

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO.22 OF 2022

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

Parmanand Motiram Appellant

V/s.

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

Appearances:

For Appellant : Ganesh Datey, Representative

For Respondent : Pravin Chakole, Executive Engineer

Coram: Vandana Krishna (Retd. IAS)

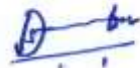
Date of hearing: 8th April 2022

Date of Order: 22nd April 2022

ORDER

The Representation is filed on 22nd February 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 1st November 2021 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).

2. The Forum, by its Order dated 01.11.2021 has dismissed the grievance application in Case of K/E/1800/2236 of 2021-22 by observing that the grievance falls under Section 126



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of the Electricity Act, 2003 (the Act) which is not maintainable as per Regulation 7.9 of CGRF & EO Regulations 2020.

3. Aggrieved by the order of the Forum, the Appellant filed this representation which is taken in brief as below:

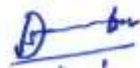
- (i) The Appellant was a LT Single Phase Commercial Consumer (No. 021514209160) in name of Parmanand Motiram from 06.10.1984 having sanctioned load (SL) of 0.5 KW. There is another electric connection for Industrial purpose in the name of Premchand Chatelal (Consumer No. 021517002416) from 24.11.2006 with SL of 10 HP. Both these connections are in the same premises at Barrack 1894, Section - 40, Ulhasnagar-5, and the Appellant is owner and occupier of the premises having both the connections. The change of name was not done till date.
- (ii) The Appellant stated that meter of Industrial Consumer No. 021517002416 was initially recording correctly as per actual use. However, there was abnormal recording of Maximum Demand (MD) in the meter of 42 KVA on 23.06.2018. The Appellant was billed for Rs. 15180/- for 127 units due to abnormal recording of MD as 42 KVA. This clearly established that meter was defective. The Appellant requested by his application dated 07.09.2018, to replace the meter on priority basis and revise the bill as per actual consumption pattern in past. The Appellant put on record the video taken on 24.08.2018 of abnormal recording of MD of the meter. The meter pulses were found blinking at abnormal rate, even though the load of the meter was totally cut off from the circuit.
- (iii) The bill was reached abnormally up to Rs.76040/- in September 2018, The Respondent failed to replace the meter and revise the bill. Under this circumstance, the Appellant has paid more than the normal bills. Hence, the Appellant was never in default in paying the bills.
- (iv) The Respondent tested the meter (Sr.No.MS 225763) of Secure make on 26.10.2018, the MD KVA was found recorded as 1.8, 2.1, 41.8, 42.0, 42.0 &


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42.0 KVA on 20.04.2018, 07.05.2018, 23.06.2018, 02.07.2018, 20.08.2018 and 01.09.2018 respectively.

- (v) The supply of Industrial Consumer No.021517002416 was disconnected on 28.01.2019 permanently for fictitious arrears. Thereafter, the Appellant has taken supply from the existing Commercial connection for maintenance of the machines of the industrial unit as machinery need periodic maintenance. The Commercial rate is higher than the Industrial rate and there was no intention to earn profit.
- (vi) As there is no response from the Respondent, the Appellant registered the complaint of high bill of the Industrial consumer on 12.02.2019 on the portal of Prime Minister, Govt. of India, but the high bill was not revised.
- (vii) In the meantime, the Assistant Engineer (Quality Control) and the team of the Respondent inspected the premises of the Appellant on 15.05.2019 and claimed that the Appellant has illegally extended the power supply to industrial unit. Hence, the Respondent has penalised the Appellant for unauthorized use of electricity as per Section 126 of the Act which is illegal since both the Officers were not authorised to raise the bill under Section 126 of the Act. The Appellant protested the alleged illegal provisional bill of Rs.63,590/- at random assessment even though the reading was available which was very less.
- (viii) The Respondent tested the meter (Sr.No.1858899 of HPL Make) of Commercial consumer on site on 20.05.2019 and found that the meter was working 30% slow.
- (ix) The Appellant was running from pillar to post to solve his grievance, but the grievance was not solved. The Respondent formed a Committee to review the case. The Appellant has submitted all important papers to the Committee for revision of bill. The Committee directed to club both the connections; however, relief was not given for alleged assessment bill as per Section 126 of the Act.
- (x) The Appellant filed his grievance in Internal Grievance Redressal Cell (IGRC) on 31.08.2019. The IGRC by its order dated 24.12.2019 has partly allowed the




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grievance by direction to send the meter to manufacturer for testing purpose and revise the bill as per actual consumption pattern.

- (xi) As per the order of the IGRC, one month bill of the Appellant was revised on 03.02.2020, two bills were revised on 26.05.2020. However, the high bills of July 2018 and August 2018 were not revised. The IGRC failed to penalise the concerned staff in non-performing their duty.
- (xii) It is clearly established from the bill revision that the Appellant was not at fault. The Respondent has illegally disconnected the supply of the Industrial connection on 28.01.2019.
- (xiii) Hence, the extension of single phase supply of Commercial tariff category (higher Tariff Rate) to lower industrial tariff category for maintenance purpose of machines. There is no undue benefit to the Appellant to attract Section 126 of the Act. The essence in Section 126 never expressed anywhere of such senseless recovery. The Appellant was compelled to pay the illogical assessment under Section 126 for starting the industrial unit.
- (xiv) The Appellant was not in position to file appeal mentally against assessment under Section 127 of the Act as the Appellant was totally exhausted due to disconnection threat of the Respondent, and survival.
- (xv) The lockdown due to Covid-19 epidemic started on 23.03.2020. After its relaxation, the Appellant filed its grievance again in IGRC on 26.03.2021 stating that the Appellant is not eligible for action against Section 126 of the Act. The Commercial meter was found 30.6 % slow as per testing report dated 20.05.2019. The assessment given was not as per test report of the meter. The bill of the three phase industrial consumer has already been revised as per earlier IGRC order dated 24.12.2019. Hence, the Appellant prays for withdrawal of assessment bill of Section 126 of the Act and the amount paid under protest be refunded with interest. The IGRC, by its order dated 29.06.2021 has rejected the grievance.



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- (xvi) The Appellant approached the Forum on 15.09.2021 which was registered on 24.09.2021. The Forum, by its order dated dated 01.11.2021 has dismissed the grievance application. The Forum failed to understand the basic issue.
- (xvii) The Officers of the Respondent have misused their position. The grievance of billing dispute was not solved properly, and hence they failed to perform their duty. There were multiple correspondence, however, they did not bother to reply. They are liable to be punished as per Section 154 of the Act.
- (xviii) In view of above, the Appellant prays that the Respondent be directed
- to withdraw the Assessment bill issued under Section 126 of the Act and the amount paid under protest be refunded with accrued interest.
 - to take stringent action against the concerned Officers of the Respondent as per Section 154 of the Act.

4. The Respondent has filed its reply on 16.03.2022 by email which in brief is as under: -

- The Appellant, Surajbhan Sahu, was a LT single phase Commercial Consumer (No. 021514209160) in the name of Parmanand Motiram from 06.10.1984 having SL of 0.5 KW at Barrack No. 1895, Section - 40, Ulhasnagar-5. There is another electric connection for Industrial purpose in name of Premchand Chatelal, (Consumer No. 021517002416) having SL of 10 HP at Barrack No. 1894 (next to Consumer No. 021514209160). The power supply of the Industrial consumer was disconnected on 28.01.2019 due to outstanding dues.
- The Assistant Engineer (Quality Control) and Special Committee Team of Kalyan Circle II of the Respondent has inspected the premises on 15.05.2019. During inspection, it was observed that the Appellant has illegally extended the power supply of Commercial consumer to the premises of disconnected Industrial Consumer of Barrack No. 1894. The Appellant was found in indulging unauthorised use of electricity for the purpose other than the usage of electricity authorised.


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- (iii) Hence, the Respondent has initiated the action against the Appellant towards unauthorized use of electricity as per Section 126 of the Act. The provisional bill of Rs. 63,590/- was served to the Appellant on 24.05.2019. The final assessment bill was issued to him on 21.06.2019 after giving opportunity of hearing as per mandate of statute of the Act. The relevant portion of the final assessment order is reproduced as below:
- “You are requested to pay the final assessment bill amount under Section 126 of Rs. 63,590/- (Sixty three thousand five hundred ninety only) within 15 days from receipt of the final order. If you are not satisfied with this final assessment order, you make filed to appellate authority u/s 127 EA 2003 within 30 days from date of receipt of this order depositing 50 % amount of the final assessment order..... The address of the Appellate Authority of u/s is as below..... ”*
- (iv) The supply of the Appellant was disconnected however, the Appellant paid the final bill of Assessment as per Section 126. The Appellant did not apply for reconnection of power supply. The Appellant remained Permanently Disconnected (PD) Status.
- (v) The owner of Consumer No. 021517002416 (Premchand Chatelal) has also paid the revised bill and reconnected the supply.
- (vi) The Appellant filed a grievance application in IGRC. The IGRC by its order dated 24.12.2019 has partly allowed the grievance. Accordingly, bill of the Appellant was revised.
- (vii) The Appellant again filed his grievance in IGRC on 26.03.2021 for withdrawal of supplementary bill of Section 126 of the Act and the amount paid against the bill be refunded with interest. The IGRC by its order dated 29.06.2021 has rejected the grievance.
- (viii) The Appellant approached the Forum on 15.09.2021 which is registered on 24.09.2021. The Forum, by its order dated dated 01.11.2021 has dismissed the grievance by observing that the grievance falls under Section 126 of the Act which is not maintainable as per Regulation 7.9 of CGRF & EO Regulations 2020.
- (ix) In view of the above, the Respondent prays that the Representation of the Appellant be dismissed.



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5. An online hearing was held through Video Conferencing on 08.04.2022. The Representative of the Appellant reiterated the submission made in the Representation and argued that the meter of Industrial connection was recording correctly up to May 2018. However, there was abnormal recording of MD up to the level of 42 KVA from June 2018 onwards till meter replacement. The Appellant was overbilled from June 2018 onwards. The Appellant has complained on 07.09.2018 for replacement of the meter and revision of high bill on the basis of actual consumption pattern recorded in past. The meter pulses were found blinking at abnormal rate, even though the load of the meter was totally cut off from the circuit. The Respondent failed to replace the meter and revise the bill. On the contrary, the supply of the industrial meter was disconnected illegally.

6. The Appellant further argued that due to disconnection of industrial supply, the supply was extended from the existing commercial connection for periodic maintenance of the machines of the industrial unit and not for production in earning any profit. It was compelled to do so as industrial meter was illegally disconnected. The Commercial rate is higher than the industrial rate. Both the connections belong to the Appellant. Hence, there was no ill intention for extension of load. The Section 126 of the Act is not applicable in the instant case. The Officers of the Respondent were not authorised to inspect the installation and raise the bill of Rs. 63,590/- under Section 126 of the Act.

7. The Appellant has protested the alleged illegal provisional bill and he was compelled to pay the illogical assessment for starting the industrial unit for livelihood and survival. The lockdown started on 23.03.2020 due to Covid-19 epidemic. After relaxation, the Appellant filed its grievance again in IGRC on 26.03.2021. The IGRC by its order dated 29.06.2021 has rejected the grievance. The Appellant approached the Forum on 15.09.2021 and the Forum by its order dated 01.11.2021 has dismissed the grievance application referring the Regulation 7.9 of CGRF & EO Regulations 2020. The Forum failed to understand the core issue. The concerned staff of the Respondent has misused their position and failed to perform their duty. They are liable to punish as per Section 154 of the Act. In view of above, the Appellant prays


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that the Respondent be directed to withdraw assessment bill issued under Section 126 of the Act and the amount paid against the bill be refunded with interest.


8. The Respondent argued that Spot Inspection was carried out as per procedure laid down in Section 126 of the Act. The Industrial load was taken on Commercial connection for production purpose. The provisional bill of Rs.63,590/- was issued in time by Provisional Assessing Officer. The opportunity of hearing was given before issuing final assessment bill. The final Assessment bill was served by Final Assessing Officer where it was advised that if he is not satisfied with this final assessment order, he has remedy to file appeal to Appellate Authority as per Section 127 of the Act within 30 days depositing 50 % amount of the final assessment order. There is no provision to take away jurisdiction of the Appellate Authority and bring it before the Forum or Electricity Ombudsman merely pointing out various allied issues which are not related under purview of Section 126. The Respondent therefore prayed that the Representation of the Appellant be rejected which is not maintainable as per Regulation 7.9 of CGRF & EO Regulations 2020 as rightly held by the Forum.

Analysis and Ruling

9. Heard the parties and perused the documents on record. In this case, there are two galas, one is having Industrial, and the other is having Commercial electric connection. The Commercial connection is in the name of the Appellant and the Industrial connection is in the name of Premchand Chatelal. The details are tabulated as below:-

Sr. No.	Name of Consumer	Consumer No.	Address	Sanctioned load	Date of Supply	Purpose
1	Parmanand Motiram	021514209160	Barrack No. 1895	0.5 KW	06.10.1984	Commercial
2	Premchand Chatelal	021517002416	Barrack No. 1894	10 HP	24.11.2006	Industrial

It is seen that the Industrial connection got disconnected due to non-payment. The Appellant contended that it was billed due to technical defect of abnormal recording of MD


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from June 2019 to September 2019. In these four months' period, the bill was about Rs.76,040/-. It was not possible to pay these high bills, however, the Appellant has already paid the amount of bills based on the previous average, i.e., an amount of Rs.15,180/-. The Respondent did not revise the bills and replace the meter in time; hence, the supply was disconnected. The supply on the said connection was unauthorisedly extended by the Appellant from the neighbouring Commercial connection for maintenance / testing of the machines of the industrial unit, and not for regular production as the industrial meter was illegally disconnected.


On the other hand, the Respondent stated that it inspected the premises of the Appellant on 15.05.2019 where it was found that the Appellant has illegally extended the power supply to the premises of disconnected Industrial Consumer of Barrack No.1894 from the neighbouring Barrack No.1895. Hence, the Respondent has initiated action against the Appellant towards unauthorized use of electricity as per Section 126 of the Act.

Opportunity of appeal was available to the Appellant as per Section 127 of the Act; however, the Appellant has not availed the same. The defect or flaw in initiating action under Section 126 of the Act, if any, can only be adjudicated by the Statutory Authority under Section 127 of the Act which is the Superintending Engineer, Mumbai Regional Inspectorate Circle of Works, Energy & Labour Department, Government of Maharashtra.

10. The CGRF & EO Regulations 2020 specifies that the cases covered under Sections 126, 127, 135 to 139, 152, and 161 of the Act does not constitute a grievance under this Grievance Redressal Mechanism. 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;*


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- (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.)

11. In the Judgment of Apex Court dated 01.07.2013 in Civil Appeal No. 5466 of 2012 (arising out of SLP (C) no. 35906 of 2011) of U.P. Power Corporation Ltd. & Ors V/s. Anis Ahmad, there is a clear mention that against the final assessment order under Section 126 of the Electricity Act, 2003, there cannot be any dispute before the Forum as there is an independent machinery available as per Section 127 of the Act to challenge the final assessment order including all procedural defects, legal flaws, etc. Accordingly, if once there is a final assessment order under Section 126 which is amenable for appeal under Section 127 then in the light of CGRF & EO Regulations 2020, i.e., Regulation 7.9 and aforesaid Judgment of Hon'ble Supreme Court, it will not be possible to enter into the issue of legality and validity of the order passed by the Assessing Officer.

12. There is, therefore, no reason to interfere in the order of the Forum. Representation of the Appellant is therefore rejected and disposed of accordingly.

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


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Secretary
Electricity Ombudsman Mumbai

