



## BEFORE THE OMBUDSMAN

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

606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051  
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### **REPRESENTATION NO.16 OF 2006**

In the matter of bill dispute and unauthorised use of electricity

M/s. Swasti Vinayak Synthetics Ltd..... Appellant

V/s

The B.E.S.& T Undertaking..... Respondent

Present:

1. Shri W.G. Gorde, Ombudsman
2. Shri S.N. Yadwad, Secretary
- 3.

On behalf of the Appellant:

1. Shri Anil S. Kawale, Consultant on behalf of  
M/s. Swasti Vinayak Synthetics Ltd
2. Shri Vijay Kadam, Accounts Executive

On behalf of the Respondent:

1. Shri Subir S. Ghosh, Superintendent, (Energy Audit), B.E.S.& T Undertaking
3. Shri Tanoji J. Mane, Sub Engineer, (Energy Audit), B.E.S.& T Undertaking

**Date: 31<sup>st</sup> March, 2006**

### **ORDER**

M/s. Swasti Vinayak Synthetics Ltd (hereinafter referred to as the Appellant) is a consumer of the B.E.S.& T Undertaking (hereinafter referred to as the Respondent). It is situated at Jogani Industrial Estate, Parel, Mumbai. The present appeal is filed by the consumer against the order of the Consumer Grievance Redressal Forum issued on 30<sup>th</sup> September, 2005 which was communicated to the Appellant on 3<sup>rd</sup> October, 2005. The Forum held that the present grievance comes under Regulation 6.4(1) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 and relates to unauthorised use of electricity. The Forum did not therefore pass any specific order on merit, the matter being outside the jurisdiction of the Forum and disposed of the complaint. Aggrieved with this decision, the present representation happens to be filed. Brief details in the representation are as under:

2. The Appellant had a meter with serial number R850280 upto 8<sup>th</sup> November, 1998 which was then replaced by a new meter with serial number T970431. Both the meters were meant for commercial use till 18<sup>th</sup> October, 2000. The tariff of the meter no. T970431 was changed to industrial with effect from 18<sup>th</sup> October, 2000. It had been paying the current bills. However, it received a bill of Rs. 5,67,674.48 from the Respondent on 23<sup>rd</sup> January, 2002. This was challenged in appeal before the Electrical Inspector who stayed the recovery of the bill amount. In respect of the second meter number T970431, the officer of the Respondent visited the premises on 1<sup>st</sup> September, 2003. Upon inspection, he alleged that the supply is used for commercial purpose (instead of industrial use) and informed that the tariff C-2, meant for commercial use, would be effected from 1<sup>st</sup> August, 2003. The Respondent accordingly changed the tariff of this meter to C-2 with effect from that date and also informed the Appellant on 28<sup>th</sup> January, 2004 that the past bills for this meter are required to be amended from industrial tariff to commercial tariff.

3. The Appellant submits that on or about 10<sup>th</sup> July, 2003, machinery from the premises were removed to their another factory. However, certain machines are still there at the above premises in Jogani Industrial Estate and are used for industrial purpose. The office maintained in the said premises is ancillary to the industrial purpose.

4. The Appellant contends that the Respondent changed the tariff to commercial, from date of installation of the machines and not from 10<sup>th</sup> July, 2003 (date on which some machines were shifted). It claims that the Respondent has no right to change the tariff.

5. The Appellant says that it received a bill on 1<sup>st</sup> January, 2005 for the amount of Rs. 2,43,954/- for the meter no. T970431 due to difference in commercial and industrial tariff, which was debited to its current bill for the month of January, 2005.

6. Aggrieved with the above action of the Respondent, the Appellant approached the Forum. The Forum declined to pass any order on the ground that the matter is outside its jurisdiction. The Appellant now prays to set aside the order of the Forum. It has also sought relief by way of quashing the bill of Rs. 2,43,954/- debited to its current month's bill of January, 2005. Further, it has prayed that the Respondent be directed not to charge delayed payment charges for the disputed amount of Rs. 5,67,674/- which is stayed by the Electrical Inspector and also sought directions to be issued to the Respondent not to recover the amount of Rs. 2,43,954/- referred to above pending disposal of the representation.

7. Notice was issued to both the parties. They were advised to explore the possibility of working out a settlement by mutual agreement. Alternatively, the Respondent was advised to furnish its written statement of defence on the points raised by the Appellant in its representation.

8. The Respondent submitted the written statement on 28<sup>th</sup> March, 2006 alongwith the copies of relevant papers and correspondence in the matter. It says that the Forum has disposed of the complaint on the point of jurisdiction since it falls within the purview of the Regulations 6.4(1) [unauthorized use of electricity]. The Respondent prays that since the Forum does not have jurisdiction, the Ombudsman would also not have jurisdiction to deal such matters and therefore it should not be considered on merits.

9. Without prejudice to the above contention, the Respondent put on record the brief history of the case to say that the meter no. T970431 was installed on 8<sup>th</sup> November, 1998 under commercial C2 tariff which was changed to GP2 (industrial tariff) on application from the Appellant with effect from 18<sup>th</sup> October, 2000. The Appellant, vide its letter dated 21<sup>st</sup> February, 2003, complained that the electricity duty is wrongly charged at 12% instead of 6% as applicable for industrial tariff. The site was inspected on 1<sup>st</sup> July and again on 1<sup>st</sup> September, 2003. It was observed that the Appellant was using the premises for commercial activities (showroom in the gala nos. 306, 312 and 316) by using electricity through the meter no. T970431. Further visit by its commercial department on 16<sup>th</sup> July, 2004 confirmed that the gala nos. 302, 303, 306, 311 and 312 were being used for entirely commercial purpose. Accordingly, tariff of the above meter was changed to commercial with effect from 1<sup>st</sup> August, 2003 and informed the consumer on 28<sup>th</sup> January, 2004. The Respondent stressed on the Appellant's letter dated 19<sup>th</sup> January, 2004 conceding that the Electricity duty at 12% is right as per rules and the Appellant withdrew its complaint asking the Respondent to charge duty at 6% which is meant for industrial tariff. The Appellant also agreed to this letter. The Appellant was requested to communicate the date of change of activity from industrial to commercial and produce the documentary evidence. The Respondent on the basis of the documents given by the Appellant, concluded that the premises were used for commercial activities.

10. In view of the above, the bill for change of tariff was further amended retrospectively from 18<sup>th</sup> October, 2000 (date of application for industrial tariff) instead of from 1<sup>st</sup> August, 2003 and the consumer was accordingly informed. The amendment bill works out to Rs. 2,43,954.30. This is carried out in accordance with the relevant rules. It further submits that the consumer requested for referring the case to Inhouse Review Committee of the Respondent but did not pay 50% of the bill amount as communicated to him for making such reference. The Respondent cited letters from the Appellant accepting that 70 to 80% of the power was being used for industrial purpose although this was not correct as ascertained by the site inspection. It has submitted that as per prevailing conditions of supply, the Respondent is entitled to charge at higher method of charging when the consumer is found using electricity for more than one purpose. Summing up its submission, the Respondent has prayed to dispose of the representation, as being out of jurisdiction.

11. The matter was heard on 31<sup>st</sup> March, 2006. Shri Anil S. Kawale, Consultant for M/s. Swasti Vinayak Synthetics and Shri Vijay Kadam, Accounts Executive for M/s. Vinayak Synthetics were present on behalf of the Appellant while Shri Subir S. Ghosh, Superintendent (Energy Audit) and Shri Tanoji J. Mane, Sub Engineer (Energy Audit) represented on behalf of the Respondent. The Appellant narrated the brief history of the case to say that it is not agreeable to the Respondent's charging of bill of Rs.2,43,954.30. It was argued that the Respondent has worked out the same assuming that the premises were put to commercial use right from 18<sup>th</sup> October, 2000, the date on which the tariff was changed to industrial. He reiterated that although the machines were shifted to its Tarapur unit, some machines were still lying in the old premises. Upon query, he conceded that he did not make this point before the Forum. He did not also said clearly before the Forum that some machines were still working in the old premises. He agreed that the premises were mostly used for commercial but not from 18<sup>th</sup> October, 2000 as contended by the Respondent. He also confessed that his prayer regarding not charging of delayed payment charges on the bill amount of Rs. 5,67,674.48 is not relevant since the matter regarding that bill is already under consideration of the Electrical Inspector and the said recovery is stayed.

12. The Respondent reiterated the points made in his written statement of the defence. He made the point that the Forum has rightly decided the matter to conclude that it is outside the Forum's purview, it being under the Regulations 6.4(1) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. He also agreed that the consumer in such cases may take up its grievance as provided under Section 127 to the Appellate Authority. Upon query, he agreed that there is no clear mention of Section 126 while issuing the bill of Rs. 2,43,954.30 but the bill was indeed raised as an assessment as provided under Section 126 of the Electricity Act, 2003. Summing up his argument, the Respondent prayed that the matter should be disposed of accordingly.

13. The Appellant has filed this Representation on 17<sup>th</sup> March, 2006 against the order of the Forum issued on 30<sup>th</sup> September, 2005, that is after a period of 168 days without giving any reason for the delay of 108 days in filing the representation. There is no application for the condonation of delay.

14. It is evident from the documents on record and arguments advanced during the hearing that the Appellant seeks setting aside of the Forum's order mainly on the ground that the matter is very much under the jurisdiction of the Forum. Consequent prayers in the representation relate to the facts of the case and seek relief in connection therewith. Since the Forum has passed the order mainly on the issue of jurisdiction, it is necessary first to go through the provisions contained in the Electricity Act, 2003 and Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 in this behalf.

15. Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation, 2003 reads as under

*“6.4: - Grievances falling within the purview of any of the following provisions of the Act are excluded from the jurisdiction of the Forum.*

- (1) Unauthorised use of electricity as provided under Section 126 of the Act;*
- (2) Offences and penalties as provided under Section 135 to 139 of the Act;*
- (3) Accidents in the distribution, ..... Under Section 161 of the Act; and*
- (4) Recovery of arrears where the bill amount is not disputed.”*

16. The Forum, in its order, has observed that the consumer was having electricity supply on GP-2 tariff (industrial purpose). The inspection carried out by the Respondent on 1<sup>st</sup> September, 2003 reveal that the supply was used for commercial purpose. Therefore, the Respondent decided to apply C-2 tariff (commercial use). The Forum, therefore, ruled that the present complaint falls under the Regulation 6.4(1) (unauthorised use of electricity) and such cases are excluded from the jurisdiction of Consumer Grievance Redressal Forum. The Forum cannot hear and decide this complaint. With these observations, the Forum disposed of the complaint without any order on merit of the case.

17. Perusal of the above Regulation shows that matters regarding “unauthorised use of electricity” as provided under Section 126 of the Act stand excluded from the jurisdiction of the

Forum. To get some more clarity on the issue, it would be worthwhile to read the Section 126 of the Electricity Act, 2003.

*“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 judgement the electricity charges payable by such person or by any other person benefited by such use.*

*(2)....*

*(3).....*

*(4).....*

*(5)....*

*(6).....*

*Explanation: - For the purpose of this Section, -*

*(a).....*

*(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 license; or*

*(iii) through a tampered meter; or*

*(iv) for the purpose other than for which the usage of electricity was authorised.”*

18. Explanation appearing at (b)(iv) above makes it abundantly clear that the electricity has to be used for the purpose for which it is sanctioned. Therefore, it follows that if the electricity is used for the purpose other than for which it is sanctioned, it becomes an “unauthorised use”, within the meaning of this section. In the present case, it is an admitted fact that the electricity supply by the Respondent to the Appellant was initially for commercial use, but was subsequently sanctioned for industrial use with effect from 18<sup>th</sup> October, 2000 on the Appellant’s request. The inspection carried out by the Respondent’s officials on several occasions after 1<sup>st</sup> of July, 2003 reveal that the Appellant was using electricity supply through meter number T970431 for commercial use. The Appellant, in its representation did not deny that the electricity through this meter was used for commercial use, although, it claims that certain machines are still at the factory site and used for industrial purpose. The Appellant conceded during the hearing that he did not make these points before the Forum. It did not deny using the premises as office although it says that it is ancillary to the industrial purpose.

19. As regards the earlier meter with Serial No. 850280, working till 8<sup>th</sup> November, 1998 the Respondent had charged the bill of Rs. 5,67,674.48 in the year January, 2002, the details of which are not on record, nor it is a subject matter of this representation except the prayer that the Respondent should be directed not to levy delayed payment charges on that amount. The said bill was challenged by the Appellant with the Electrical Inspector who reportedly granted stay in the case.

20. Documents on record and the arguments advanced during the hearing, show that the Appellant had not disputed using the premises for the office and shifting of the machinery from the premises. The only point he made is that, some machines are still lying in the premises and are used. However, it is conceded during the hearing that the Appellant had never made this point before the Forum. It only relied on the argument that the Respondent should have charged commercial tariff from 10<sup>th</sup> July, 2003 when some machines were shifted out of the premises and not from the date of installation of the machines. The Appellant also agreed that the existence of some machines working in the premises was never pointed out or argued before the Forum and therefore it cannot be made as a ground for argument in appeal. In any case, it is not intended to go through the merit of this argument, since the Forum has rejected the grievance wholly on the ground of jurisdiction.

21. As regards the matter regarding the disputed bill pending before the Electrical Inspector, it is clearly an issue, which is under consideration of some other Authority and therefore the Forum has rightly concluded that it is beyond its jurisdiction and the same cannot be taken up in appeal for consideration.

22. It is observed that the Appellant has filed the representation on 17<sup>th</sup> March, 2006, against the Order issued on 30<sup>th</sup> September, 2005. This entailed an abnormal delay of 108 days beyond a permissible period of 60 days. Moreover, there is no explanation given for the delay nor there is any application for condonation. The representation is, therefore, non maintainable, on this ground.

23. Ground made out for the representation is mainly on the issue of jurisdiction. On going through the documents on record regarding the electricity used through the meter number T970431, it is evident that the Appellant has been using the electricity for commercial purpose, while the electricity was sanctioned for industrial purpose. There is clearly a difference between the parties on whether the entire premises or only part thereof is used for commercial purpose. But extent of unauthorised use cannot help the Appellant to substantiate its stand that the case does not fall within the provision of the Regulation 6.4 (1) and the Section 126 of the Act. Such use, which was not authorised, undisputedly falls within the ambit of the explanation given under Section 126 of the Electricity Act and therefore within provision of Regulation 6.4 to render it beyond the jurisdiction.

24. As such, prima facie, it is a case of “unauthorised use of electricity” and therefore would be excluded from the jurisdiction of the Forum. I am inclined to agree with the view taken by the Forum. There is no merit in the argument put forth by the Appellant in this behalf. The Representation is therefore rejected on this ground too. In view of this, it is not necessary to go into the merits of the case and/ or make any order on the prayers made in the Representation. The representation, therefore, fails on both the grounds i.e. of jurisdiction and maintainability. The Appellant is free to take a recourse under Section 126 and 127 of the Electricity Act. The Representation stands disposed of with the above order.

Sd/  
(W. G. Gorde)  
Ombudsman

Sd/  
(S. N. Yadwad)  
Secretary