

**MAHARASHTRA STATE ELECTRICITY DISTRIBUTION
COMPANY LTD.
CONSUMER GRIEVANCE REDRESSAL FORM
KOLHAPUR ZONE, TARABAI PARK, KOLHAPUR**

Con.Comp. No. 276/08 to 286/08

Date :16.3.2009

COMMON JUDGMENT

1)	Shri Gajanan Sadashiv Sultanpure Parvati Ind. Estate, Plot No. 14, Ichal. Chandur Rasta Ichalkaranji.	Case No. 276/08	Applicant
2)	M/s. Suparshv Export, Pro. Sou. Shobha Parisa Magdum Gat No. 1248/B, Rui, Tq. Hatkakangale	Case No. 277/08	
3)	M/s. Suparshv Export Prop. Kiran Chandrakant Magdum, Gat No. 1248/B, Rui, Tq. Hatkanangale	Case No. 278/08	
4)	Shri Mahadev Nayku Nemishte W.No. 1, House No. 834, Gat No. 599, Asaranagar, Ichalkaranji.	Case No. 279/08	
5)	Shri Raigonda Shivgonda Patil, W.No. 16, Kudche Mala, Chandur Rasta, Ichalkaranji. Applicants	Case No. 280/08	
6)	Nikita Export Pro. Rajgonda Raigonda Patil, Kudche Mala, Chandur Rasta, Ichal.	Case No. 281/08	
7)	Nikita Weaving Mills, Rajgonda R. Patil, Kudche Mala, Chandur Rasta, Ichalkaranji.	Case No. 282/08	
8)	Shri Suryakant Parisa Magdum, Gat No. 1248/B, Rui, Tq. Hatkanangale, Dist. Kolhapur	Case No. 283/08	
9)	Shri Chandrakant Parisa Magdum, Gat No. 1248/B, Rui, Tq. Hatkanangale, Dist. Kolhapur	Case No. 284/08	
10)	Sou. Hemal Gajanan Sultanpure, Shrilaxmi Textiles, Parvati Ind. Estate, Ichalkaranji.	Case No. 285/08	
11)	Shri Sudhir Mallappa Koshti Vikasnagar, Ichalkaranji.	Case No. 286/08	

V/s

1)	Executive Engineer (Office) & Nodal Officer, M.S.E.D.C.L. Circle Office, Kolhapur	Opponent
2)	Executive Engineer, M..S.E.D.C.L. Division Office, Ichalkaranji.	

**Judgement by Shri K.Y. Jagtap, Chairperson of
C.G.R.F. Kolhapur**

Date : 16/3/2009

**Common Judgement in Consumer Complaint Applications No.s 276/08 to 286/08
(11 Cases)**

All these complaint applications are pertaining to charging of penalty in connection with power factor. All these cases disclose common question of fact and law. So also in all these matters all the complainants have been represented by Shri Pratap Hogade. Shri Kamble, Ex.Engineer, Ichalkaranji has represented the Opponents, the M.S.E.D.C.L. For the sake of convenience, all these 11 matters are being decided by common judgement. This common judgment would not go to cause prejudice to either parties. Hence after these complainant applicants shall be called the applicants and the opponent M.S.E.D.C.L. shall be called the Company.

The brief facts giving the rise to these applications can be stated as under :

That the applicants in all the applications had received the bills having duly charged penalty for not maintaining power factor in relation to their powerloom units. In view of the said bills, according to the applicants, it was surprise to receive such penalty bills in connection of power factor. According to them, the Company did not follow the procedure laid down in Regulations 12, and Regulation 12.2 of the M.S.E.C. (Electricity Supply Code and other Conditions of Supply) Regulations 2005. In particular, the applicants have raised the grievance that Company can not charge the penalty in connection with power factor / harmonics unless a reasonable time/ period, which shall not be less than three months given to the customer to take such effective measures so as to raise the average power factor or control harmonics of the installation to value not less than such norms in accordance with the Regulations 12.1 above.

Consequently these applicants had approached I.G.R. Cell for redressal of the grievance. Thereafter during the pendency of said proceedings before I.G.R.Cell, the applicants apprehended that their electric supply may be disconnected for want of payment as to penalty in connection with the power factor. So in view of the provisions of Regulations 6.5 read with Regulation 8.3, the applicants have approached to this Forum by filling application in Schedule Form A, even without finalisation of the matter by the I.G.R.Cell. Accordingly all these applicants also had given application for interim relief of stay to the recovery of the penalty amounts as per the bills received by them.

Then notices with respect to interim relief order were issued to the opponent Company. After giving an opportunity to both the parties of hearing, this Forum had passed the Interim Order on 16/12/2008 and had rejected the request of the applicants for grant of interim stay to the said recovery of the penalty amount as per the bills. The applicants had asked for time to approach the Appellate Authority against the Interim Order passed by this Forum on 16/12/2008. So a longer date was given for further hearing of the main applicants on merits. However, it was informed by the applicants' representative Shri Hogade that they did not prefer an appeal against the Interim Order passed by this Forum and main application may be considered for final hearing on merits.

Accordingly, all the matters came to be fixed for final hearing on merits. In the mean time the opponent Company filed written say / submission which is a common in respect of all these applications. Further the opponent Company also produced the documents and bills issued to the each of the applicants in Nov.2006, wherein it has been pointed out that intimation to the customer / applicants was issued to submit their contract demand / TRF revised with effect from 1/10/2006 subject to correction of MERC detail order / current bill MERC rate etc.

It is the contention of the Company that as per the tariff order dt. 20/6/2008 and the letter dated 14/8/2008 by the Chief Engineer (Comm), the power factor penalty has been charged with effect from Aug.2008. Further as per the MERC Regulation No. 12.1, it is the duty of the customer to maintain power factor as laid down by the rules and order of MERC. Accordingly on 15.12.2008 vide L.No. 9/08-09 the Powerloom Association, Ichalkaranji had undertaken to install the capacitors to the unit of the respective consumers. Further, the understanding was given to the Association, that Company shall charge the penalty or provide incentive for low / high power factor and harmonics in accordance with the relevant order of the Commission. Further inspection of load and capacitor were also made and notice to that effect was given to the customer. The Association had accepted, the right of Company to charge such penalty for not maintaining of power factor. Moreover, it is specifically mentioned in the written submission by the Company that in the month of Nov. / Dec. 2006 the electric energy bills were issued disclosing a specific notice to convey contract demand. It was further mentioned that as per the letter No. PR/ Tariff/32150 dated 14/8/2008, the industrial customers (above 27 HP) LTMD. Meters 100% would be fixed to the concerned unit and thereafter LTMD. Tariff would be made applicable since Aug.2008. This was also published on Web site of the Company. So the opponent Company has justified charging of penalty for not maintaining power factor. Moreover, it is also submitted that the Company has also given the incentive to the concerned customers who have raised power factor as per Order of MERC and the Electricity Rules.

In this matter representative of all the applicants Shri Hogade has submitted the case of the applicants in detail before this Forum by referring legal provisions as well factual aspects involved in these matter, Shri Hogade has relied upon the tariff Order of M.S.E.D.C.L. for F.Y. 2006-07 referred in Case No. 54/05. Shri Hogade has also relied upon the Commission's directives disclosed in the Case No. 54/05. He has also relied upon the case Nos. 50, 53 and 56 of 2006 and Order dated 3.3.2007 of the M.E.R.C.

According to Shri Hogade, unless contract demand is registered and MD meters are installed the charging of penalty for power factor is not legal and proper. Shri Hogade specifically relied upon the order of the Commission, that the power factor penalty and incentive shall be applicable to only those consumers who have MD based tariff and provided with meters to measure their power factor. Moreover, according to him unless minimum three months reasonable time is given to the customers to take effective measures to raise the power factor and control harmonic of his installations, no penalty can be imposed on the customers. So Shri Hogade in his argument has submitted that the bills issued charging penalty be quashed and set aside and Company may be directed not to issue such penalty bills till three month time is given as per Regulation No. 12.2.

As against this, Shri Kambe, Ex.Engineer, Ichalkaranji has opposed the submission of Shri Hogade and has relied upon the documents which have been produced on record and has specifically submitted that the notices were given to submit contract demand to each of the customer in Nov. 2006 along with the bills issued to them and in those days failing to submit contract demand, the load which was sanctioned for the respective meters of the customers was taken has accepted by the customers as the contract demand. The TOD meters have been already installed to all the industrial units to whom the power factor penalty has been charged. Moreover, according to Shri Kambe, charging of penalty is nothing to with three month's notice in view of the " Proviso ", to regulation No. 12.2 of the Regulations 2005 issued by the Commission. As such it is submitted that all the 11 applications be dismissed.

Having considered the factual and legal aspects, following points arise for my determination :

Point No. 1) Whether the opponent Company is justified in charging the penalty relating to P.F. , as per the bills issued in the month of Oct. 08 and Nov. 08 ?

Finding – In the affirmative.

Point No. 2) Whether the bills in question of all the applicants in these 11 attars are required to be squashed and cancelled ?

Finding – In the negative.

3] What order ?

Finding – As per order below.

REASONS:-

1] AND 2] – Amongst of all these 11 applicants the bills inward in Application Nos. 277, 278, 279, 283, 284 and 285 of 2008 disclosed the bills of Oct. 08 issued to the respective applicants including the penalty pertaining to the P.F. Other matters No. 280, 281, 282 and 285 of 2008 disclosed the bills of Nov. 08 issued to the respective applicants including penalty pertaining to power factor. The above mentioned bills go to disclose that penalty has been charged pertaining to non maintenance of P.F. as per prescribed norms. The penalty charged in the month of Oct. 2008 and Nov. 08. The opponent Company is justified this action and charging the penalty based upon the bills issued to the respective applicants in the month of Nov. 06. Therein typed notice was given on each of the bills calling upon the customer to submit the contract demand / TRF revised with effect from 1-10-2006 subject to corrections of MERC. Detail order . current bill MERC rate. So the observations of the Commission in the tariff order dtd. 20.10.2006 in case No. 54/05 are seen complied with. After the said order of the Commission the opponent Company had given specific notice / understanding to the customers to register the contract demand. The order of the Commission is dated 20-10-2006 while the notices for registration for contract demand are given on 10-11-2006 as per the date of the respective bills. So this is much evidence on the record, the documents are preserved in Application No. 276/08 go to show that the Company had done it's part calling the customer to register the contract demand in order to have MD. based tariff. The Commission in the order Dt. 20-10-2006 had observed that, further, the Commission directs MSEDCL. to invite and minimum awareness programme wherein the LT industry IV category consumers would be required to declare / registered their contract demand within 2 months of the issue of this order. " Admittedly, irrespective of above notices to the customers none of the consumers had given his respective demand by way of declaration or registration. So non declaration of the contract demand by the customer as required by MSEDCL. and as per notices on the bill, the consequences follows that the demand load of the customer is presumed, on the basis of his sanctioned demand and same will be continued for billing purposes.

In this regard the Regulations No. 12 of the MERC [Electricity Supply Code and Other Conditions of Supply] Regulations 2005 has been referred by Shri Hogade and particularly provisions of 12.2 have been given for concentration. For sake of convenience those provisions can be noticed hereunder.:-

12. Power Factor / Harmonics

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 Rules, 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 orders 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 incentive for low / high power factor and for harmonics, in accordance with the relevant orders of the Commission.

In the above relevant provisions of Regulations No. 12.2 three months prior reasonable time was required to be given to take such effective measures so as to raise average P.F. and control harmonics of the installation of the customers to the value not less than such norms. However, it is submitted by Shri. Kamble, Ex.Engr. the awareness / notices were issued from time to time for installation of capacitors to the units and also for declaring contract demand about which I have already discussed. The documents produced on behalf of the Company alongwith written reply dt. 5/12/2008 also disclosed various commercial circulars and contract entered into by the customers for supply of energy. Those contracts provides the conditions that the conditions existing and to be imposed shall be binding with customers. So as per the provision of Regulation 12., it is the duty of the customer to maintain the average P.F. of his load at level prescribed by the Indian Electricity Rules 1956 and or in accordance with relevant orders of the Commission. The provisions in 12.2 about reasonable time period does not mean the customer should be taught about the system. But the paramount consideration of the said provisions is that the penalty for P.F. should not be surprised. Moreover the proviso to regulation 12.2 specifically gives power to the Company to charge the penalty or provide incentive for low or high P.F. and for harmonics in accordance with the P.F. This proviso to regulation 12.2 go to nullify the condition of reasonable period not less than 3 months as disclosed in 12.2. The provisions of proviso to Reg.12.2 are seen to have been made, in order to protect the revenue of the Company and it should not be avoided by the customer only on some so called technical grounds. To my opinion proviso to Regulation 12.2 gives power to the Company to charge penalty towards P.f. irrespective of provision of Regulation 12.2. In our matter, the Company had given information by way of awareness to the customers to install the capacitor to their unit to avoid loss of energy. A written submission dated 11.12.2008 given by the Ex.Engineer is accompanied with notices to the customer to Shri Sudhir Koshti disclose that there was no capacitor installed as required for load. Further the capacitors which was in existence was not in order. This notice is dt. 14.5.2008. The another notice dated 11.8.2008 given to Shri Gajanan Sultanpure also disclose about installation of requisite capacitors. This clearly go to show that well in advance before charging the penalty the customers were called on to do the needful by installation of capacitors. So in no case, it can be said that charging of penalty for P.F. is surprise to the customers.

No doubt Shri Hogade, on behalf of representative applicants has submitted that the review of the tariff order dated. 20.10,2006 passed by the Commission, requires the Company to start fresh process as to awareness programme as contemplated in Regulation No. 12.2. According to him there is no agreed contract demand.

Further he submitted that tariff order dated 20.10.2006 has been cancelled by the Commission in review order dated 3.3.2007 in case No. 50, 55, 56 of 2006. However, to my opinion that submission of Shri Hogade can not be accepted as in review order dated 3.3.2007, the Hon. Commission has not cancelled the tariff order dated 20.10.2006 all together but it is revoked to earlier prevailing tariff till such time 100% M.D. meters completed by M.S.E.D.C.L. as observed in Para 32 of the Order dated 3.3.2007 of the Commission. So a question of starting fresh process of awareness programme can not be contemplated and accepted. Moreover contract demand is concerned, with demand charges, which are derieved only after installation of MD meters. While P.F.penalty can be charged to the customers who have M.D. based tariff and who are provided with meters to measure the power factor. M.D. based tariff is directly linked to the installation of M.D. meters. So when the M.D. meters are installed 100% to the units, till July / Aug. 2008, M.D. based tariff is applicable and consequently power factor penalty can be charged. The installation of M.D. meters is not disputed fact on record by the applicants.

So as per the above aspects for want of declaration of actual demand by the customer, as per the notices issued to them in 2006, the Company has presumed the demand load as sanctioned to the meter. The condition which was stipulated in the review order that there must be 100% installation of M.D. meters and then and then only the Company could be able to charge the demand charges. It has come on record through the documents produced by the Company that there is 100% installation of M.D. meters for LT-V industrial consumers above 20 KW. So as per the review order passed by the Hon. Commission on 3.3.2007, the demand charges which were made applicable and recoverable by the Company were directed to revert back to the earliler prevailing tariff of Rs. 60/- per HP applicable for 50% of sanction load till such time as 100% M.D. metering is completed by M.S.E.D.C.L.

The above mentioned review order and other aspects as to M.D. meters are concerned and connected with recovery of demand charges. So far as our matters are not concerned those are not pertaining to the demand charges but those are pertaining to P.F. penalty. So it is necessary to point out here that demand charges is separate revenue then the P.F. penalty imposed by the opponent Co. In order to charge the demand charges there must be 100% M.D. metering which has been ordered by Hon. Commission in the review order. The Commission has observed that, the Commission clarifies that the P.F. penalty and incentive shall be applicable to only those consumers who have M.D. based tariff and are provided with meters to measure their P.F. Here as per the notices issued in Nov. 2006 by the Opponent Company to the customers for registering or declaring the contract demand and there after the Company has taken presumptive demand for want of specific declaration by the consumers and as there is 100% M.D. metering is completed by M.S.E.D.C.L.,the consequence follows that opponent Company is entitled to charge P.F. penalty and give incentive accordingly.

The above my discussions go to justify myself in recording affirmative findings on point No. 1 above.

Since the findings of point No. 1 recorded in affirmative, the bills issued to the customers / applicants with respect of charging penalty for P.F. can not be said illegal and it can not be quashed at all. On the contract applicants customers are bound to pay such amounts as shown in the respective bills. So I record my findings in negative on point No. 2.

In view of findings on the above points and reasons thereto all these 11 applications holds no merits and those are liable to be dismissed. However, considering nature of dispute I find that it will be just and proper to direct the parties to bear their own cost of this proceeding. With this I pass the following order.

ORDER

- 1) The applications No. 276 to 286 of 2008 are hereby dismissed.
- 2) In view of this judgment , the matters pending before the I.G.R. Cell of these applicants have been redundant and stood disposed off.
- 3) Parties are directed to bear their own cost of these proceedings.
- 4) The applicants / aggrieved persons by this Order are having right to prefer appeal within 60 days from the date of this order before the Hon. Ombudsman at ' Keshwa ' Bandra Kurla Complex, Bandra (E) Mumbai-51.

Date : 16.3.2009

Shri K.Y. Jagtap
Chairman

1) Shri S.R. Bamble, Member Secretary :

2) Shri G.C. Lele, Member :