

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 94 OF 2022

In the matter of assessment under Section 126 of the Electricity Act, 2003

Kailas Food ProductsAppellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Thane I (MSEDCL)Respondent

Appearances:

Appellant : 1. Mahesh Khushalani
2. Madhav Gadre, Representative

Respondent : 1. Raman Datunwala, Addl. Ex. Engineer, Thane I
2. F.V. Donde, Addl. Ex. Engineer, Thane East S/Dn.


Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 21st July 2022

Date of Order : 17th August 2022

ORDER

This Representation is filed on 10th June 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 26th April 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Urban Zone (the Forum).



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2. The Forum, by its order dated 26.04.2022 has rejected the grievance application in Case No.95 of 2021 since the Forum has no jurisdiction to entertain any grievances under Section 126 of the Electricity Act, 2003.

3. The Appellant filed this instant Representation against the Forum's order. The hearing was held on 21.06.2022 when the Appellant was present physically and the Respondent attended through Video Conference. The written submission and arguments of the Appellant, in brief, are as below: -


- (i) The Appellant was an Industrial consumer (No.000038000888) from 31.12.1990 with a small-scale manufacturing business of masala items. As per Tariff Orders of the Maharashtra Electricity Regulatory Commission (the Commission) in force, the "manufacturing of masala" activity is covered under Industrial Tariff Category. The Appellant was correctly billed in industrial tariff category till March 2018.
- (ii) However, the Respondent unilaterally changed the tariff category from Industrial to Commercial from April 2018. The Appellant requested several times to restore the original Industrial tariff category as there was no change in activity. However, the Respondent did not change the tariff category to Industrial till date.
- (iii) The Respondent issued a hypothetical provisional assessment bill of Rs.15,92,563.17 under Section 126 of the Electricity Act, 2003 (the Act) in April 2018. The Appellant received a very strange, wrong, and exorbitant bill with debit bill adjustment of Rs.16,38,388/- on 07.08.2021. The debit bill adjustment is absolutely illegal, baseless, and also time barred.
- (iv) The Appellant, by its letter dated 02.05.2018 requested to cancel the provisional assessment as the Appellant has registered his manufacturing activity under Ministry of Micro, Small & Medium Enterprises (MSME).
- (v) The Appellant filed a detailed objection before the Assessing Officer and attended the hearing before the Assessing Officer (AO) who was fully convinced about its arguments, and closed the case in May 2018. The Appellant has asked for a written final order of the AO. However, orally he was informed that the entire assessment


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is under withdrawal, hence, there is no provision in the Act to issue 'NIL Final Assessment.' The subject of provisional assessment was closed by the then AO.

- (vi) As per Section 126 of the Act, the Final Assessment Order is to be given within 30 days from the provisional assessment order. However, the AO did not issue any Final Assessment Order on the said provisional assessment, as the total amount was withdrawn.
- (vii) The Appellant approached the office of the Superintending Engineer (Electrical), PWD, Chembur who is the Appellate Authority under Section 127 of the Act. It was informed that the appeal under Section 127 can be filed only after receipt of Final Assessment Order as per Section 126 of the Act. It cannot be filed against a provisional assessment order. Hence, the Appellant approached the Forum on 23.09.2021. The Forum, by its order dated 26.04.2022 dismissed the case. The Forum did not understand the basic issue that Final Assessment Order was not issued by the Respondent.
- (viii) Thereafter, the Appellant approached the Appellate Authority under Section 127 of the Act, but the Appellate Authority is not ready to admit any appeal due to the absence of a Final Assessment order.
- (ix) The Appellant has a valid license for manufacturing of masala products as per Food and Drugs Administration, Government of Maharashtra.
- (x) The licensee cannot impose a time barred illegal recovery in the current bill. Hence, it needs to be withdrawn.
- (xi) The Appellant states that in view of Section 56(2) of the Act, MSEDCL cannot add the alleged recovery of April 2018 in the bill of August 2021, being time barred.
- (xii) In view of the above, the Appellant prays that the Respondent be directed: -
 - (a) Not to disconnect the power supply till disposal of the case.
 - (b) To withdraw the illegal bill of Rs. 16,38,388/- along with interest & DPC thereon.
 - (c) To refund the tariff difference from Commercial to Industrial tariff category from April 2018 onwards along with 9% interest as per Section 62(6) of the Act.



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- (d) To compensate Rs. 10,000/- for harassment, legal expenditure, and mental agony.

4. The Respondent filed its reply by its letter dated 28.06.2022. The Respondent's written submission and arguments in brief is as below: -

- (i) The Appellant is a consumer (No.000038000888) from 31.12.1990 with Sanctioned Load of 45 HP and Contract Demand of 45 KVA at Bakery No. 10, Kopari Colony, Thane (East). It was not clarified by either the Appellant or the Respondent how the original bakery was converted to masala business.
- (ii) The Appellant was originally billed under Industrial Tariff Category. The Assistant Engineer (Quality Control) of Thane (East) Subdivision of the Respondent inspected the premises of the Appellant on 13.04.2018. During the inspection, it was observed that the Appellant was using power supply for "Packaging of Materials and Supply Chain" for commercial purpose instead of industrial purpose of manufacturing, which was other than the authorised purpose of usage of electricity, for making profit.
- (iii) Hence, the Respondent initiated action against the Appellant towards unauthorized use of electricity as per Section 126 of the Act. A provisional bill of Rs. 15,92,563.17 was served to the Appellant on 27.04.2018. The Appellant refused to pay the said provisional bill.
- (iv) An opportunity of hearing was given to the Appellant on 09.05.2018 by the Final Assessment Officer [Addl. Ex. Engineer, Thane (East) Subdivision] as per request of Consumer's letter dated 02.05.2018. Meanwhile, as per the record available, a month wise debit B-80 was fed in the system by the Billing Department of Thane (East) Subdivision, and no further action for approval of these B-80 was taken.
- (v) Addl. Ex. Engineer, Thane (East) Subdivision (AEE) sent a letter dated 10.05.2018 for taking legal advice from the Legal Adviser, MSEDCL on the matter of recovery against the said tariff change. In reply to the above letter, the legal adviser vide letter dated 16.05.2018 intimated to take the decision at the level of Subdivisional officer/Assessing officer himself.


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- (vi) Meanwhile, the consumer submitted an application to the Respondent for revision of the bill on 16.05.2018. Accordingly, a spot inspection was done on 04.06.2019 which is kept on record.
- (vii) The B-80 debit record of the Appellant was pending in the system since long due to a technical reason. It was noticed that out of 24-month wise B-80s, 16 B80s had got auto rejected in the Bill revision system. Hence, the balance B-80s were also not fed in the system, thus, remained pending. The tariff difference amount against the usage of **Industrial to Commercial** was finally debited in the Appellant's bill for the month of **July-2021 for Rs. 16,38,388.97/-**.
- (viii) The Appellant approached the Forum on 23.09.2021. The Forum, by its order dated 26.04.2022 has rightly analysed and dismissed the case. Addl. Ex. Engineer Thane (East) Subdivision by letter dated 17.05.2022 informed the Appellant to pay the bill with disputed amount.
- (ix) The Appellant then approached the office of the Electricity Ombudsman, Mumbai.
- (x) In view of the above, the Respondent prays that the Representation of the Appellant be rejected.

5. During the hearing, the Respondent was directed to submit the latest inspection report of the Appellant along with photographs of the premises.

6. Accordingly, the Respondent, by its letter dated 04.08.2022, has sent a Spot Inspection Report and photographs on the record. The activities observed in the Spot Verification Report are as under: -

- Storage of food and catering of products of other brands and to supply in bulk to hotels and institutions, etc.
- Making smaller packets of the food and catering material to supply them in bulk to hotels and institutions with their own brand named "Khushalani Stores Pvt. Ltd."


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- Storage of different food, frozen foods, and catering material of various brands and to supply them in bulk to hotels and institutions.
- Processing of various spices into fine products in packets and to supply them in bulk to hotels and Institutions with their own brand namely “Khushalani Stores Pvt. Ltd.”
- ‘Use of lift’ has been observed which is being used for movement of materials through four floors of the premises.

Analysis and Ruling:

7. Heard the parties and perused the documents on record. The Appellant is a consumer (No.000038000888) from 31.12.1990 with Sanctioned Load of 45 HP and Contract Demand of 45 KVA at Bakery No. 10, Kopari Colony, Thane (East). The Appellant was billed under Industrial Tariff Category initially.

8. The Appellant contended that the Appellant was an Industrial consumer from 31.12.1990 with a small-scale manufacturing business of masala items. As per Tariff Orders of the Commission in force, the manufacturing of masala activity is covered under Industrial Tariff Category. The Appellant was correctly billed in industrial tariff category till March 2018. The Respondent issued a provisional assessment bill of Rs. 15,92,563.17 in April 2018 under Section 126 of the Act. The Appellant filed a detailed objection before the Assessing Officer and also attended the hearing before it who was fully convinced about its arguments, and closed the case in May 2018. However, the final Assessment Order was not issued at all till date. This seems to have happened because the provisional assessment order is under challenge.

9. The Respondent contended that the Respondent inspected the premises of the Appellant on 13.04.2018 during which it was observed that the Appellant was using power supply for “Packaging of Materials and Supply Chain” which is a commercial purpose instead of industrial purpose of manufacturing. From the spot inspection report and photographs available on record, prima-facie it seems that the said premises are primarily being used for storage and packaging purposes. A provisional assessment bill of Rs. 15,92,563.17 under Section 126 of


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the Act was issued in April 2018. An opportunity for hearing was given to the Appellant on 09.05.2018 by the Final Assessment Officer. However, No Final Assessment Order has been issued till date as per record available in the Subdivision Office.

10. While going through the Case, it was observed that the Respondent is duty bound to issue a Final Assessment Order. The Commercial Circular No.316 dated 11.03.2019 of the Respondent has already issued guidelines for finalising the Cases under Section 126 of the Act.

11. The Relevant portion is quoted as below:


"F Provisional Assessment:

G Final Assessment:

The assessing officer shall afford to the consumer an opportunity of being heard, if the consumer files an objection against the provisional assessment order.

The final assessment order must be passed within 30 days of provisional assessment. This is statutory requirement.

- 1. The hearing shall be scheduled and completed within the statutory period of thirty days from the date of service of provisional assessment order.*
- 2. The oral / written statement / documents submitted by the consumer or his authorised representative or witness during the hearing shall be duly recorded.*
- 3. The final order shall be a speaking and reasoned containing the brief of inspection report, record, submission made by the consumer, occupant or person in his written reply and oral submission during personal hearing and reasons for acceptance or rejection of the same.*
- 4. The final order shall contain information regarding right to appeal as contemplated U/s 127 of the Electricity Act, 2003 and address of appellate authority.*
- 5. The list of re-constituted Appellate Authorities U/s 127 of Electricity Act, 2003 as per Government Notification vide No. EA-2015/CR-345/NGR-2, dated 11.06.2015, is annexed herewith.*
- 6. If the final order is issued based on the consent of the consumer, the matter shall be recorded in the final order and no appeal shall lie to the appellate authority in such cases as per section 127(5).*
- 7. If the final order of assessment shall also indicate the due date for payment of assessed amount, which is thirty days from the date of final order. (Format enclosed, format is indicative only and suitably be modified, if needed)*
- 8. The order of final assessment served shall be uploaded online in the system.*
- 9. After completion of above process, in case of failure to pay the assessed amount by the consumer within due date, such amount shall be shown as arrears and the*


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supply may be disconnected after serving a fifteen clear days' notice as per section 56(1) of Electricity Act 2003.

The Respondent itself has issued the above guidelines.

12. After inspection was carried out on 13th April 2018, the Assessing Officer issued a "Provisional Assessment" against the Appellant under Section 126 of the Act, calling upon them to pay the assessed amount. It was stated that there was unauthorised use of supply. Thereafter, upon hearing the consumer, FAO was not issued. This is required to be issued at the earliest. If the final bill is not acceptable, the consumer may then file an appeal with the Appellate Authority under Section 127 of the Act, upon payment of 50% of the assessed amount within 30 days.

13. The Regulation 7.9 of the CGRF Regulations 2020 states that

"The Forum shall reject the grievance at any stage under the following circumstances:

(a)

(b) In cases, which fall under Sections 126, 127, 135 to 139, 152, and 161 of the Act;

....."

14. In view of the above, the Respondent is directed to give a fresh opportunity of hearing to the Appellant as per procedure laid by the Respondent for Section 126 of the Act, and to issue a Final Assessment Order within 30 days.

15. If the consumer is aggrieved by the Final Assessment Order passed by the Assessing Officer within 30 days, the remedy of appeal under Section 127 of the Act is available to the Appellant.

16. Other prayers of the Appellant are rejected.

17. The Representation is disposed of accordingly.

Sd/-

(Vandana Krishna)

Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai

