



Consumer Grievance Redressal Forum, Kalyan Zone
Behind “Tejashree”, Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO. K/ E/281/309 OF 2009-2010 OF
M/S. ELTRON INDIA, VASAI REGISTERED WITH CONSUMER
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE BILLING.

M/s. Eltron India
Unit No. 15,
Akshay Industrial Estate
Navghar, Vasai(E),Dist.Thane

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Vasai Road (East) Sub-Dn.
Vasai, Dist. Thane.

(Here-in-after
referred
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers. This regulation has been made by the

Maharashtra Electricity Regulatory Commission vide powers conformed on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

- 2) The consumer is a L.T.-V > 20 KW consumer of the licensee with C. D. 40 KVA. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 16/07/2009 for Excessive Energy Bills. The details are as follows: -

Name of the consumer :- M/s. Eltron India

Address: - As given in the title

Consumer No :- 001610258201

Reason of dispute: Excessive Energy Bills.

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/642 dated 16/07/2009 to Nodal Officer of licensee. The licensee through Dy. Executive Engineer, MSEDCL Vasai Road (East) filed reply vide letter No. DYEE/VSI/(E)/B/6099, dated 06/08/2009.
- 4) The consumer has raised these grievances before the IGRC and the Executive Engineer (O&M) Division, MSEDCL, Vasai Division, on 21/05/2009, before Dy. Ex. Engr. Vasai Road East on 09/02/09 and the Asstt. Engr. Vasai (E) on 26/12/08. The said Internal Redressal Cell, Executive Engineer, Dy. Ex. Engr. and Asstt. Engr. did not send any reply resolving the said grievances to the consumer. Therefore, the consumer has registered the present grievances before this Forum on 16/07/2009.
- 5). The forum heard both the parties on 07/08/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Shri Harshad Sheth, representative of the consumer & Shri N.V.Waghmare, LDC representative of the licensee, attended hearing. Minutes of the hearing including the submissions made

by the parties are recorded and the same are kept in the record. Submissions made by each party in respect of each grievance shall be referred while deciding each of the grievances to avoid repetition.

- 6). The following grievances raised by the consumer in its letter dated 15/12/08 sent to the concerned Executive Engineer, letter to Dy. Ex. Engr. and also letter to Asstt. Engr., of which copies, the consumer has attached with the grievance made before this forum, arise for consideration, and considering the reply dtd. 06/08/09 filed by the licensee, record produced by the parties, and submissions made by the parties, the finding or resolution on each of such grievance is given against it, for the given reasons.
- 7) As to grievance No. (1) - Regarding refund of excess fix charges as per MD based tariff, PF penalty recovered during the period from Aug. 08 to March 09 : The consumer claims that the licensee has recovered excess fix charges, PF penalty and demand penalty during the period from Aug. 08 to March 09, by illegally applying MD based tariff from 1st Aug. 08 without completion of 100% work of installation of MD meters and therefore, the licensee be directed to refund the said above referred amount together with interest to the consumer. The consumer relies on order dt. 20/06/08 passed by MERC in case No. 72 of 2007, circular No. 81, dt. 07/07/08 and the order dt. 12/09/08 passed by MERC in case No. 44 of 2008 in support of its such contention. As against this, the licensee claims that on completion of 100% TOD metering and as per directions given in circular No. 81, dt. 07/07/08, MD based tariff is applied to the consumer from Aug. 08 i.e. at the rate of Rs. 100 per KVA per month for 65% of maximum demand or 40% of contract demand whichever is higher and charging of

such charges is correct and hence the consumer is not entitled for any refund on this count.

- 8) As far as the consumer's prayer for refund of alleged excess fix charges and PF penalty charged by the licensee during the period from Aug. 08 to March 09 is concerned, it is an admitted fact that this Forum vide order dt. 18/03/09 in grievance application No. K/E/159/181 upheld the action of licensee of applying MD based tariff from 1st Aug. 08 to the above 20 KW Industrial consumers and the consumer in the said case filed representation No. 33 of 2009 before the Hon. Electricity Ombudsman against the above referred decision of this Forum. The Hon. Electricity Ombudsman vide order dt. 6th May 09 in the above referred representation though rejected the contention of the consumer to the effect that the Commission has not yet allowed the licensee to start MD based tariff for LT-V Industrial consumers, relying on the circular dt. 05/02/09, issued by the licensee held that as per the said circular, the licensee, in spite of completion of 100% metering work, decided to levy MD based tariff for LT-V Industrial consumers from April 09 and hence directed the licensee to refund the amount of MD charges collected over and above the fix charges recoverable as per tariff and also to withdraw PF penalty/incentive levied prior to April 09. It is also an admitted fact that the licensee challenged the above referred order of Hon. Electricity Ombudsman before the Hon. High Court vide Writ Petition No. 1273 of 2009 MSEDCL V/s. Crystal Industries. The licensee has filed copies of the petition filed by it before the Hon. High Court, affidavit in reply of the respondent No. (1), order dt. 17/07/09 passed by the Hon. High Court and the application dt. 31/07/09 filed by it for clarification of the above referred order dt. 17/07/09, in the said Writ

Petition. The relevant extracts from the order dt. 17/07/09 passed by the Hon. High Court in the said Writ Petition reads as under :

“ We have heard the learned Counsel appear for the parties. In the order dt. 6th May 09 passed by the Electricity Ombudsman, it has been recorded as under :

“7. It is clear from the above that the respondent MSEDCL is

.....
8. As regards applicability of power factor penalty

.....
2. The Learned Counsel appearing for Respondent No. 1 has not been able to demonstrate before us by reference to any cogent documents on record that the Petitioner has failed to complete 100% installation of meters which was a condition precedent to the circular issued. It is further clear from the record that the petition has agreed to refund the penalty and not to charge penalty and they would be entitle to MD based TOD tariff. In these circumstances afore-noticed, Rule. The operation of the order dt. 6th May 09 to remain stayed, but the Petitioner will not be entitle to charge any penalty and, in fact, if penalty recovered, shall be refunded or adjusted towards further bills.

9) It is thus clear from the above referred order that the Hon. High Court has stayed the effect and operation of the above referred order of Hon. Electricity Ombudsman regarding non applicability of MD based tariff and refund of PF with effect from 1st Aug. 2008 and the said question regarding applicability of MD based tariff and PF penalty with effect from 1st Aug. 08 is now for consideration before the Hon. High Court in the above referred Writ Petition. It is submitted by the representative of consumer (CR) that

the licensee has sent a letter dt. 01/08/2008 to MERC informing that it has completed 100% metering work and therefore, is starting applying MD based tariff. Therefore, it should have charged the electric charges as per MD based tariff for the consumption in Aug. 08 in the bill for Sept. 08, but it has charged such electric charges as per MD based tariff in the bill for Aug. 08 naturally for the consumption in July 08 which it could not do and therefore, the licensee be directed to refund such excess fix charges charged in the bill for Aug. 08. He further submits that as per Regulation No. 12.2 of MERC (Electric Supply Code etc.) Regulations 2005, the licensee was suppose to give three months time after applying MD based tariff to the consumer to take effective measures to raise the average power factor or control harmonics of his installation to a value to less than such norms, in accordance with Regulation 12.1, after applying charges as per MD based tariff for the consumption in August 08 in the bill for Sept. 08. Therefore, the licensee could not have charged PF penalty for the months of Oct. 08, Nov. 08 and Dec. 08 and therefore, PF penalty imposed by the licensee to the consumer in the said months be directed to be refunded to the consumer. He further submits that the above referred grounds for the refund of excess fix charges charged in the month of Aug. 08 and refund of PF penalty imposed during the period from Aug. 08 to Dec. 08 have not been pleaded in the above referred Crystal case and therefore, the said points are not under consideration of the Hon. High Court in the above referred Writ Petition. Therefore, this Forum can direct the refund of excess fix charges and PF penalty imposed by the licensee in the month of Aug. 08, and during the period from August 08 to Dec. 08, respectively. It is clear from the above discussion that the larger question about the legality

of the applicability of MD based tariff to such consumers like the present consumer is under consideration before the Hon. High Court in the above referred Writ Petition, and though the consumer in the said Writ Petition did not raise the grounds raised by CR as above, the consumer in the said Writ Petition can very well raise these grounds in the said Writ Petition at the time of final hearing. As far as the question regarding PF penalty is concerned, though the Hon. High Court by the above referred order issued certain directions regarding the penalty recovered, the licensee has filed application for clarification of such directions and the said application is pending before the Hon. High Court. It is true that the present consumer is not party to the above referred Writ Petition before the Hon. High Court. However, the finding of Hon. High Court on the above referred point would be binding on the licensee and the licensee will have to follow such finding and other directions which the Hon. High Court may issue in that regard, to all consumers including the present consumer, and thus such finding and directions will be applicable to all consumers including the present consumer. Moreover, if the present consumer wishes that it should be heard by the Hon. High Court in the said petition, it can apply for permission to be intervener in the said Petition. Therefore, in our considered view, it would not be proper for this Forum to consider the prayer of consumer for the refund of fix charges charged in Aug. 08 and PF penalty imposed from Aug. 08 to Dec. 08 at this stage and it would be proper to direct the consumer to file grievance application about the same together with refund of fix charges and PF penalty recovered during further period, before this Forum, if necessary, within 60 days from the final decision of Hon. High Court in the above referred Writ Petition. Hence the consumer is directed accordingly.

- 10) As to grievance No. (2) made in para (c) of the rejoinder dt. 04/08/09 and letter given to Dy. Ex. Engr. on 09/02/09 and letter given to Asstt. Engr. on 26/12/08 – Regarding refund of excess fix charges and P.F. penalty on the ground of irrational readings regarding MD & PF in the meter, excessive PF penalty and unfair incentives : The consumer vide Rejoinder dt. 04/08/09, claims that the web site of Distribution Licensee Tata Power Demand side Management Improvement of power factor gives definite relation of MD with PF, such as if PF is reduced by 10%, MD goes up by 11.11% and if PF is reduced by 20%, MD goes up by 25%. The consumer further claims that however, in case of the present consumer the readings of MD and PF, during the period from Aug. 08 to Jan. 09 were as under :

Billing Month	M.D.	P.F.	Changed in MD	Changed in PF.
Aug. 08	38.94	0.41	--	--
Sept. 08	38.94	0.70	--	29% improved
Oct. 08	37.20	0.49	1.74	21% down
Nov. 08	31.83	CPL not available, reading not known		
Dec. 08	32.10	0.49	--	--
Jan. 09	31.15	0.82	0.95	33% improved

The consumer further claims that if one believes the above referred information given by Tata Power Company, the above referred readings regarding MD and PF in respect of consumer are incorrect and therefore, the licensee be directed to clarify the above things and in case the MD or PF of consumer as above are incorrect, the licensee be asked to refund excess fix charges and PF penalties to the consumer.

- 11) The consumer vide letters given to Dy. Ex. Engr. Vasai Road (E) and Asstt. Engr. Vasai Road (E) on 09/02/09 and 26/12/08 resp. raised similar grievances regarding the PF penalties recovered by the licensee from it by the bills for different periods as under :

Sr.No.	Period of Bill	P. F.	PF penal charges
1	05/07/08 to 05/08/08	0.41	10,007.99
2	05/08/08 to 05/09/08	0.70	3,770.61
3	05/09/08 to 06/10/08	0.49	9010.00
4	06/10/08 to 06/11/08	1.0 (Incentive)	(- 1158.43)
5	06/11/08 to 06/12/08	0.49	10120.25
6	06/12/08 to 06/01/09	0.82	1546.76

The consumer challenges the PF penal charges recovered by licensee as above, mainly on following grounds :

- i) It has paid Rs. 33,297.18 towards PF penal charges, it's unit is a small engineering firm and hence is unable to pay heavy PF penal charges.
- ii) It is paying very high penalty charges upto 60% for lower PF whereas getting incentives 5% only for good PF and hence the same is unfair.
- iii) It has installed APFC meter and two 15 KVAR capacitors and two 10 KVAR capacitors and thus has 50 KVAR capacitors, and it has already submitted it's details and test reports to the licensee. Therefore, various readings shown in the bills of the above referred period are wrong and therefore, the licensee be directed to verify and check the same from the MRI reports and the licensee be directed to refund the entire PF penalty charges of Rs. 32,908.85 recovered by it from the consumer.

- iv) The meter at its unit does not display the average PF and therefore, it is not possible for it to keep watch on the PF and therefore, it has been illegal on the part of licensee to charge PF penalty without providing the meter displaying the PF. Therefore, the licensee be directed to refund the PF charges recovered by it from the consumer as above and credit the same in its account.
- 12) The licensee did not file any say to these grievances in its reply dt. 06/08/09 and its representative also could not throw any light on the same.
- 13) As far as the above referred grounds mentioned in above para No. 10 and para No. 11 (iii) are concerned, the licensee has also filed copy of the information about the advantage of improvement in Power Factor (PF) displayed by Tata Power Co. on its Internet (Annex. 2-a). Therefore, the licensee is directed to go through the said information (Annex. 2-a), retrieve the MRI reports of the concerned meter during the periods from 05/07/08 to 06/01/09 and verify various entries in the bills of the above referred period, and explain the entries regarding MD and PF in respect of consumer given in the bills and justify the fix charges and PF penalties recovered during the periods mentioned in para No. 10 and 11 in writing to the consumer within a period of 60 days from the date of decision in this case, and in case it is found that some excess fix charges and PF penalty is recovered from the consumer due to wrong readings, refund such excess charges together with interest at the Bank rate of RBI to the consumer by crediting the same in the ensuing bill after a period of 60 days from the date of decision in this case.
- 14) As far as ground Nos. (i and ii) mentioned in above para No. 11 are concerned, it may be that the consumer's unit may be small engineering

firm and hence it is difficult for it to pay PF penal charges. However, this Forum can help the consumer in this regard, only if this forum finally comes to the conclusion that the charging of PF penal charges has been illegal. The MERC permitted the licensee to impose PF penalty whenever the average PF is less than 0.9, and give PF incentives if the average PF is more than 0.95 and also gave details as to how much PF penalty should be imposed for how much reduction in the PF and how much incentives should be given in case of improvement in the PF during the financial year 2008-2009 as per the details given on page No. 38 and 39 in the Order dt. 20/06/08 in case No. 72 of 2007. We have verified the PF penal charges imposed by the licensee on the consumer in the bills for the periods 05/07/08 to 05/08/08, 05/08/08 to 05/09/08, 05/09/08 to 05/10/08 and 06/11/08 to 06/12/08 by calculating such PF penal charges during the relevant periods from the copies of the bills filed by the consumer and the criteria given by the MERC in the above referred order and found that the PF penal charges imposed by the licensee in the bills during the above referred periods are correct. However, the incentives given in the bill for the period 06/10/08 to 06/11/08 and the PF penal charges imposed in the bill for the period 06/12/08 to 06/01/09 could not be verified as the consumer did not file copy of the bill for the period 06/10/08 to 06/11/08 and the copy of bill for the period 06/12/08 to 06/01/09 filed by the consumer is illegible. Therefore, the licensee is directed to verify the correctness of incentives given to the consumer in the bill for the period 06/10/08 to 06/11/08 and the PF penal charges imposed in the bill for the period 06/12/08 to 06/01/09 and inform in writing about the same to the consumer within 60 days from the date of decision in this case, and give the credit of

- additional incentives and excess recovered PF penal charges if any to the consumer in the ensuing bill after a period of 60 days from the date of decision in this case.
- 15) As far as the contention of the consumer to the effect that the PF penal penalties which are being imposed and the incentives which are being given are unfair is concerned, the consumer has to approach MERC because this Forum cannot make any comment or any suggestions in this regard. Therefore, the consumer is directed accordingly.
 - 16) As far as the grievance to the effect that the consumer's meter is not displaying average PF is concerned, the licensee is directed to examine and check the meter at the unit of the consumer and verify as to whether it displays the PF and in case it does not display the PF, change the said meter immediately with proper meter, and verify the PF penal charges charged to the consumer during the period from 05/07/08 to 06/01/09 by finding out PF in each of the said billing month by retrieving MRI report of the concerned meter of each of the concerned billing month, and refund excess PF charges if earlier recovered during the said period, to the consumer, by giving credit of such amount in the ensuing bill after a period of 60 days from the date of decision in this case.
 - 17) In view of the findings on the grievances of the consumer as above, the forum unanimously passes the following order.

O-R-D-E-R

- 1) The grievance application is partly allowed.
- 2) The grievance No. 1 is not considered and the consumer is at liberty to file fresh grievance application in respect of such grievance within 60 days

from the date of final decision of Hon. High Court in Writ Petition No. 1273 of 2009 MSEDCL V/s. M/s. Crystal Industries as observed in para 09.

- 3) The licensee to comply the directions given in above para Nos. 13,14 and 16.
- 4) The Compliance should be reported to the forum within 90 days from the date of decision.
- 5) The Consumer can file representation against this decision with the Ombudsman at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Building, Bandra Kurla Complex, Mumbai 51”

Representation can be filed within 60 days from the date of this order.

- 6) Consumer, as per section 142 of the Electricity Act, 003, can approach Maharashtra Electricity Regulatory Commission at the following address:-
“Maharashtra Electricity Regulatory Commission,13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003”

Date : 02/09/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan