

**MAHARASTRA STATE ELECTRICITY DISTRIBUTION CO. Ltd.
KONKAN ZONE RATNAGIRI
CONSUMER GREVANCE REDRASSAL FORUM**

Consumer case No -29/2009

Date: 06 /01/2009

1) Sarpanch, Gram-Panchayat
Nachane,
Tal-Dist.-Ratnagiri
Pin No. 415639

Complainant

V/S

1) Supdt. Engineer,
Maharashtra State Electricity Dist.
Company Ltd. Ratnagiri Circle,
Ratnagiri.

Opposite Party

Quorum of the Forum

- 1) Mr.D. S. Jamkhedkar
Chairman
- 2) Mr. S. R. Khandare
Secretary/ Member
- 3) Mr. N. A. Kulkarni
Member

On behalf of consumer

- 1) Shri. Sandeep V. Savant
Sarpanch, Gram-Panchayat,
Nachane.
- 2) Shri. Santosh P. Savant
Secretary, Gram-Panchyat,
Nachane.

On behalf of opposite party

- 1) **Shri. S. V. Kshirsagar
Ex.Engineer(administration)
circle office, Ratnagiri.**
- 2) **Shri.Z.J.Rakhame
Assistant Engineer.**

**Maharashtra State Electricity Regulatory Commission
Consumer Grievance Redressal Forum and Ombudsman
Regulation 2003 Vide Clause No. 8.2**

1) This is a grievance filed under format 'A' by Nachane Gram-Panchayat regarding the levy and recovery of P.F. penalty, calling it illegal being against the provisions of Electricity Act 2003 and the Maharashtra Electricity Regulatory Commission (Elect-supply code and other conditions of supply) Regulation 2005. The Gram-panchayat bears Consumer No. 2106009790, which is H.T. supply for Drinking water scheme.

2) On the basis of the application filed by Gram-Panchayat Nachane for H.T. supply to run Drinking water scheme, Mahavitran released the supply in favour of Maha. Jivan Pradhikaran for the said scheme, which was later on handed over to Gram-Panchayat Nachane in due-course and Nachane Gram-Panchayat had become regular consumer of Mahavitran.

3) Gram-Panchayat Nachane was regularly getting the bills and the same were also paid off by Gram-Panchayat including the power factor penalty (Hereinafter referred to P.F. penalty). Till Nov. 2008, The bills including the P.F. Penalty were paid by Gram-Panchayat Nachane and till then a hefty sum of 1,27,703/- was paid to Mahavitran, which disturbed the patience of Gram-Panchayat Nachane and the office bearers swung into action.

4) On inquiry, the office bearers of Nachane Gram-Panchayat came to know that since the power factor level of 0.9 could not be maintained, the power factor penalty was recovered. Now under this format 'A' the Gram-Panchayat has come forward with grievance that since no notice or intimation was given to them before levying penalty, the recovery is against the provisions of law and more particularly the Regulation 12.2 of Maharashtra Electricity Regulatory Commission (Elect-supply code and other conditions of supply) Regulation 2005. So the Gram-Panchayat Nachane has asked for refund.

5) Mahavitran has opposed the grievance of Gram-Panchayat Nachane with submissions that Gram-Panchayat Nachane has executed an agreement and thus accepted the terms and conditions of supply. It is submitted that as per the terms and conditions of agreement guidelines issued by MERC, and Regulations governing supply, the recovery is justified. More reliance has been placed on Regulation 12.1 of the aforesaid Regulations of 2005.

6) A further submission has been made that consumer is under an obligation to maintain P.F. at the level of 0.9 and since the same has not been done by present consumer, the penal action had been taken.

7) The matter has been heard at length and the contentions raised by the parties were simply reiterated by them during the course of argument. A submission was also made that the word used under Regulation 12.2 is 'May' and so Mahavitran was under no obligation to issue notice before levying penalty, certain other documents have also been filed on record to support the submission.

8) In view of the rival submissions the points arise for our consideration are as follows and the findings are given against each of them for the reasons given below.

<u>Points</u>	<u>Findings</u>
1) Whether recovery of P.F. penalty in this case is in accordance with Rules and Regulations.	No.
2) Whether Gram-Panchayat is entitled to refund as sought.	Yes.
3) What order	As per final order.

Reasons

Point No.1:- The core of the dispute raised by the parties in this case is about the legality or other wise of the recovery of P.F. penalty by Mahavitran.

The Gram-Panchayat Nachane has relied upon the provisions of Regulation 12.2 and submitted that the recovery sans notice to consumer is illegal.

According to Mahavitran the recovery of P.F. penalty is in accordance with regulation 12.1 and Mahavitran is entitled to recover it in view of documents executed by Gram-Panchayat and the payment of penalty for years together without demur or protest.

For considering the scope and merit of rival contentions, it will be beneficial to reproduce the provisions of regulation 12.1 and 12.2.

12.1:-

"It shall be obligatory for the consumer to maintain the average power factor of his load at levels prescribed by the Indian Electricity Rule, 1956 with such variations, if any, adopted by the Distribution Licensee in accordance with Rule 27 of the Indian Electricity Rules, 1956 and in accordance with the relevant orders of the Commission."

"Provided that it shall be obligatory for the HT consumer and the LT consumer (Industrial and Commercial only) to control harmonics of his load at levels prescribed by the IEEE STD 519-1992, and in accordance with the relevant Order of the Commission."

12.2:-

"The Distribution Licensee may require the consumer, within a reasonable time period, which shall not be less than three months, to take such effective measures so as to raise the average power factor or control harmonics of his installation to a value not less than such norm, in accordance with Regulation 12.1 above: Provided that the Distribution Licensee may charge penalty or provide incentives for low/high power factor and for harmonics, in accordance with relevant Order of the Commission".

It we just have a look to these provisions, then we find that Regulation 12.1 authorizes Mahavitrans to recover P.F. penalty, while Regulation 12.2 works as it's proviso. So both these provisions will have to be read conjunctively rather than disjunctively as tried to be done by Mahavitrans.

The provision of s.12(2) Regulation is based on principles of Natural justice and equity which underlines the principle that no one be penalized unless a fair opportunity is being given to him.

The submission of Mahavitrans that the word 'May' used in Regulation 12.2 gives them option to give notice or not before hand, is also without any substance. The supreme court has succinctly laid down that whenever any penal action is to follow then the word 'may' shall be interpreted as 'Must'. A hand could be laid on the ratio laid down in the case reported in A.I.R. 1979 supreme court page 1029 (Sup and remembrance of legal affairs to Govt. of West Bengal- V/S Abani Maity). Though this case is having different complexion, it relates to law of interpretation of statute and thus applies to the present case. With this background forum is of the opinion that notice under Regulation 12.2 was necessary in this case and in it's absence, the recovery is without any semblance of authority. Incidentally it may be observed that even in regulation 12.1, word 'may' has been used.

So far as reliance placed on consistent payment for years together is concerned, the forum is of the view that this never amount to acceptance, nor such so called acceptance turns illegal action into legal one.

So far as reliance placed on agreement inter se is concerned, there is not even a remote reference of this P.F. penalty.

So far as tariff order is concerned, it only lays down that P.F. penalty will be charged in case P.F. is not maintained but that is not all and it is necessary that it should be brought to the notice of consumer with a warning that in case of future lapses, penalty will be charged.

The commercial circular No.80 dated 10th June 2008 placed on record by Mahavitrans is in respect of tariff order dated 31.05.2008. This has been issued by Mahavitrans in consequence of decision of M.E.R.C. in case No.72/2007. The tariff order is effective from 1st June 2008, even then P.F. penalty has been recovered in this case from the date of release of connection in 2005 for this, no justification has been put forth by Mahavitrans to explain this anomalous position and has simply relied on circular which is always issued for administrative purposes. In this regard, certain observations have also been made by Hon able MERC and Ombudsman in the cases viz. 72/2007 and 44/2008 and certain directions have also been given.

The MERC has amply made it clear that the power factor penalty be made applicable only after installation of M.D. based meter. In the present case, tariff code of consumer is 51 and metering is of H.T. and the meter type is TOD, as is evident from G-7 format maintained by Mahavitrans, which makes the consumer difficult to know the average power-factor under these circumstances, the consumer cannot know the power factor.

With these observations, the forum is of the view that in view of provisions of Regulation 12.2, the recovery is not legal for want of notice and Hence. We answer point in the negative.

Point No.2:- As the recovery of P.F. penalty done by Mahavitrans is without any authority and not in accordance with the procedure, the consumer is entitled to refund of the amount. Hence we answer the point in the affirmative.

Point No.3:- In the result, the consumer applicant is entitled to get refund of the P.F. penalty paid. Hence we proceed to pass following order.

ORDER

- 1) The levy and recovery of power factor penalty of Rs. 127703 (One lakh twenty seven thousand seven hundred three) upto the billing period 16.10.08 by the MAHAVITRANS is held as illegal and in violation of the rules and regulations.
- 2) MAHAVITRANS- is directed to adjust the said amount in 3 (Three) equal installments in the subsequent billing and to file the compliances within a period of 30 days from the date of receipt of this order.
- 3) No order as to the cost or compensation.
- 4) In case consumer desires to appeal against this order he may file the same to the below mentioned authority within a period of 60 days (sixty days).

**Secretary- OMBUDSMAN Maharashtra State Electricity Regulatory Commission, 606/608 Keshava building, Bandra Kurla Complex Mumbai- 400051.
Phone No. 022-26592965**

D. S. Jamkhedkar
President
Consumer grievances
Redressal Forum
Kokan Zone
Ratnagiri.

N. A. Kulkarni
Member
Consumer grievenaces
Redressal Forum
Kokan Zone
Ratnagiri

Place: Ratnagiri

Date: 10.06.2009

I, the undersigned in my capacity of Executive Engineer/ Secretary of this Forum do not agree with the above order. My separate opinion is produced below which forms the part of this order.

The said consumer has been provided power supply on H.T. side by Maha-Vitaran from Jan.2006. Initially the connection was released in the name of Mah. Jeevan Pradhikaran Ratnagiri which has been subsequently handed over to Grampanchayat Ratnagiri. On 06.01.09 the consumer has filled 'A' form for refund of power factor penalty. The consumer has stated that they were unaware of the p.f. penalty & Co. has not intimated them regarding leas p.f.

The views of the undersigned in this matter are as follows.

- 1.** Jeevan Pradhikaran is a State level organization availing H.T. power supply for drinking water schemes through out the state. They are well aware of the terms and conditions of H.T. power supply. While handing over the scheme it was their duty to make aware the G.P. regarding maintaining adequate p.f. which is not seen in this case.
- 2.** In case of H.T. consumers daily G-7 card is to be maintained by the consumer by taking regular readings. From the reading itself the scenario of p.f. can be seen daily and thus the consumer becomes well aware.
- 3.** As per conditions of supply code of MERC the clause No.12 states regarding p.f. As per sub. Cl. No.12.1 it is obligatory for the consumer to

maintain the prescribed p.f. as per Rule 27 of I.E. Rules 1956 and **in accordance with the relevant orders of the commission.**

These relevant orders are nothing but the tariff order passed by MERC timely during the subsequent years.

P.F. Penalty:- P.F. penalty shall be applicable to these consumers who have M.D. based tariff and are provided with meters to measure the p.f. wherever the avg. p.f. is less than 0.9 penal charges shall be levied to the consumer.

4. As per code of commercial Instruction Cl. No. 5.24, a penal charge shall be levied to the H.T. consumer whenever the arg, p.f. is less than 0.9

5. It is the responsibility of the consumer to ensure that p.f. of his installation is maintained at the level as such prescribed by the company.

The above facts clearly state that whatever penalty levied by the company is in accordance with the regulations framed by MERC & as per H.O. instructions and circular. The undersigned is of the opinion that in this case refund cannot be given to the consumer regarding P.F. penalty.

6. In the case No 72/2007 of MERC Operative Order for APR of MSEDCL for F.Y. 2007-2008 in case of power factor penalty for LT-V category consumers, **Whenever** the average P.F. is less than 0.9, penal charges shall be levied at the rate of 2% of the amount of monthly bill. This has also been mentioned in the Comm. circular No.80 dt.10.06.08. As per the content in the order the word **whenever** itself specifies that during that month when the P.F. comes less than 0.9, prescribed penalty has to be levied. Whenever the P.F. is above 0.9, the incentive has also to be awarded. The rationale behind this is the consumer should be aware of the Demand side Management and take necessary precaution and application for utilization of proper share of energy.

Here Maha-vitaran has acted as per conditions of supply Cl.No. 12.1 & case No . 12 of 2007 of MERC. Hence the undersigned is of the opinion that in this case refund cannot be given to the consumer regarding P.F. penalty.

Place:-Ratnagiri
Date:-

J.L.Sonawane
Ex.Engineer
Secretary
C.G.R.F.(KZRO
Ratnagiri.