

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 54 OF 2022

In the matter of high bill and assessment as per Section 126 of the Act.

Virendra Rajaram Dandekar..... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Panvel (R)Respondent
(MSEDCL)

Appearances:

Appellant : 1. Virendra Rajaram Dandekar
2. Suraj Chakraborty, Representative

Respondent: Prakash B. Devke, Dy. Ex. Engineer, Karjat S/Dn.

Coram: Vandana Krishna (Retd. IAS)

Date of hearing: 20th June 2022

Date of Order: 1st September 2022

This Representation was filed on 18th April 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 9th March 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).



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2. The Forum, by its Order dated 09.03.2022 rejected the grievance application in Case of K/E/1838/2283 of 2021-22.

3. Aggrieved by the order of the Forum, the Appellant has filed this representation. The hearing was held on 20.06.2022 through Video Conference. The Appellant's written submission and arguments advanced during the hearing in brief is stated as below: -

- (i) The Appellant is a Consumer (No.027632100260) from 20.09.2016 for an agricultural plantation having sanctioned load of 3 HP at Survey No. 30/2, Humgaon, Karjat, Dist. Raigad.
- (ii) The Appellant was billed for average consumption with Faulty status, Reading Not Taken (R.N.T.) status of the meter. The Appellant requested many times to the Respondent on its Online Portal to issue the bill as per actual reading, or other wise to replace the defective meter. Afterwards, the Respondent issued a high bill of Rs.86,720/-in November 2021. The Appellant requested to revise this high bill; however, the Respondent did not reply. The Respondent issued a revised high bill of Rs.74,140/- in November 2021 which was paid under protest to avoid disconnection. The revised bill is not apparently commensurate with the actual use. The Appellant suspects that the meter is faulty.
- (iii) Hence, the Appellant filed his grievance application before the Forum on 20.12.2021 with a prayer *to check the meter/ if faulty, replace it and give correct bill.*
- (iv) After filing the case before the Forum, the Subdivision Office of the Respondent raised a huge bill of Rs.7,89,530/- in February 2022 under Section 126 of the Electricity Act, 2003 (the Act) and this high bill was not issued to him but submitted directly to the Forum. This is highly



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objectionable. The Forum, by its Order dated 09.03.2022 rejected the grievance application. The Forum failed to understand the basic issue that the Respondent cannot issue such a bill when the grievance was pending in the Forum. The Order passed by the Forum is against the principles of natural justice as the same has been passed without considering the history of electricity consumption by the Appellant. The Forum has only considered the stand taken by the Respondent.

- (v) The Appellant argued that as per Section 56(2) of the Act, the Appellant can raise a bill for the past two years; however, the bill raised of Rs.74,140/- is for about three years. Hence, the said bill should be set aside.
- (vi) The Appellant argued that as per the tariff order of the Maharashtra Electricity Regulatory Commission (the Commission) dated 30.03.2020, the Commission has introduced a new tariff category “Agriculture-Others” from 01.04.2020. “Plantation” is covered under “Agriculture-Others” tariff category. The Respondent is duty bound to check the activity of the Appellant and bill the consumers as per actual activity before implementing it as per MSEDCL’s Commercial Circular 316 dated 03.04.2020. However, the Respondent did not check it; on the contrary the Appellant was fined under Section 126 of the Act when the grievance was pending with the Forum. This is an unfair and unethical practice on the part of the Respondent. Apart from this, the Respondent did not follow the guidelines of finalizing the Cases under Section 126 of the Act as per its own Commercial Circular No. 288 dated 12.05.2017 and Circular No. 316 dated 11.03.2019 on the subject matter. The Appellant referred the relevant para of Circular No. 316 which is quoted as below: -

“(viii) If the purpose of use is found changed due to change in tariff order by MERC, then the case neither falls under Section 126 of E.A. 2003 and should be treated as a plain tariff case.”



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- (vii) The Appellant argued that as per “Consumer Personal Ledger” (CPL), the reading in November 2021 was 83921 kWh which does not tally with one HP load. There is inconsistency in the reading shown in CPL. This clearly indicates that the meter is defective. Hence, the Appellant should be billed as per Regulation 15.4 of the Supply Code Regulations 2005.
- (viii) There is less use of electricity in rainy season.
- (ix) In view of the above, the Appellant prays that the Respondent be directed
 - i) to set aside the energy bill of Rs.74,140 /- under Section 126 of the Act and refund the bill amount, which was paid under protest, and pass the order as per Regulation 15.4 of the Supply Code Regulations 2005.
 - ii) To compensate suitably towards harassment and mental agony.

4. The Respondent, by its letter dated 16.06.2022 filed its reply and the e-hearing was held on 20.06.2022. Its written submission and arguments in brief are as below:

- (i) The Appellant is Consumer (No.027632100260) from 20.09.2016 for an agricultural plantation having sanctioned load of 3 HP at Survey No. 30/2, Humgaon, Karjat, Dist. Raigad.
- (ii) The Respondent inspected the premises of the Appellant on 06.01.2022. During the inspection it was observed that the Appellant’s power supply was sanctioned for “Agricultural Activity”. The Appellant was being billed under the Agricultural- Metered Tariff Category. However, the Appellant was using power supply for the purpose of “Tree Plantation”. which is covered under “LT IV (c) –Agricultural –Others” which is a higher tariff category. This clearly means that the consumer was using power supply of higher tariff category other than the use sanctioned by the Licensee. This is nothing but a dishonest act for earning profit. The



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consumer was liable for action under Section 126 of the Act. Hence, the Appellant was provisionally assessed for Rs. 7,89,526/- for the period September 2016 to January 2022 under Section 126 of the Act. This does not come under the purview of the Forum. Hence, the argument of the Appellant that the assessment bill should not have been issued while the grievance was pending in the Forum has no merit.

The relevant Regulation 7.9 provides as under: -

“7.9 The Forum shall reject the Grievance at any stage under the following circumstances:

- (a) In cases where proceedings in respect of the same matter and between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;*
- (b) In cases, which fall under Sections 126, 127, 135 to 139, 152, and 161 of the Act;*
- (c) In cases where the Grievance has been submitted two (2) years after the date on which the cause of action has arisen;*
- (d) In cases of recovery of arrears where the bill amount is not disputed; and*
- (e) In the case of Grievances, which are:*
 - (i) frivolous, vexatious, malafide;*
 - (ii) without any sufficient cause; or*
 - (iii) where there is no prima facie loss or damage or inconvenience caused to the Complainant or the consumers who are represented by an association or group of consumers:*

Provided that no Grievance shall be rejected unless the Complainant has been given an opportunity of being heard.”

(Emphasis Added.)

- (iii) The Appellant filed an online complaint at the Consumer’s Facility Centre on 18.11.2021 for resolution of average bill of the last three years. The Respondent issued a bill of Rs. 86,720/- on 27.11.2021 as per actual meter reading. The said bill was subsequently revised to Rs.74,140/- in



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November 2021. This bill was based on the reading of the meter as 83921 kWh in November 2021. The meter was tested by accucheck and found in order. However, there is a mismatch of slot readings and main header reading. The reading of 83921 is taken as the lowest reading of the slot readings.

- (iv) The Appellant has been billed to an amount of Rs.74,140/- for 36 months for 68775 units (83921-15146) for the period from April 2019 to Nov.2021.
- (v) The Appellant filed its grievance before the Forum on 28.12.2021. During the hearing, the Forum directed to submit a copy of the original application for new connection (A1 Form). The A1 Form indicates that the three phase LT connection was originally requested for agricultural purpose. Demand notice was issued on 23.05.2016 and the connection was released on 27.05.2016. As per consumer's application, the supply was requested for agricultural purpose, but as per spot verification report, it is being used for tree plantation like mangoes, coconut, chikoos, etc. Hence, the Appellant is assessed under Section 126 of the Act.
- (vi) The meter was inspected on 06.01.2022 showing the reading as 000192 KWH and the meter slot readings as 84074, 84092, 84086 & 84078 KWH. On 14.01.2022, the meter was checked by Accucheck instrument and found in order. The slot readings on 22.01.2022 were found as 084105, 084150, 084112 & 084093 KWH. The Main reading is 000297 KWH. Hence, from 06.01.2022 to 22.01.2022 there was a consumption of (000297 – 000192) 105 units for 16 days. Based on this, the provisional assessment bill of Rs.7,89,526/- was used for the period September 2016 to January 2022.
- (vii) The Forum has rightly rejected the grievance.

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(viii) In view of the above, the Respondent prays that the Representation of the Appellant be rejected.

Analysis and Ruling

5. Heard both the parties and perused the documents on record. The Appellant is a Consumer from 20.09.2016 for agricultural plantation having sanctioned load of 3 HP at Survey No. 30/2, Humgaon, Karjat, Dist. Raigad.

6. There are two issues in the grievance, namely the assessment of Rs.7.89 lakhs under Section 126 of the Act, and the performance of the meter and the related bill of Rs.74,140/-.

Assessment under Section 126 of the Act

7. The Respondent contended that Respondent inspected the electric installation of the Appellant on 06.01.2022. It was observed that the Appellant`s power supply was sanctioned for “Agricultural Activity.” The Appellant was being billed under the Agricultural- Metered Tariff Category. However, the Appellant was actually using power supply for the purpose of “Tree Plantation” which is covered under “LT IV (c) –Agricultural –Others” Tariff Category. The consumer was using power supply of a higher tariff category other than the use sanctioned. The Respondent has acted under Section 126 of the Act. The Respondent issued a provisional assessment of Rs.7,89,526/- under Section 126 of the Act for the period September 2016 to January 2022 and the bill was served to the Appellant on 25.04.2022.

8. The Regulation 7.9(C) of the CGRF & EO Regulations 2020 provides as under:
*“7.9 The Forum shall reject the Grievance **at any stage** under the following circumstances:*



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- (a)
- (b) ***In cases, which fall under Sections 126, 127, 135 to 139, 152, and 161 of the Act;***
- (c)
- (d)
- (e)

Provided that no Grievance shall be rejected unless the Complainant has been given an opportunity of being heard.” (Emphasis added)

9. The Supreme Court, in the U.P. Power Corporation versus Anis Ahmad [2013 SCALE 334] has held that a complaint against the assessment made by the assessing officer under Section 126 or against the offence committed under Section 135 or 140 of the Electricity Act, 2003 is not maintainable before the Consumer Forum. It is also held in the said case of U.P. Power Corporation that the act of indulging in unauthorized use of electricity by a person neither has any relationship with unfair trade practices nor restrictive trade practices.

There is no bar for taking action under Section 126 of the Act, even if the grievance was registered in Grievance Redressal Mechanism as per CGRF & EO Regulations 2020.

10. While going through the Case, it is observed that after issuing a provisional assessment bill, 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. The Respondent stated that a Notice was issued to the Appellant for finalising the assessment bill; however, the Appellant did not attend the hearing. Thus, the finalization of the assessment bill is still pending. Accordingly, in the hearing, the Respondent was advised to schedule a hearing and give a further opportunity to the Appellant, to be

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heard and to finalize the assessment bill expeditiously. This issue need not be examined further by the Electricity Ombudsman.

Performance of Meter

11. The Respondent issued a bill of Rs. 86,720/- on 27.11.2021 as per actual meter reading. The said bill was subsequently revised to Rs.74140/-. The Respondent contended that the reading of the meter was 83921 in November 2021, that the meter was tested by Accucheck and found in order. The assessment was issued for 68775 (Reading 83921 KWH - Reading 15146 KWH) units for 36 months from April 2019 to Nov.2021. It is seen that the monthly average consumption comes to 1910 (68775/36) units per month. This average does not match with 3 HP connected load. It was also not proved by the Respondent that the Appellant used the power supply of the meter for any other activities. The Respondent did not take monthly readings. Though a warning letter was issued to the meter reading agency, no reading is available to check the proper functioning of the meter. The Appellant prayed before the Forum for checking the meter and if it was not functioning properly, requested to replace it. However, we find that there is no consistency in the reading of the meter though the Respondent claimed that the meter was tested and found in order.

12. While perusing the earlier CPL of the Appellant, the consumption pattern of the Appellant for one year of healthy period is tabulated as below. This healthy period is taken only up to September 2018, as from October 2018 onwards no readings are available.



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Consumption Pattern for Healthy Period from				
Month	Initial Reading (KWH)	Final Reading (KWH)	Diff. (Units)	Status
Oct-17	5643	6048	405	Normal
Nov-17	6048	6726	678	Normal
Dec-17	6726	7323	597	Normal
Jan-18	7323	8021	698	Normal
Feb-18	8021	8861	840	Normal
Mar-18	8861	9749	888	Normal
Apr-18	9749	10639	890	Normal
May-18	10639	11731	1092	Normal
Jun-18	11731	13084	1353	Normal
Jul-18	13084	13323	239	Normal
Aug-18	13323	13467	144	Normal
Sep-18	13467	13780	313	Normal
Total for 1 year			8137	
Maximum units recorded during June 2018			1353	
Minimum units recorded during August 2018			144	
Average Units recorded per month			678	

From the above table, the trend of consumption is established. The average monthly consumption comes to 678 units, while the Respondent billed the Appellant based on meter reading of 1910 units per month. These 2 figures do not coincide or match.

13. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

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This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions.

14. Considering these peculiar circumstances, the Respondent is directed
- a) to withdraw the supplementary bill of Rs.74140/- and to revise the bill considering the average consumption of 678 units per month for the period of 24 months from Dec. 2019 to Nov. 2021 without any interest and DPC if any levied.
 - b) to replace the existing meter by a new meter.
 - c) to give an opportunity of hearing to the Appellant for final assessment under Section 126 of the Act.
 - d) Compliance to be reported by the Respondent within two months from the date of this order.
15. The Representation is disposed of accordingly.

Sd/-
(Vandana Krishna)
Electricity Ombudsman (M)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

