

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 49 of 2010

In the matter of
Complaint filed by M/s Nidhye Engineering Co. Pvt. Ltd. against MSEDCL alleging non-compliance of the Order dated 30th June, 2010 passed by the Electricity Ombudsman, within the stipulated time frame.

Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member

M/s. Nidhye Engineering Co. Pvt. Ltd.

....Complainant

V/s

Maharashtra State Electricity Distribution Company Limited
Through its' Superintending Engineer, Nagpur (U)

...Opponent

ORDER

Date: December 28, 2010

M/s. Nidhye Engineering Co. Pvt. Ltd., Nagpur, the Complainant filed a complaint under affidavit before the Commission on 20th August, 2010 against Maharashtra State Electricity Distribution Company Limited (“MSEDCL”), the Opponent. The Complainant has sought directions for penalizing the Opponent under Sections 142, 146, 151 and 151A of the Electricity Act, 2003 (“EA 2003”) for contravening the provisions of MERC (CGRF & EO) Regulations, 2006, for non-compliance of the Order of the Electricity Ombudsman within the stipulated time frame.

2. The prayers made by the Complainant are as under:

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1. *Penalize the Respondent under Section 142 of the Act and in addition to this direct the Respondent to pay Rs. 1 lac as penalty for contravening the directions issued in the order of Ombudsman.*



2. *File a complaint with the appropriate court under Section 151 of the Act for penalizing the Respondent under Section 146 of the Act.*
3. *Direct the Respondent to comply with the order of the Ombudsman.”*

3. The facts of the matter in the complaint, are as under:

- a) The Complainant is a HT consumer of the Opponent, having Sanctioned Contract Demand (“CD”) of 550kVA with a Sanctioned Load (“SL”) of 810kW at 11kV. The load was released on 18th October, 2004.
- b) The Commission vide its Tariff Order for MSEDCL, in Case No. 54 of 2005 dated 20th October, 2006, (with reference to determining the ASC, in Commission’s order dated 10th January, 2006, in Case No. 35 of 2005), had determined the ASC and its applicability on percentage basis for different categories of consumers. Subsequently, with Clarificatory Orders issued in regard to the applicable base consumptions for charging the ASC to the consumers, the Commission vide its Tariff Order dated 18th May, 2007 in Case No. 65 of 2006, specified the methodology for computation of benchmark consumption at Paragraph 7.4 of the Order. This paragraph was modified and replaced by the APTEL in its Judgment dated 12th May, 2008 in an appeal by ‘Eurotex Industries and Exports Ltd.’, to cover, for reference period, the utilization of increase in demand in same ratio as percentage of increase in CD, in case of consumers who increased their CD after billing month of December, 2005.
- c) The Opponent issued its bill to the Complainant claiming the Additional Energy charges under the head ‘debit bill adjustment’ in the month of September 2009 and added an amount of Rs.13,27,521.56 against additional ASC charges saying ‘as per the ATE order’.
- d) Considering that the said ATE Judgment was not applicable to the Complainant, since the Complainant had not increased its demand after Dec., 2005, and also, that the Opponent had taken a wrong benchmark consumption for computation of ASC Units for the period from May 2007 to May 2008 (during which the said Tariff Order dated 18th May, 2007, was to be applicable), the Complainant communicated accordingly to the Opponent’s Chief Engineer, Nagpur (U) Zone. Not being able to convince the Opponent in the matter, the Complainant requested the Opponent to grant installments for making the payment, which was accepted, and Complainant made the payment in 3 (three) installments with interest, i.e. total Rs.13,78,526/- as against the bill for Rs.13,27,521.56.
- e) The Complainant, on 23rd October, 2009, filed a grievance with Internal Grievance Redressal Cell (“IGRC”), Nagpur, which vide an order dated 19th December, 2009, said ‘Decision of the ATE - - - is applicable to all consumers, hence the charging of ASC of Rs.13,27,521.56 by MSEDCL is correct’.
- f) Aggrieved by the Order of the IGRC, the Complainant filed a grievance with the Consumer Grievance Redressal Forum (“CGRF”), Nagpur(U) Zone (No. CGRF (NUZ)/018/2010). The CGRF passed an Order on 7th May, 2010, partly allowing relief to the Complainant, by asking for revision of the bills for the period from October 2006 to April 2007, taking into consideration the reference period as per



the Commission's Orders in Case No. 54 of 2005 and Case No. 35 of 2005, as against the Complainant's prayer for the period from October 2006 to May 2008.

- g) Not satisfied with CGRF's said order, the Complainant made a representation to the Electricity Ombudsman (No. 71 of 2010). The Electricity Ombudsman ("EO") passed its Order dated 30th June, 2010, giving relief to the Complainant by directing the Opponent to revise the bills of the Complainant based on 'the benchmark consumption as average of Sept. – Dec. 2005, even for the period from May, 2007 to May, 2008.

Compliance was to be reported within 30 days of the order.

- h) The Complainant vide its letter dated 8th July, 2010, requested the Opponent to comply with the said Order of the EO and refund the excess amount paid by it to the Opponent, to which the Opponent vide its letter dated 3rd August, 2010, replied conveying that the Opponent had instructed its pleader to challenge the said Order of the EO by filing Writ Petition in the Nagpur Bench of Bombay High Court.
- i) Terming the action, of not complying with EO's Order by the Opponent, as an offence punishable under Section 142 of the EA 2003 and also, a criminal offence punishable u/s 146, 151, 151A of the EA 2003, the Complainant has filed the present complaint with the Commission.
4. In reply to the letter dated 30th August, 2010, from the Commission's office asking the Opponent about the steps taken by it to comply with EO's Order, the Opponent vide its letter dated 9th September, 2010, informed the Commission that it had filed a Writ Petition before the Nagpur Bench of the Bombay High Court, challenging the said Order passed by the EO.
5. Subsequently, the Opponent vide its letter dated 6th October, 2010, submitted the following:
- a) The Opponent had acted according to the Order issued by the CGRF, Nagpur to revise the benchmark consumption for the period from October 2006 to April 2007 and the credit was given to the Consumer in the bill of June 2010.
- b) The Opponent had filed a Writ Petition (No.4655/10) before the Nagpur Bench of Bombay High Court, for quashing and setting aside the Order of the EO and to stay the effect, operation, implementation and execution of the same.
- c) Since, the Opponent has gone to the Hon'ble High Court, for seeking clarification in the matter, it had not followed the EO's Order, and thus, it does not have an intention to disobey the EO's Order.
- d) The Hon'ble High Court had made, on 9th September, 2010, the said WP returnable on 18th October, 2010, alongwith another Writ Petition, No. 4057/10 (which is on similar issue of ASC and bench mark consumption, by the S.E., Akola V/s Gujarat Ambuja Exports Ltd). It was also submitted that the matter in the present case was of high importance since it was going to have its effect all-over Maharashtra State.
6. A hearing in the matter was held by the Commission, on 24th November, 2010, where Shri R. B. Goenka and Shri A. K. Ramani appeared on behalf of the Complainant, and, Shri M. S. Kele, Superintending Engineer, along with Sau. S. O. Janorkar, Dy. Manager (F&A) of MSEDCL, appeared on behalf of the Opponent. During the hearing, the Opponent submitted that the WP filed before the Hon'ble High Court, was



listed on 7th December, 2010, and that in the meantime, the Hon'ble High Court has stayed any coercive steps in the matter.

In view of the stay order given by the Hon'ble High Court, the Commission adjourned the matter, and decided to hear the matter further on 20th December, 2010.

7. The Opponent vide a fax message dated 14th December, 2010, submitted to the Commission that the Hon'ble High Court has continued the Interim Order of stay by its order of 7th Dec., 2010, in the matter, now returnable on 19th January, 2011.
8. Vide an email on 20th December, 2010 the Complainant has sent a scanned copy of its withdrawal application dated 20th December, 2010 addressed to the Commission in the present matter . The Complainant has conveyed that on the WP filed by the Opponent, 'the Hon'ble Court issued Order that the Complainant shall not take any coercive steps in the matter till a final Judgment is issued by the Hon'ble High Court'. The Complainant has mentioned that in another case the Commission has dismissed the Petition on same ground and hence the Complainant had decided to withdraw the present complaint.
9. During the hearing held by the Commission, on 20th December, 2010, the Complainant was absent, while the Opponent was represented by MSEDCL's Shri M. S. Kele, S.E., and Sau. S. O. Janorkar, Dy. Manager (F&A). The aforesaid letter, dated 20th December, 2010, from the Complainant, was read out, and, taken on record. The Commission has accepted the request of the Complainant to withdraw the present case filed before it.

In view of the above, Case No. 49 of 2010, stands dismissed as withdrawn.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N.
Khawarey)
Secretary, MERC