

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

Case No. CGRF(NUZ)/070/2010

Applicant : M/s. Director Sargo Leasing Investment
Shri Mohini Complex Kingsway
NAGPUR.

Non-applicant : MSEDCL represented by
the Nodal Officer-
Executive Engineer,
Civil Lines Division, MSEDCL,
NAGPUR.

Quorum Present: Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

Smt. K.K. Gharat
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER PASSED ON 23.11.2010

The present grievance application has been filed on 05.10.2010 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. The Director, Sargo Leasing Investment, Kingsway, Nagpur, the applicant has protested the assessment raised by the non-applicant after the inspection of its Flying Squad unit vide letter dated 22.05.2010. Thereafter the applicant has made several correspondence with the non-applicant but all were unreplied. Therefore aggrieved by this the applicant has filed the grievance application in the Forum on dated 05.10.2010 and requested to the Forum to...

- 1) Direct MSEDCL not to disconnect the power supply till the grievance is finalized by CGRF / Ombudsman.
- 2) Set aside the final assessment of Rs.1,62,098/- as assessed by Dy. Executive Engineer (Dy.E.E.), Flying Squad, Nagpur.
- 3) Set aside the assessment of Rs.95,010/- as per inspection of Dy. E.E., Flying Squad, Bhandara.

2. The applicant has mentioned in grievance application submitted to the Forum that Dy. E.E., Flying Squad, Nagpur has inspected his premises on dated 09.11.2009. In the inspection report it has pointed out that the applicant has been billed as tariff category LT-II (20-50kW), but actually recorded MD was found more than 50 kW. Therefore the applicant should be billed as per LT-II category for more than 50 kW. This was treated unauthorized use of electricity, and hence imposed section 126 of Electricity Act, 2003. The Flying Squad also observed that low power factor with

value 0.58. Therefore proposed penalty for low power factor for past period.

3. According to above inspection report, the Executive Engineer, Civil Lines Division, has issued a manual bill of Rs. 8,28,576/-. Subsequently the applicant has received bill of Rs. 9,91,330/- including current bill and also the amount of Rs.9,23,586/-. The applicant has treated this bill as absurd, unlawful and hence not accepted. Therefore informed to the Executive Engineer, Civil Lines Division vide letter 22.05.2010, by challenging the legality of the bill and applicability of section 126 of Electricity Act, 2003. The non-applicant did not reply this letter. After wards the applicant has sent reminder letters to the applicant dated 26.08.2010, dated 03.09.2010, but all these letters were not replied by the non-applicant. Therefore the applicant has made appeal to the Dy. E.E., Flying Squad, Nagpur.
4. The matter was heard on dated 06.09.2010 for final assessment under section 126 of Electricity Act, 2003. In this regard, an order was passed by Dy. E.E., Flying Squad, Nagpur on dated 09.09.2010. The order has stated that ...

“As per the Electricity Act, 2003 amendment 2007 section 126 is not applicable for exceeding contract demand and tariff change, hence the action under section 126 is withdrawn. But as the sanctioned demand is exceeded and the tariff group of billing is changed and the power factor is poor. As per tariff order it is

necessary to recover and pay the charges for excess MD and the tariff difference from LT-II (20-50 kW) to LT-II above (50kW) for six months and the P.F. penalty for 3 months preceding date of inspection. Hence the final assessment of Rs.1,62,098/- shall be recovered from the consumer”.

Based on this the non-applicant has issued a bill with amount Rs. 3,38,218/- in the month of October, 2010, including amount Rs.1,62,098/- as assessment amount by Dy. E.E. Flying Squad, Nagpur, Rs. 95,010/- as assessment amount as per report of Dy. E.E., Flying Squad, Bhandara and current bill amount Rs.81,310/-. In this context the applicant has mentioned that the Dy. E.E., Flying Squad, Bhandara, has raised the assessment for the same irregularity as pointed out by Dy. E.E., Flying Squad, Nagpur.

5. The applicant has further stated that prior to inspections of Flying Squad, MSEDCL has never pointed out to the applicant that his kW MD has been exceeded and power factor was poor till July, 2010. The first bill showing kVA MD, 57.70 was issued in the month of July 2010. For this MSEDCL has charged for excess demand which has been paid by the applicant as per tariff order. Since the penalty for exceeding MD was already raised in computerize billing, therefore the revision of tariff block as per kVA MD is against MERC tariff order. The existing tariff order provides penalty for exceeding MD on monthly basis, therefore MD penalty for previous period could not be assessed until

recorded by MSEDCL and accordingly informed to the consumer. Hence revision of tariff block on the basis of recorded MD should be treated as illegal and arbitrary.

6. The applicant has further added that the MD and power factor was not mentioned in the energy bill upto June 2010. Therefore the MSEDCL cannot change slab block on the basis of recorded MD as slab block is based on kW i.e. connected or sanctioned load. Further previous MD cannot be billed on assumption but it has to be recorded by MSEDCL and also reported to consumer. Also P.F. Penalty cannot be imposed unless the consumer was being informed.
7. Therefore the applicant has requested to the Forum that the assessment as per Dy.E.E., Flying Squad, Bhandara should be treated as unlawful as per MERC tariff order and considered as double billing as the assessment was raised on the same points as of Dy. E.E., Flying Squad, Nagpur. Hence the applicant has further requested in the grievance application to set aside the assessment raised by both the Flying Squad units with amount Rs. 1,62,098/- and Rs.95,010/-. Also requested to the Forum to direct MSEDCL authorities not to disconnect the power supply till the grievance would be finalized by CGRF/Ombudsman. The applicant has shown his readiness to pay current bill except the assessment amount of Flying Squad.

8. The non-applicant has submitted the reply in the Forum on dated 21.10.2010. The non-applicant has stated that Director Sargo Leasing Investment limited with consumer no. 419993286614 was inspected by the Dy. E.E., Flying Squad, Nagpur, on dated 09.11.2009. The Squad has observed that the applicant was using the load of 61.8kW against the sanctioned load of 22.8kW. Also the power factor was found low i.e. point 0.58. Therefore the Dy. E.E., Flying Squad, has carried out the assessment under section 126 of amount Rs.8,28,576/-. The applicant has protested this amount. Accordingly the applicant was advised to approach the Dy. E.E., Flying Squad, Nagpur, because the inspection and assessment were carried out by Dy. E.E., Flying Squad, Nagpur.

On receipt of consumer's applications dated 27.08.2010 and 03.09.2010, the grievance of consumer was informed to the Dy. E.E., Flying Squad, vide letter dated 04.09.2010. The hearing was carried out by the concerned Dy. E.E. Flying Squad and as per his order a revised assessment bill of Rs.1,62,098/- was served to the applicant. As the applicant did not pay the amount the same was included in the energy bill of the consumer.

9. The non-applicant has stated that it is the responsibility of the applicant to maintain MD within the limit of sanctioned value and also maintain required power factor. Therefore the bill issued to the applicant was correct.

10. The matter was heard in the Forum on dated 22.10.2010. Both

the parties were present. Shri S.R. Gandhewar, Executive Engineer, Civil Lines Division was present on behalf of the non-applicant.

Shri S.P. Banait, the applicant's representative has reiterated the points as submitted in grievance application and submitted MERC Order in case no. 116 of 2008. Thereby pointed out to the guidelines of penalty for exceeding contract demand...

“In case, a consumer (availing Demand based tariff) exceeds his Contract Demand, he will be billed at the appropriate Demand charge rate for the Demand actually recorded and will be additionally charged at the rate of 150% of the prevailing Demand charges (only for the excess demand over the contract demand).

In case any consumer exceeds the Contract Demand on more than three occasions in a calendar year, the action taken in such cases would be governed by the supply code”.

By quoting this clause, the applicant's representative informed to the Forum that prior to imposing the penalty, it is the responsibility of the non- applicant to inform to the applicant regarding exceeding Contract Demand.

11. He further informed to the Forum that the non-applicant has never pointed out regarding exceeding of MD and low power factor prior to Flying Squad inspection. Two Flying Squad has made different assessments. Therefore the non-applicant cannot

penalized the applicant twice for the same reason. After the inspection, the applicant has taken corrective steps for power factor improvement by installing the capacitors. Therefore the assessments raised by the non-applicant should be considered as illegal and should be withdrawn.

12. The non-applicant has clarified his side that the assessment raised are proper as the applicant has been using electricity for more than its sanctioned quantity. Also to maintain power factor is the responsibility of consumer. Therefore power factor penalty which was raised also correct and hence applicant's grievance application should be rejected.

13. Heard both the parties and observed the documents on record. This grievance has arisen on the basis of inspection carried out by two Flying Squads of the non-applicant on dated 09.11.2009 and 09.07.2010. In both the inspection reports the irregularities were quoted as 'MD exceeds against sanctioned load and wrong tariff has been applied'. They have directed to apply the tariff category as LT-II (> 50 kW) instead of applied tariff category i.e. LT-II (20-50 kW) to the applicant.

The inspection report of Flying Squad, Nagpur Urban, also directed to penalize the applicant for poor power factor. In this case a hearing was also carried out for final assessment by the corresponding Flying Squad and has given an order that 'exceeding Contract Demand and tariff change did not fall under section 126 of the Electricity Act, 2003, amendment, 2007 but directed to recover charges for excess MD and the tariff difference from LT-II

(20-50 kW) to LT-II above 50 kW for 6 months and power factor penalty for 3 months preceding date of inspection’.

Accordingly the concerned authority of the non-applicant has raised assessment bill to the applicant.

14. The Forum has observed the inspection reports of both the Flying Squads. It reveals that in both the cases actual recorded kVA MD was taken as the basis for deciding consumption slab.

The Flying Squad Nagpur Urban, has directed to charge for excess MD and tariff change for the period preceding six months from the date of inspection i.e. 09.11.2009 (i.e. May 2009 to October, 2009) by considering 61.8 kW as unauthorized load against sanctioned load of 22.5 kW. But inspection report dated 09.11.2009 has shown kVA MD as 61.8 kVA and nothing has mentioned about recorded kW MD.

15. The tariff order which was applicable in this period was based on MERC’s order in case no. 72/2007 w.e.f. 1st June 2008. In this tariff order the Hon. Commission has created three sub categories under LT-II Commercial Category. The Salient feature no. 36 of this operative order is ...

“...three new sub categories have been created under LT-2 commercial category on the basis of sanctioned load, viz., 0 to 20kW, 21 kW to 50 kW, and above 50 kW sanctioned load”.

As per this clause the sub-category under commercial category should be based on sanctioned load.

16. The CPL submitted to the Forum shows that up to September 2009, the applicant's sanctioned load was 22.50 kW and from October 2009, the sanctioned load was 30.70 kW. As per the final assessment sheet prepared by Dy. E.E. Flying Squad, Nagpur Urban, the penalty for fixed charges was calculated on the basis of excess demand of 34 kVA against 22.5 kW sanctioned load. The energy charges were calculated on the basis of difference of tariff for LT-II above 50 kW for past 6 months from the date of inspection. He has also charged penalty for poor power factor for the months of August 2009, September, 2009 & October 2009 on the basis of recorded power factor i.e. 0.58 as per inspection dated 09.11.2009 with 31% power factor penalty. This bill amounts to Rs. 1,62,098/-. In all these calculations the base was taken as 61.8kW MD which has been never recorded by the meter.
17. The assessment sheet prepared by Dy. E.E., Flying Squad, Bhandara showed that on the basis of inspection dated 09.07.2010, the assessment was carried out for MD exceeding sanctioned load of 30.7 kW. The MD was considered as more than 50kVA on the basis of history record as noted from the meter for past 6 months (i.e. January 2010 to June 2010).

In case also base was taken as recorded kVA MD which was more than 50 kVA. The assessment was carried out for fixed charges by considering excess demand over the sanctioned demand with 150% penalty for the period January 2010 to June 2010. He has also assessed energy charges considering tariff

category as LT-II (> 50kW) and energy charge (Rs. /kWh) 8.10. This bill was amounted to Rs.95,010/-

In both the assessments, Forum has observed that recorded kVA MD is treated as kW MD for deciding tariff slab.

18. As per MERC order in case no. 72/2007 LT-II commercial category was sub-categorized on the basis of applicant's sanctioned load. The document's on record (CPL) shows that sanctioned load was 30.7 kW of both the occasion on Flying Squads visits. Therefore consumer category applicable to the applicant for the period as per MERC tariff order for case no. 72/2007 and case no. 116/2008 is LT-II commercial (> 20 kW and \leq 50 kW). Hence in Forums opinion the assessment which was charged on the basis of consumer category LT-II commercial > 50 kW should be withdrawn.
19. The Hon'ble commission's order clarifies that the TOD tariff has been applicable to the applicant from 1st June 2008 since his unit falls under LT-II commercial (>20-50kW) category. In both the applicable tariff orders the definition of Contract Demand is given as...

“ Contract Demand

Contract Demand means demand in Kilowatt(kW) / Kilo-Volt Ampere (kVA), mutually agreed between MSEDCL and the consumer as entered into in the agreement or agreed through

other written communication (For conversion of kW into kVA, Power Factor of 0.80 shall be considered).”

The documents on record shows that Contract Demand of the applicant was 22.50 kW up to Sep-2009 and from October 2009, it has been 30.70 kW. As per the above definition the corresponding Contract Demand in kVA for above periods are 28.12 kVA and 38.37 kVA respectively.

20. The photo copy of readings' register showing kWh, kVArh, kVAh, kVA, kW readings as submitted by the non-applicant from August 2007 to August 2010 shows that the recorded kVA are more than the Contract Demand. Therefore penalty for exceeding contract demand is applicable to the applicant. Hence the non-applicant can recover penalty for exceeding contract demand as per the prevailing tariff orders.

“Penalty for exceeding Contract Demand

In case, a consumer (availing Demand based Tariff) exceeds his Contract Demand, he will be billed at the appropriate Demand Charge rate for the Demand actually recorded and will be additionally charged at the rate of 150% of the prevailing Demand Charges (only for the excess Demand over the Contract Demand).

In case any consumer exceeds the Contract Demand on more than three occasions in a calendar year the action taken in such cases would be governed by the Supply Code”

This clause indicates a method for charging penalty for exceeding Contract Demand and using this the non-applicant can recover penalty for exceeding Contract Demand from the applicant.

Also in case any consumer exceeds the Contract Demand on more than three occasions in a calendar year, the non-applicant should increase the contract demand / sanctioned load of the consumer by following procedure as specified in the supply code.

21. The Dy. E. E., Flying Squad, Nagpur Urban, has proposed P.F. penalty as 31% on the basis of P.F. recorded (i.e.0.58) on 09.11.2009 for August 2009 to October, 2009. The basis of calculation of this assessment was not explained by the non-applicant. As per the Hon. Commissions orders in case no 72/2007 and 116/2008, if the average power factor measurement is not possible through the installed meter, the power factor calculation should be adopted as per the method outlined in the prevailing tariff orders. The non-applicant has neither shown any calculation for average power factor nor shown measurement of power factor through the installed meter. Therefore in Forums opinion, the non-applicant cannot recover the power factor penalty for past periods.
22. On above grounds the grievance application is disposed off with following order.

ORDER

The applicant's grievance application is partly allowed.

1. The non-applicant is hereby directed to set-aside the final assessment of Rs. 1,62,098/- as assessed by Dy. E.E. Flying Squad Nagpur and Rs. 95,010/- as per inspection of Dy. E.E. Flying Squad, Bhandara.
2. The assessment should be revised by imposing penalty for exceeding the Contract Demand as per prevailing tariff and considering the consumer category as LT-II commercial (>20 kW to 50kW).
3. The PF penalty for past period shall be withdrawn.
4. The non-applicant shall carry out this order and report compliance within 30 days from the date of issue the order.

Sd/-

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

Sd/-

(Smt.Gauri Chandrayan)
MEMBER