

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 64 of 2008

In the matter of
Complaint filed by Akhil Bharatiya Grahak Panchayat, Latur under Sections
142, 146 and 149 of the Electricity Act, 2003.

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Akhil Bharatiya Grahak Panchayat, Latur
Datta Nagar (South),
Engineer Colony, AUSA Road,
Latur - 413 531

... Complainant

Versus

Shri. S.Y. Thakur,
Chief Engineer (LZ),
Administrative Building,
Maharashtra State Electricity Distribution Company Ltd.,
Latur

... Opponent

ORDER

Dated: November 12, 2008.

Akhil Bharatiya Grahak Panchayat, Latur filed a complaint on 5.8.2008 against Shri. S.Y. Thakur, Chief Engineer (LZ), MSEDCL, Latur. It has been contended therein that the Commission had, in terms of its Clarificatory Order dated 24.8.2007 passed in Case Nos. 26 of 2007 and 65 of 2006, restrained MSEDCL from levying MD based tariffs till MD meters were installed for all consumers. MSEDCL could not have charged MD based tariffs till the relevant contract demand and billing demand data is submitted to the Commission in terms of the said Order dated 24.8.2007. On the basis of the aforesaid Order dated 24.8.2007, MSEDCL H.O. by means of a commercial Circular No. 62 dated 10.9.2007 asked its zones to complete the work and submit the data to their H.O. and confirm that the same had been updated in respective I.T. centres.



2. It has been alleged that however Shri. Thakur, Chief Engineer (LZ), MSEDCL, Latur issued a violative illegal Circular No. 1522 dated 14.3.2008 asking field staff to charge penalty to IP consumers in the entire district of Latur and accordingly MSEDCL illegally collected Rs. 15.61 Lakh as demand charges.

3. It has been averred in the complaint that being aggrieved by the actions of MSEDCL, Manwantar Cement Products, a consumer, gave a copy of the Commission's Order dated 24.8.2007 to the Executive Engineer, Latur in the month of May 2008, of which no cognizance was taken.

4. The Complainant has also submitted that upon information demanded by the Complainant under the RTI Act, 2005, it came to light that Rs. 15.61 Lakh have been collected by MSEDCL as demand charges.

5. In the circumstances, the Complainant has demanded the refund of amount in respect of excess demand along with interest on the same, to be returned to Manwantar Cement Products. Complainant has sought that till that time an immediate order may be issued by MSEDCL HO to their subordinate offices not to disconnect any consumer on this account. Complainant has sought that penalty be imposed on Shri. Thakur under Sections 142, 146 and 149 of the EA 2003. Complainant has also submitted that the C.E. (LZ) is in-charge of Latur, Nanded, Osmanabad and Beed districts. So in the same manner, such illegal amounts must have been collected from the other three districts also. Details may be called for and such amount may be refunded. Complainant has referred to an Order dated 14.7.2005 in Case No. 2 of 2003 wherein MSEB were directed to make refund of similar charges as stated in the present complaint. However, MSEDCL's officers did not refund the amounts and those who applied for the refund, had to approach CGRF and Electricity Ombudsman. This time the same incident should not occur and the consumer should not have to approach MSEDCL. Within the stipulated time of next billing cycle, amount should be credited in the consumer's bill. If any consumer is left out and approaches MSEDCL for refund, it will be a clear case of violation and invocation of Sections 142 and 146 along with compensation of Rs. 5,000/- would need to be paid by MSEDCL. Complainant has also sought for costs.

6. Shri. S.Y. Thakur filed his reply on 23.9.2008. He has submitted that the complaint has been filed by one Shri. Avinash Dobadgaonkar without receiving any due authorisation from Akhil Bharatiya Grahak Panchayat and without having any *locus standi* as per the provisions of Order 7 Rule 4 of CPC. It has also been submitted that the proprietor of Manwantar Cement Products as well as the said Shri. Avinash Dobadgaonkar have not made any representation before the office of MSEDCL IGRF, CGRF or Electricity Ombudsman at Mumbai in respect of Rs. 6,456/- and thereby have not fulfilled the provisions of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006. They should not have directly approached the Commission by filing the present complaint without invoking the alternative remedy as aforesaid and without any cause of action. Shri. Thakur has alleged that the Complainant has not submitted the names of consumers from whom Rs. 15.61/- lakh have been purported to have been illegally collected by MSEDCL. It is also stated in the reply that there was no violation by MSEDCL of the



Order dated 24.8.2007 passed in Case Nos. 26 of 2007 and 65 of 2006 as well as Commercial Circular No. 62 of MSEDCL.

7. Shri. Thakur has further submitted that Shri. Avinash Dobadgaonkar had filed another Petition seeking identical reliefs as sought hereunder in his representative capacity before the CGRF Latur bearing Case No. 246/20/2008, which has been decided on 16.9.2008 in favour of MSEDCL. It is Shri. Thakur's contention that the correct route should have been to prefer appeal before the Electricity Ombudsman instead of filing the present complaint before the Commission thereby bypassing the provisions of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006.

8. With regard to the contention as to the collection of Rs. 15.61 lakh, Shri. Thakur has conceded that MSEDCL has collected Rs. 15.61 lakh against excess load penalty and power factor penalty from the consumers under Latur district who utilized excess load more than sanctioned load and also consumers who have not maintained power factor of 0.90. Shri. S.Y. Thakur submitted that neither have these consumers represented before the office of MSEDCL for refund of excess load penalty amount or power factor penalty amount whatsoever charged by MSEDCL to such consumers nor did they represent before the IGRF/ CGRF Latur.

9. Subsequent to the filing of the complaint by the Complainant and reply by the Opponent, applications for intervention were filed by Shri. Jude Tandon and Shri. N. Ponrathnam on 22.09.2008 wherein they have sought direction upon all Electricity Distribution Companies not to force the Contract Demand based tariff to low tension (LT), low load factor Industrial units. Intervenors have also sought directions upon all Electricity Distribution Companies not to force Power factor penalty and demand Penalty to the low tension (LT) consumers of Maharashtra.

10. On 23.09.2008 a hearing was held in the aforesaid matter wherein Shri. Harshad Seth, authorized nominee appeared for the Complainant. Shri. K. G. Sakhare, Advocate appeared for the Opponent. In the hearing, the Complainant submitted that the Opponent had issued a Circular dated 14.03.2008 by means of which the Opponent instructed the field staff of MSEDCL to collect demand charges from the IP consumers. Pursuant to this circular, MSEDCL collected demand charges to the tune of Rs. 15.61 Lakh. Information about collection of this amount was obtained by the Complainant in writing by filing an application under the RTI Act, 2005. This amount was only pertaining to the district of Latur. Information relating to all the four districts from where the staff of MSEDCL had collected demand charges was not available with the Complainant. The Complainant also pleaded before the Commission to direct the Opponent to refund all the amounts collected as demand charges as they were illegal. Also, the Complainant pleaded before the Commission to direct MSEDCL to refrain from taking any action of disconnection till the matter is finally decided.

11. Shri R. K. Kawathekar appearing on behalf the Opponent submitted that the so called Circular as referred to by the Complainant was only an internal letter issued by the Opponent to MSEDCL field staff to inform the field staff as to how much load was being utilized by the consumers more than their sanctioned load. All billings by



MSEDCL have been in accordance with the Commission's Order dated 24.8.2007 in Case Nos. 26 of 2007 and 65 of 2006 and Commercial Circular No. 62, on HP based tariff only. The excess load used by the consumers is ascertained through MD meters. Penalties are levied for excess consumption as per Orders of the Commission and the Ombudsman.

12. Shri R. K. Kawathekar further submitted that Manwantar Cement Products never demanded any refund of demand charges collected by MSEDCL and it has directly come before the Commission without going to the IGRF, CGRF and the Ombudsman. This action has been stated to be objectionable by Shri R. K. Kawathekar and prayed before the Commission to remand the matter to the appropriate Forum.

13. Shri K. G. Sakhare, Advocate appearing on behalf of the Opponent submitted that Shri. Avinash Dobadgaonkar without receiving any due authorization from Akhil Bharatiya Grahak Panchayat and without having any locus standi and without any authorization letter has filed the present case before the Commission. Shri Sakhare submitted that Shri. Avinash Dobadgaonkar had filed another similar petition in the same matter with identical reliefs as sought hereunder before the CGRF Latur. This has not been mentioned by the Complainant anywhere in his complaint.

14. Shri. Sakhare submitted that Manwantar Cement Products had corresponded with the Deputy Engineer sub-division Latur, but has not added the concerned officer as an Opponent in the complaint. Also, none of the consumers have come to MSEDCL for refund. The Complainant should have first approached the IGRF, then the CGRF and then the Ombudsman instead of filing the present complaint before the Commission.

15. Shri K. G. Sakhare submitted that the present case is not maintainable under Sections 142, 146 and 149 of the Electricity Act, 2003.

16. Replying to the Opponent's arguments, the Complainant submitted that the action of the Opponent has been illegal and it concerns all consumers, not only Manwantar Cement Products.

17. Shri. Ponrathnam, the intervening party submitted that the directives of the Commission must be altered, i.e., the basis on which tariff is calculated and pleaded that the Commission should allow the present complaint.

18. Having heard the parties and after considering the material placed on record, the Commission needs to point out to the Tariff Order dated May 18, 2007 in Case 65 of 2006 on the MYT Petition filed by MSEDCL and the Clarificatory Order dated August 24, 2007 in Case 26 of 2007 and 65 of 2006, which have been referred to by the Parties. The MYT Order dated May 18, 2007 states,

"The Commission has created two sub-categories within LT-V (LT industrial) category, viz., consumers with sanctioned load of up to and including 20 kW, and consumers with sanctioned load above 20 kW. Demand charges have been specified in Rs/kVA for consumers with sanctioned load above 20 kW, whereas fixed charges in



Rs/connection/month have been specified for consumers with sanctioned load of up to and including 20 kW, to ensure parity with other distribution licensees in the State.

For the consumers with sanctioned load above 20 kW, the Commission has considered that the MD meters have been installed and computed the revenue accordingly. However, given the earlier experience narrated in above referred review Order, MSEDCL will not be permitted to charge the demand charges specified in this Order, till such time MD meters are installed and the demand has been contracted for all the consumers' premises for whom MD based tariff is applicable. Till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs for the consumers whose sanctioned load is above 20 KW, though the revenue has been assessed based on MD based tariffs. Also, the ToD tariffs will be applicable for the consumers with sanctioned load above 20 kW, only after the MD meters are in place. The Commission is of the opinion that this is sufficient incentive for MSEDCL to ensure that the MD meters are installed at all the eligible consumers' premises in its own interest.

The Commission clarifies that the consumers in LT V category with sanctioned load below 20 kW, who had opted for MD based tariff in the past and have MD meters installed, will not be charged MD based demand charges, and will be charged fixed charges only, as per the Commission's Tariff Order."

The approved Tariff Schedule for LT Consumers, which was a part of the MYT Order, states,

"Power factor Penalty: Power Factor penalty shall be applicable to those consumers who have MD based tariff and are provided with meters to measure their power factor (LT III, LT V and LT IX categories), and shall be ..."

Further, the Commission's Clarificatory Order states,

"From the above reproduction of the Tariff Order, it is clear that the relevant sub-category is for LT industrial consumers having sanctioned load above 20 kW and where MD meters have been installed. In the absence of data regarding this sub-category, the Commission has used available data and certain assumptions to project the revenue. While there could be errors in the revenue estimation on this account, the issue is that till date, MSEDCL has neither submitted the desired data sought by the Commission in the format provided for this purpose, nor has it confirmed that complete MD metering has been done for all the relevant consumers as directed by the Commission. Further, the Order also clearly mentions that unless MSEDCL completes 100% metering for this category (as per MSEDCL's own commitment and extended time line, the MD metering was to have been completed by March 31, 2007), it will not be allowed to charge the MD based tariffs, and will continue to levy the earlier existing fixed charges on the basis of the sanctioned load, though revenue will be assessed on the basis of MD metering..."

MSEDCL is required to act within the above-said two Orders. However, the Commission finds that it has not been disputed by the Complainant that Shri. Avinash Dobadgaonkar had filed one another petition seeking identical reliefs as sought hereunder in his representative capacity before the CGRF Latur bearing Case No. 246/20/2008, which has been decided on 16.09.2008 in favour of MSEDCL. It is Shri.



Thakur's contention that the correct route should have been to prefer appeal before the Electricity Ombudsman instead of filing the present complaint before the Commission, thereby bypassing the provisions of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006. The Complainant has not disputed this argument made by the Opponent. Shri. S.Y. Thakur submitted that neither have these consumers represented before the office of MSEDCL for refund of excess load penalty amount or power factor penalty amount whatsoever charged by MSEDCL to such consumers nor did they represent before the IGRF/ CGRF Latur. It is apparent that MSEDCL is open to hearing the affected consumers on the issue of MD based tariffs, load factor penalty, etc. MSEDCL cannot charge any tariffs that have not been authorized so to be charged under the Order dated 18.05.2007 in Case No. 65 of 2006 and Clarificatory Order dated 24.08.2007 in Case Nos. 26 of 2007 and 65 of 2006. In view of the above, it will not be justifiable to order penalty on MSEDCL under Section 142 without giving an opportunity to the CGRFs of MSEDCL to examine grievances that may be filed in this connection. Moreover, these are billing disputes, which the Commission cannot go into. For the purposes of resolving billing disputes, the CGRFs have been established under Section 42 (5) of the Electricity Act, 2003. These grievances also include that of action taken by MSEDCL under Section 126 of the Electricity Act, 2003 for excess load, unauthorized use of electricity and penalty levied therefor. These matters are not within the jurisdiction of the Commission.

19. The Intervenors have sought direction upon all Electricity Distribution Companies not to force the Contract Demand based tariff to low tension (LT), low load factor Industrial units. Intervenors have also sought directions upon all Electricity Distribution Companies not to force Power factor penalty and demand Penalty to the low tension (LT) consumers of Maharashtra. They have submitted that the directives of the Commission must be altered, i.e., the basis on which tariff is calculated and pleaded that the Commission should allow the present complaint. The Commission is of the view that these arguments and contentions do not fall within the ambit of the present complaint and therefore stand dismissed.

The present complaint stands disposed of with the above observations.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(Prafulla S. Varhade)
Secretary, MERC