

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/063/2010

Applicant : M/s. Sanvijay Rolling & Engineering
Ltd.,
Plot No. 9, Immamwada, Ghat Road,
NAGPUR.

Non-applicant : MSEDCL represented by
the Nodal Officer-
Executive Engineer,
Nagpur Rural Circle,
Nagpur.

Quorum Present: 1) Smt. K.K. Gharat
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 29.10.2010)

The present grievance application has been filed on dated 02.09.2010 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 here-in-after referred-to-as the said Regulations.

1. M/s. Sanvijay Rolling & Engineering Limited, Immawada, Ghat Road, Nagpur, an EHV consumer of MSEDCL, has received an additional energy bill of Rs.16,66,09,859/- on dated 26.07.2010 from the non-applicant. The applicant has protested this energy bill by informing to the Superintending Engineer, Nagpur Rural Circle (NRC), vide letter 31.07.2010 and requested him to withdraw this illegal demand. The non-applicant has informed to the applicant vide letter 16.08.2010 that the additional bill issued was as per regulations.

Therefore, aggrieved by this the applicant has filed his grievance to Consumer Grievance Redressal Forum, NUZ, on dated 02.09.2010. He requested to the Forum to direct the non-applicant to withdraw the wrong additional bill of amount Rs.16,66,09,859/- dated 26.07.2010 which was issued to the applicant.

2. The applicant has stated in his grievance letter that he has received sanction of 39 MVA from the Chief Engineer, Commercial, MSEDCL, in the month of April 2005. The validity of this letter was six months from the date of issue. In that letter, it was mentioned that the applicant had to make all necessary arrangement for availing the sanctioned demand within validity period. The estimated cost by erstwhile MSEB was worked out to be Rs. 214.50 lacs and the applicant was asked to make payment of Rs.75 lacs including 15% supervision charges of Rs.24,70,000/-. Therefore

the applicant has made payment of Rs. 75 lack and has undertaken to carry out the required work.

3. Thereafter the applicant has requested to the Chief Engineer, Nagpur Urban Zone, in September, 2005 to release the load in three phases.

In first phase, the applicant has requested to the Chief Engineer, Nagpur Urban Zone, to issue a sanction 8 MVA, Contract Demand with Connected Load 13 MW. He requested to the Chief Engineer, Nagpur Urban Zone to sanction 8 MVA, Contract Demand with Connected Load 13 MW. and to issue a demand note for the 8 MVA load phase. The applicant has also indicated that the applicant would need a total load of 35 MVA in three phases. For this the applicant has mentioned expected date of load sanction as first phase by 25.09.2005, second phase June 2006 and third phase by March 2006.

4. The applicant has again requested to the Chief Engineer, Nagpur Urban Zone, vide letter 14.09.2005 to release 8 MVA Contract Demand and also brought to the notice of the Chief Engineer that the applicant has paid the cost of meter CT and PT although they have to be provided by erstwhile MSEB. He has further requested to the non-applicant to utilize applicant's CT's & PT's would make available these equipment.

5. Afterwards the Chief Engineer, Nagpur Urban Zone, has sought guidance from Director (Operation) to allow the applicant to use his CT & PT and the same would be replaced with MSEDCLs in future as those were needed in order to release 8 MVA load. After this SE (NRC), has issued a demand note dated 21.09.2005 to the applicant for Contract Demand of 8 MVA and Connected Load of 13 MW and asked the applicant to make payment of Security Deposit of Rs.1,17,12,000 for 8 MVA. The applicant has paid this amount and entered into the agreement with the non-applicant on dated 30.09.2005 for Contract Demand of 8 MVA.

6. The applicant has further stated that he has applied for load reduction from 8 MVA to 6.3 MVA on dated 11.10.2006 and the same application was cancelled by himself on dated 10.01.2007. After that the applicant has again requested to the non-applicant to reduce load from 8 MVA to 5.6 MVA on dated 10.05.2007. Afterwards the applicant has again submitted for load enhancement from 8 MVA to 12 MVA on 13.06.2008. In response to this Superintending Engineer, NRC, has forwarded the matter to the Executive Engineer, Maharashtra State Electricity Transmission Company Limited (MSETCL) for seeking technical feasibility for 12 MVA load in the month of June 2008. The Chief Engineer, MSETCL, has accorded feasibility on dated 18.11.2008 for load enhancement and asked to replace existing CTs as per Superintending Engineer, MSEDCL's recommendations. He had given both

provisions for payment of expenditure i.e. if the work would be carried out by the consumer and if MSETCL would be carry out the work.

7. Meanwhile the applicant's Maximum Demand (MD) has been increased from 8000 kVA to 8399 kVA in February 2009. Therefore SE (NRC) has issued a notice to the applicant for restricting demand otherwise the connection would be disconnected. The non-applicant has also imposed a penalty to the applicant for exceeding MD in energy bill of February, 2009 having amount of Rs.89,775/-.

8. The Chief Engineer, Commercial, has sanctioned 12 MVA demand in June 2009. Accordingly SE (NRC) has issued a demand notice with Security Deposit amount of Rs.84,01,920 in the month of June 2009. On receipt of the demand notice, the applicant has requested for revised Security Deposit amount because his unit has been working in one shift only. He has also submitted an undertaking that his factory would run in one shift for 8 hrs. only and if demand increases applicant would make an additional Security Deposit payment. Therefore the non-applicant has issued a revised demand note for on dated 19.12.2009 with Security Deposit of Rs.29,80,609.

After this the applicant has received a letter from the non-applicant in the month of May 2010 which informs to the applicant that the validity of additional load sanction has expired on 04.06.2009. Therefore the applicant should get extension from the Chief Engineer, Commercial. The applicant has informed to the non-applicant that this validity has expired due to procedural delay in accepting Security Deposit as Bank Guarantee and after that, he has applied for validity of load sanction. The Chief Engineer, Commercial has forwarded the proposal to MSETCL for technical feasibility with respect to load enhancement and the same is still pending with MSETCL.

9. However, the SE (NRC) has issued a bill of Rs.16,66,09,859/- to the applicant on dated 26.07.2010 towards difference of less billed demand charges during the period April 2006 to June 2010. Also informed to the applicant that to pay the bill on or before due date, otherwise it would be added in next bill and further course of action will be decided as per rules. Therefore the applicant has protested this additional energy bill vide letter dated 31.07.2010 by stating that MSEDCL has demanded wrong and illegal additional energy bill. According to the applicant

sanctioned Contract Demand is only 8000 kVA and MSEDCL has already charged penalty for exceeding this Contract Demand in the month of February 2010. Therefore this additional demand bill raised by MSEDCL considering 39 MVA as Contract Demand from April 2006 is un-justified, illegal and not payable. He requested to the non-applicant to withdraw this illegal demand vide letter dated 31.07.2010.

10. The non-applicant has replied to this letter in the month of August 2010 and informed to the applicant that as per second condition in the validity clause of load sanction order

“the applicant has to avail the supply within three months on the intimation about board’s readiness to give power supply to him, failing which the applicant will be liable to pay monthly energy charges as per the applicable tariff”.

Therefore, the action on the part of MSEDCL towards charging difference of demand charges is proper and there is no violation of any rules and regulation of MERC’s order. Therefore the applicant has requested to the Forum to direct the non-applicant to withdraw the wrong additional energy bill with amount of Rs. 16,66,09,859/-.

11. The non-applicant has submitted a parawise reply in the Forum on dated 22.09.2010. The non-applicant has stated that the applicant has received a sanction for load of 39 MVA, and also received an approval for load sanction in three phase manner. In the load sanction order there was a condition that the applicant would have to avail the said load as per above schedule, failing which the applicant would liable to pay monthly minimum charges as per the applicable tariff. Based on this load sanction order, the applicant was entered into the agreement on dated 30.09.2005. The supply was released on 23.03.2006.

12. The non-applicant has further added that MSETCL has granted approval for load enhancement from 8 MVA to 12 MVA. Based on this, the Chief Engineer, Commercial, has sanctioned 12 MVA load and the applicant has paid revised demand note on 19.12.2009. Also the applicant has requested for extension of validity of sanction order. On this the non-applicant has pointed out that since 1½ years time has been elapsed from the date of sanction, it was essential to obtain load feasibility again from the Transmission utility. Therefore the proposal was for forwarded to MSETCL.

13. He further stated that as per the second para of validity clause no. 22 of load sanction order dated 15.04.2005.

“You will have to avail the supply within 3 months on the intimation about boards readiness to give power supply to you, failing which you will be liable monthly minimum charges as per the applicable tariff”.

With respect to load sanction order, the applicant has made the payment of Rs.75 Lacs, thereby giving his consent to the expenses of load sanction order and also to the conditions mentioned in it.

Therefore the additional energy bill of Rs.16,66,09,859/- which was issued to the applicant towards the different of maximum demand charges for the period April 2006 to June 2006 as per clause no. 22 of the load sanctioned order is correct.

14. The non-applicant has further mentioned that as per clause no. 22 of load sanction order, dated 15.04.2005.

“The sanctioned as above shall be valid for a period of six months from the date of issue and therefore you should ensure to make all necessary payments to receive the power supply within the validity period. However, the Board reserves the right to revalidation the sanctioned order and should also make all other arrangement, within the validity period and ensure that you are ready to receive power within that period”.

Therefore as per this clause, the validity of the sanctioned order was six months if consumer wanted to received the power. The applicant should ensure to make all necessary payment and also ensure that ready

receive in further processing of the sanction order within the validity period six months. So that the MSEDCL should proceed further in-respect of the application of the consumer. However this clause did not mean that the consumer should avail the power within six months, but it only means that the consumer should show his readiness to avail power within that period.

15. Also the Chief Engineer, Commercial, has given approval on dated 27.10.2005 for availing the power in three phase. Also intimated to the applicant that he would have to avail the said load as per schedule, failing which he would be liable to pay minimum charges as per applicable tariff. But the applicant has availed only 8 MVA load out of 39 MVA load. This was the only one phase of sanctioned order. The rest of the load which the applicant has to avail was due, and he has neither availed that load nor surrendered it.

In such circumstances, if the consumer exceeds his existing Contract Demand without taking prior sanction of the Distribution Licensee, it would lead to drastic drop of voltage at receiving end and the consumer cannot disturb the whole system. Therefore the MSEDCL has issued a notice to the applicant on dated 26.03.2009 and also imposed penalty as per MERC tariff order. Further the non-applicant has sanctioned additional load of 4 MVA as per the applicant's demand on dated 04.06.2009 with validity period up to 04.12.2009, but the applicant did not

bother to make payment towards Security Deposit and SCC for more than 5 months. Therefore the applicant has applied for extension of validity of sanctioned order after receiving intimation from the non-applicant.

16. The non-applicant has further added that 1 ½ years has been elapsed from the date of approval from the Chief Engineer, MSETCL, therefore it became necessary for MSEDCL to forward the proposal to the Transmission utility for verifying the feasibility and the same is still pending. The 39 MVA load which has been approved to the applicant is still reserved for him and seeking feasibility from MSETCL is a matter of technical constrains. Although the applicant has availed 8 MVA load only and the sanctioned load was not surrender by him. Therefore the issue of additional energy bill for 39 MVA from April 2006 is justified.

17. In the context of Agreement and the Contract Demand, the non-applicant has stated that although the applicant has entered into the agreement with MSEDCL for 8 MVA Contract Demand only, but by various written communication like applicant's letter dated 15.04.2005 for payment of load sanction and cost of estimate for existing 220 kV power supply, 39 MVA contract demand, letter dated 01.09.2005 for requesting to release 8 MVA Contract Demand and the remaining load in further two phases and the letter dated 14.09.2005 in which the applicant has clearly

mentioned that he shall need the load of 39 MVA in three phase manner. All these correspondences showed that the consumer has agreed for 39 MVA load and by this fulfill the definition of Contract Demand.

18. According to the non-applicant the Contract Demand is rightly charged as per the definition of billing demand. Also the non-applicant has mentioned about Hon. Apex Court's order in the matter of M/s.Swastic Industries V/s. Maharashtra State Electricity Board, "there is no limitation for making demand by way of supplementary bill.

The Hon. Apex Court also held that the --
"Moreover there is no deficiency of service in supplementary demand for escaped billing. Therefore there may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumer".

Therefore although the MSEDCL has not recorded the correct Contract Demand on the bill does not take away the right of the MSEDCL to raise the charges by way of issuing supplementary bill. Thereby the applicant cannot take the advantage of section 56 (2) of the Electricity Act 2003. Hence the non-applicant has requested to the Forum in the reply to reject the applicant's request for withdraw of additional energy bill of Rs. 16,66,09,859/- dated 26.07.2010.

19. The applicant's representative has submitted a rejoinder at the time of hearing in the Forum. He has reiterated the same points and pointed out that MSEDCL has submitted a wrong information that the applicant is having a Contract Demand of 39 MVA because the applicant's Contract Demand is 8 MVA and for exceeding this Contract Demand, the non-applicant has already charged penalty in the month of February 2009. Also MSEDCL has entered into the agreement for 8 MVA load on 30.09.2005 but its copy is not handed over to the applicant. Therefore he has requested to the Forum to direct the non-applicant to handed over a copy of the agreement.
20. As per the rejoinder letter, the applicant's representative has pointed out that Contract Demadn is 8 MVA only. To strengthen this point he added that the Superintending Engineer, Nagpur Urban Circle, has demanded Security Deposit vide letter dated 21.09.2005 for 8 MVA Contract Demand, also as per the clause no. 23 of load Sanction Order, the applicant would have to pay additional Security Deposit as demanded by the non-applicant, prior to release of balanced load in other 2 phases. The applicant has

never paid additional Security Deposit for other two phases. Also the validity for load sanction order was automatically expired therefore the applicant did not apply for extension of validity period for sanction of 39 MVA.

21. When the applicant has applied for enhancement of load by 4 MVA, the non-applicant has sought feasibility from MSETCL which clearly indicates that existing arrangement was only for 8 MVA Contract Demand and it requires some additional work for enhancement by 4 MVA as per feasibility received from MSETCL.

22. In order to show non-existence of Contract Demands of 39 MVA, the applicant's representative has submitted that in the load sanction order for 12 MVA, MSETCL has demand Rs.22 Lacs as non refundable amount for making arrangement to release the additional load of 4 MVA. Thereby sanction of 39 MVA was lapsed after expiry of validity period of old sanctioned letter dated 15.04.2005 and MSETCL has made arrangement for 8 MVA Contract Demand only. But feasibility of the same is still not received from MSETCL. Therefore MSEDCL's say that 39 MVA is kept reserved for the applicant is totally false.

23. In the context of payment of demand charges by the applicant, has mentioned that payment of Rs. 75 Lacs was against supervision charges for 220 KV work which has to be carried out by the applicant. Therefore say of MSEDCL that 39 MVA contract demand was sanctioned against payment of Rs.75 Lacs is totally false.
24. The applicable tariff of the Commission specifies that the fixed charges are as per the Contract Demand which is 8 MVA in this case for this the applicant has pointed out few clauses of regulations and Electricity Act 2003. Therefore the licensee may charge electricity charges in accordance with tariff fixed by the Commission.
25. The applicant has strengthen his Day for Contract Demand of 8 MVA only by mentioning that the non-applicant has itself agreed that the applicant did not taken the balance load and it was not necessary for applicant to give a power surrender letter. The applicant can only give application for reduction in Contract Demand or surrender of Contract Demand since the validity of load sanctioned has expired after six months.

26. The applicant has further stated that the non-applicant has misinterpreted the definition of Contract Demand. As per first definition Contract Demand it is that demand for which the consumer entered into the agreement and in this case, the applicant has entered into agreement for 8 MVA Contract Demand.

The other written communication for defining Contract Demand is not applicable in this case, because other written communication applies to such cases where agreement was not done. Therefore the written communication did not mean as understood by MSEDCL in which the applicant simply elaborated the facts about the future plans of the applicant. But it did not mean that those plans are the Contracts Demand of the applicant.

27. The applicant has elaborated the concept of Contract Demand. The two parameters i.e. the Contract Demand and Connected Load are totally different and are independent from each other. The billing is to be done based on Contract Demand and not on sanctioned load. Therefore the applicant has requested to the Forum to direct the MSEDCL to withdraw the illegal bill raised of Rs.16,66,09,859/- dated 26.07.2010.

28. The matter was heard in the Forum on dated 21.10.2010. Both the parties were present. On behalf

of the non-applicant, Shri H.K. Randive, Superintending Engineer, Shri Nagrare, Executive Engineer, Nagpur Rural Circle, Nagpur and Miss. Shilpa Bangde, Jr. Law Officer were present.

The applicant's representative, Shri R.B. Goenka has presented the applicant's side. He has reiterated the same points as mentioned in the grievance application and the rejoinder. He has pointed out to the Forum that as per MERC regulations billing is based on Contract Demand and the applicant has entered into agreement with the non-applicant for 8 MVA Contract Demand only. Hence the charges demanded by the non-applicant is unjustified. Also the validity of 39 MVA has been expired within 6 months from the date of sanction, therefore this cannot be taken as a base for calculating the demand charges.

29. The non-applicant has explained his stand that as the consumer has paid the load sanction demand note in the month of May 2005, thereby he has confirmed the condition of load sanction order. In this context, the non-applicant showed the sanctioned letter dated 21.09.2005 in which MSEDCL has quoted Service Connection charges (SCC) of 39 MVA. So the non-applicant has reiterated that as the consumer has paid the demand charges, therefore he becomes liable for fixed charges for 39 MVA and the capacity of 39 MVA is also kept reserved for the applicant. The non-applicant has also submitted National Consumer

Dispute Commission's order, dated 26.05.2008 to show that there is no time limitation for raising supplementary demand and there is no deficiency of service in making supplementary demand for escaped billing. Therefore the charges demanded are legal and the applicant has to pay the same.

30. Heard both the parties and observed the documents on record. It reveals that the case revolves around the value of Contract Demand. The applicant has applied for power supply to the extent of 39 MVA in February 2005. In the sanctions letter dated 15.04.2005, the non-applicant has mentioned that --

“We are pleased to sanction the power supply to the extent of 63380 kW Connected Load with Contract Demand of 39,000kVA on 220 kV system.....”

This clearly indicates that the applicant and non-applicant were mutually agreed for Contract Demand of 39 MVA.

31. The same sanctioned order has included that the applicant was to obtain load sanction order / released power requirement from the Chief Engineer (NUZ) Nagpur / Superintending Engineer (NRC) Nagpur (clause no. 16).

The Superintending Engineer (NRC) has issued order accordingly with demand note showing SCC for 39 MVA and Security Deposit for 8 MVA. In Forum's opinion it is a deficiency in service of non-applicant.

32. It was also informed to the applicant to pay SCC and Security Deposit which would be informed by the Chief Engineer, (NUZ), Nagpur / Superintending Engineer, (NRC), Nagpur. (clause no. 23).

Accordingly the applicant has paid SCC for 39 MVA and Security Deposit for 8 MVA in the month of September 2005. This clearly indicates that the applicant showed his acceptance for 39 MVA as Contract Demand and accordingly the applicant has carried out the work of infrastructure to sustain 39 MVA load.

33. In the load sanction order, it was clearly mentioned that the applicant has to take supply within 3 months failing which the applicant would be liable to pay monthly charges as per the applicable tariff (clause no. 22)

Therefore applicant is liable to pay demand charges for 39 MVA Load.

Observed all the documents on record and submissions made by both the parties.

In the Forum's opinion, applicant's grievance is not acceptable.

ORDER

The applicant's grievance application is hereby
rejected.

Sd/-
(Smt.K.K.Gharat)
Member-Secretary

Sd/-
(Smt.Gauri Chandrayan)
Member