment details etc. That the provisional assessment order was issued against the Consumer No. 490018327659 and not against the Consumer No. allotted to the consumer.
- 8) It is submitted that, since the disputed amount was added in the monthly bill of November 2018, the complainant filed his grievance before the Internal Grievance Redressal Cell of Respondent on 04.12.2018.
- 9) It is submitted that, IGRC called the complainant on 19.12.2018 for hearing. No hearing was conducted on 19.12.2018. On 11.03.2019, the petitioner has received the copy of reply dt. 19.12.2018. On request of petitioner time was extended to 20.03.2019.
- 10) It is stated that Additional Executive Engineer, Kranti Chowk was not present on the date of hearing nor the other two members of IGRC were present on 20.03.2019. However, IGRC chairman conducted the hearing alone and went on to pass his order on 26.04.2019. Since the said order is passed without conducting any hearing and without full Coram, the order

passed by IGRC is illegal in the eyes of law and is against the provision of sanction 126 of Electricity Act, 2003.

11) That, the date of admission of grievance before IGRC is shown as 20.03.2019 whereas all the reference dates shown in the said order are prior to date of submission of grievance i.e. before 20.03.2019. This fact alternatively confirms that IGRC has not conducted hearing in fair and legal way and has acted only to protect the interest of MSEDCL.

12) The Petitioner prayed that:-

- 1) The assessment bill of Rs.2,29,167/- may be quashed.
- 2) Respondent may be directed not to take any coercive action.
- 3) Respondent may be directed to issue revised bill without levying interest ad DPC charges.
- 4) Respondent may be directed to pay suitable compensation towards mental agony and harassment.

The Respondent has filed say (P.No.29) as under:

- 13) On 06.07.2018, spot inspection was conducted & it was found that, the premises were used by the consumer for "VNEAR" plywood Show-room.
- 14) Accordingly, assessment under section 126 of Indian Electricity Act, 2003 was made for the period of May 2017 to June 2018 for 11912 units & for Rs.2,29,167/-. On 02.08.2018 the said bill was sent to the consumer. On 09.08.2018, with reference to the said bill, the consumer personally visited the sub-division office of the Respondent & submitted an application to quash the aforesaid bill claiming it as wrong. In the application it is averred that on account of business slack, his trolley manufacturing was shutdown. However, no documents were produced by the complainant in support of his submission. Also, the consumption

- of electricity by consumer was not reduced. So it is clear that the consumer has used the premises for his “Veneer” showroom & changed the use from industrial to commercial.
- 15) That on 16.08.2018, vide letter no. 946 bill was again sent to the complainant with corrected consumer No. & consumer was called upon to explain on 23.08.2018, but the consumer remained absent.
- 16) Hence, on 06.09.2018 final assessment bill for Rs. 2,29,167/- was issued & served to the consumer.
- 17) That as per Regulation 6.8 of MERC Regulation (CGRF & Ombudsman), 2006, jurisdiction of this Forum in the matter of Section 126 of Indian Electricity Act, 2003, is excluded. Hence it is prayed to dismiss the petition.
- 18) We have perused the pleading & documents placed on record by both the parties. Heard Consumer Representative Shri Akhtar Ali and Smt. Bhalerao Addl. EE, Kranti Chowk Sub-Divn for the Respondent on the preliminary point of jurisdiction.
- 19) Following preliminary point of jurisdiction arise for our determination & we have recorded its findings for the reasons to follow:-

| Sr. No. | PRELIMINARY POINTS | ANSWER |
|---------|---|--------------------|
| 1 | Whether this forum has jurisdiction to try the dispute? | No |
| 2 | What order? | As per final order |

REASONS:

- 20) **Point No.1:-** Three phase LT connection of 7 Kw was released to the petitioner for his factory. The applicable tariff was LT-V. Admittedly, the

petitioner was engaged in manufacturing of Kitchen trolleys & other engineering works.

- 21) The petitioner has challenged final assessment order passed under section 126 of Indian Electricity Act, 2003 (herein after referred as IE Act 2003) for Rs. 2,29,167/-.
- 22) For perusal, we have called record & proceedings of the inquiry conducted by the officers of the Respondent & it is produced on record on 15.10.2019 (P.No.50).
- 23) It goes to show that, on 06.07.2018 spot inspection (its copy is produced by the consumer & is at Pg. No. 34) was made by the officer of the Respondent in presence of consumer Shri. Chetan Thole, appears to be proprietor of M/s Thole Engineering Works. Remarks were passed as follows:

“Supply connection is used for “Vnear” Plywood showroom commercial & also there is accumulation of 3388 units”.

So, remark was passed to proceed under section 126 of IE Act, 2003.

- 24) Accordingly, provisional order & bill (its copy is produced by consumer & is at Pg. No. 19 to 22) was served to the consumer under section 126 of IE Act, 2003 for the amount of Rs 2,29,167.00/-. The consumer was called on to appear on 09.08.2018 before the Additional Executive Engineer, Kranti Chowk subdivision, Aurangabad. It is evident that on the provisional bill dtd 02.08.2018, though the name of owner was written as M/s Thole Engineering Works C/o user Chetan Thole, but consumer number was written wrong as 490018327659. Admittedly this bill was received to the petitioner & accordingly he remained personally present before the authority & submitted his objection (copy of it is produced by

- the Respondent and is at Pg. No. 41) in writing, thereby explaining that on account of slack in the business of manufacturing trolleys, his manufacturing activity was somewhat shutdown. So in that premises he stored raw material of himself & his friend. So the challan issued is unjust & wrong & need to be quashed.
- 25) It further appears that, on 16.08.2018 again a notice (copy is produced by Respondent at Pg. No. 42) was issued with corrected Consumer No. and consumer was again called for hearing on 23.08.2018. However, it's acknowledgement by consumer is not on record. Then on 06.09.2018, final assessment was made & final bill (its copy is produced by the Respondent is at Pg. No. 43 & 44) under section 126 along with coverage was sent to the petitioner. Admittedly, petitioner has received the said final bill & letter. Then he has challenged it before IGRC on 04.12.2018 & it was rejected by IGRC on 26.04.2019. Copy of IGRC order is produced at Pg. No. 26 & 27.
- 26) On going through the complete record, it is seen that in para 2 of the petition, the petitioner has admitted the fact that in February 2018 he decided to close the manufacturing activity & one Mr. Ronak Pradeep Thole was allowed to run business of plywood in the same premises. The copy of Leave & License agreement (Pg. No. 9) produced on record goes to show that the said agreement was entered with Smt. Saroj Ajit Thole. She is not the proprietor of the said firm. Change of use thus prima facie is not disputed.
- 27) Be the fact as it may, it is seen from the record that opportunity was given to the petitioner by serving provisional assessment order on him to explain. Accordingly, he has raised his objection in writing. Though on the

- provisional bill wrong consumer number was written, but it also depicts name & address of the petitioner, to which the petitioner has also responded. Hence, though it was technical error, but consumer has realized that it was regarding his assessment & therefore appeared & made submission about his business. So mention of wrong consumer no. does not negate the process undergone under section 126 of IE Act 2003.
- 28) Thereafter, final assessment was made & admittedly, it was served to the petitioner. As such procedure prescribed under section 126 of IE Act, 2003 is followed by the Respondent.
- 29) In this respect we would like to refer order dt. 30.06.2017, passed by Hon'ble High Court, in W.P.No.596/2017 produced at Pg. No. 46 to 49 which is as under:
- “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.”*
- 30) Considering this ratio and the fact that opportunity was given to the Consumer, the Respondent has completed the process prescribed under section 126 of IE Act, 2003.
- 31) Regulation 6.8 of MERC Regulation (CGRF & Ombudsman), 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;

(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.”

- 32) Considering the above rule, jurisdiction of this Forum is excluded. However, the petitioner is at liberty to file appeal before Electrical Inspector. Considering the discussion, we answer Point No. 1 in the negative & proceed to pass following order in reply to Point No. 2.

ORDER

- 1) It is hereby declared that jurisdiction of this Forum is excluded to try the dispute.
- 2) Parties to bear their own cost.
- 3) Record & proceeding (Original) of inquiry under section 126 of IE Act, 2003, be returned to the Respondent under due acknowledgement & after appeal period is over.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Makarand P. Kulkarni
Member / Secretary

Sd/-
Vilaschandra S.Kabra
Member