

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

(Appointed by the Maharashtra Electricity Regulatory Commission  
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 192 OF 2019

In the matter of billing

Sant Gyaneshwar Steels Pvt. Ltd. .... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Pune (R) Circle (MSEDCL)... Respondent

Appearances

For Appellant : Suresh Sancheti, Representative

For Respondent : 1. Vitthal Adhal, Executive Engineer, PRC  
2. Sohan Dhamne, Sr. Manager


Coram: Deepak Lad

Date of Order: - 10<sup>th</sup> January 2020

**ORDER**

This Representation is filed on 25<sup>th</sup> October 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 16<sup>th</sup> August 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).

2. The Forum, by order dated 16.08.2019 has disposed of the complaint in Case No. 17 of 2019.

  
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3. Aggrieved by the order of the Forum, the Appellant has filed this representation stating in brief as under: -

- (i) The Appellant is a HT Consumer with Pune Rural Circle with Contract Demand (CD) of 4990 KVA since 18.04.2000 (No.170149022850) located in Village, Markal, Tal. Khed, District Pune.
- (ii) The Appellant is billed for demand charges and load factor incentives as per the provision of Tariff Order dated 03.11.2016 in Case No 48 of 2016. Reproduced below as per MSEDCL Commercial Circular No. 284 dated 11.04.2017

*Load Factor Incentive: -*

*The Load Factor is to be computed as follows:*

$$\text{Load Factor} = \frac{\text{Consumption during the month in MU}}{\text{Maximum Consumption Possible during the month in MU}}$$

*Maximum consumption possible = Contract Demand (kVA) x Actual Power Factor x (Total no. of hours during the month, less planned load shedding hours\*)*


*\* - Interruption/non-supply to the extent of 60 hours in a 30-day month.*

*5. In case the Billing Demand exceeds the Contract Demand in any particular month, the Load Factor Incentive will not be payable in that month. (The Billing Demand definition excludes the demand recorded during the non-peak hours, i.e., 22:00 hrs to 06:00 hrs and, therefore, even if the Maximum Demand exceeds the Contract Demand in that period, Load Factor Incentive would be applicable. However, the consumer would be subject to and shall have to pay the penal charges applicable for exceeding such Contract Demand.)*

#### ***Penalty for exceeding Contract Demand***

*In case a consumer (availing Demand-based Tariff) exceeds his Contract Demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable Demand Charge (only for the Demand in excess of the Contract Demand).*

*Under these circumstances, the consumer shall not be liable for any other action under Section 126 of the EA, 2003, since the penal additional Demand Charge provides for the penalty that the consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.*

  
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However, it is surprise, the Appellant received the bill for the month of December 2017 and January 2018 in which contract demand was updated on the basis of highest recorded demand in last 12 months for all 4 zones.

- (iii) This unilateral action on the part of MSEDCL has deprived us from actual load factor incentive, which we should have got & instead of that lower amount of load factor incentive credit was given to us. This unilateral action of MSEDCL is without any legal backing.
- (iv) The Appellant prays that :
- The order of the Forum may be set aside.
  - To set aside the bills for the month of December 2017 & January 2018 issued with CD of 5412 KVA & revise the bill with CD of 4990 KVA.
  - To recalculate our load factor incentive with reference to CD of 4990 KVA and to give credit for difference between load factor incentive given & load factor incentive receivable.
  - To recalculate demand charges / Demand Penalty / PF incentive / Electricity duty on accounts of above changes with interest.

4. The reply submitted by the Respondent vide its letter dated 21.11.2019, in short is as below: -

- The Appellant is a HT Consumer (No.170149022850) from 18.04.2000 having CD of 4990 KVA at Village Markal, Tal. Khed, District Pune.
- CD of 4990 KVA was breached more than three time in the calendar year of 2017 for August to November 2017 which is tabulated as below:

Month	Contract Demand (KVA)	Contract Demand recorded (KVA)
Aug-17	<b>4990</b>	<b>5412 (max)</b>
Sep-17	<b>4990</b>	<b>5409</b>
Oct-17	<b>4990</b>	<b>5358</b>
Nov-17	<b>4990</b>	<b>5361</b>
Dec-17	5412	5369
Jan-18	5412	4909
Feb-18	4990	4917

  
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- (iii) This is a breach of agreement between Appellant and MSEDCL. Hence Notice to comply was served on 12.12.2017 wherein consumer was asked to make application to MSEDCL Pune Rural Circle office for enhancement of CD and make payment of Rs.200521/- to regularize the same within a period of 15 days.
- (iv) However, the Appellant neither applied for enhancement of CD nor made the payment of Rs.200521/-.
- (v) Thereafter, CD of the consumer was auto updated from 4990 KVA to 5412 KVA through IT System in the month of December 2017 and the bill was accordingly issued.
- (vi) In the letter by Chief Engineer (Commercial), MSEDCL Corporate Office, Mumbai vide No. Co-ord cell/ Reduction/Application/01298 Dt. 18.01.2018, it is mentioned as follows:

*“Notice to comply was served to HT consumers who have exceeded their sanctioned Contract Demand more than 3 occasions in a calendar year 2017. These consumers have breached the agreement executed between consumer & MSEDCL as per regulations No. 4 & 6 of Supply Code Regulation and provisions of MERC Tariff order. Accordingly, the contract demand of such HT consumers is restated from Dec-17 billing to their highest recorded Demand in Calendar year 2017.”*

Maharashtra Electricity Regulatory Commission (the Commission) in its Tariff Order dated 03.11.2016 in Case No. 48 of 2016 stipulates the Penalty for exceeding CD. The relevant portion is quoted below :

*“In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.”*


- (vii) The order of the Commission dated 01.01.2019 in Case No. 60 of 2018 ruled as below:

*16. In view of above, the Commission is addressing the issues raised in this Petition. The Provisions related to Load Factor Incentives and penalty for exceeding Contract Demand in tariff Order dated 3 November, 2016 in Case No. 48 of 2016 is reproduced below:*

**“Load factor Incentives:**

.....

*8.32 In case the Billing Demand exceeds the Contract Demand in any particular month, the Load Factor Incentive will not be payable in that month. (The Billing Demand definition excludes the demand recorded during the non-peak hours, i.e. 22:00 hrs to 06:00 hrs. Even if the Maximum Demand exceeds the Contract Demand in that duration, the Load Factor*

  
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incentive would be applicable. However, the consumer would have to pay the penal charges for exceeding the Contract Demand.)”

**Penalty for exceeding Contract Demand:**


In case a consumer (availing Demand-based Tariff) exceeds his Contract Demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable Demand Charge (only for the Demand in excess of the Contract Demand). Under these circumstances, the consumer shall not be liable for any other action under Section 126 of the EA, 2003, since the penal additional Demand Charge provides for the penalty that the consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.”[Emphasis added]

Thus, as per above Tariff Order, even if Contract Demand is exceeded during non-peak hours i.e. 22:00 hours to 06:00 hours, consumer is eligible for Load Factor Incentives by paying penalty for exceeding Contract Demand. Further in case consumer exceeds its Contract Demand on more than three occasions in a calendar year, then action to be taken would be governed by the provisions of Supply Code Regulations. Relevant provision of Supply Code Regulations is reproduced below:

“6.8 The Distribution Licensee shall increase or reduce the contract demand / sanctioned load of the consumer upon receipt of an application for the same from the consumer:”

The Provisions are to be read in a conjoint manner. The applicability of load Factor incentives is dealing with the commercial treatment for achieving a load factor under conditions specified i.e even if Contract Demand is exceeded during 22:00 hrs to 06:00 hrs. The Provision regarding the Consumer exceeding the Contract Demand is dealing with system operations and system security which cannot be compromised under any circumstances. The Consumer is expected to generally operate within its own Contract Demand and not to exceed the Contract Demand as a matter of routine, while the **Distribution Licensee is mandated to carry out the grid operations in a safe and secure manner**. Therefore, a specific provision has been incorporated in case consumer exceeds its Contract Demand on more than three occasions in a calendar year. **Repeated drawl of power in excess of the Contract Demand does expose the grid to risks** and hence from the point of view of proper grid operations and planning, an enabling clause has been incorporated about revision in Contract Demand. As per Supply Code Regulations, it is possible to revise the contract demand if concerned consumer applies for the same. Further, it needs to be noted that since **the Penalty for exceeding Contract Demand is also applicable to non-peak hours therefore ipso facto the Provisions relating to exceeded Contract Demand on more than three occasions are also applicable to non-peak hours**.

17. In this case, MSEDCL has issued notice to EGPL on 14 December, 2017 for exceeding its Contract Demand on more than four occasions in a calendar year i.e. August, 2017, September, 2017, October, 2017 and November 2017 and directed EGPL to regularize the enhanced demand as per the SoP Regulations. In reply, EGPL vide its letter dated 28 December, 2017 has denied the allegations and has requested the MSEDCL to cancel/ recall its allegations and directions mentioned in the notice. However, without having any application from EGPL, MSEDCL enhanced the Contract Demand of EGPL from 289 KVA to 415 KVA.

  
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18. The Commission notes that EGPL has agreed that it has indeed exceeded the Contract Demand in four months in a calendar year. Though such incidences were during nonpeak hours and as per EGPL's contentions there is no limit on number of occasions of exceeding Contract Demand during off-peak hours, the Commission rules that this understanding of EGPL is not in accordance with the Tariff Order dated 3 November, 2016. As explained in Para No. 16 above, **as there is penalty for exceeding Contract Demand during off-peak hours, limitation of three incidences of exceeding Contract Demand is also applicable to off-peak hours.**

19. Now, only issue which needs to be addressed is the requirement of application from consumer for revision in Contract Demand. As, EGPL has exceeded the Contract Demand in four months in a calendar year, MSEDCL has requested EGPL to submit application as per Supply Code Regulations for increase in Contract Demand. However, EGPL has refused to do so. In this regard, as elaborated in Para No. 16, the Commission notes that Distribution Licensee is under obligation to maintain reliable distribution system. Loading of distribution system is major component which decides reliability of distribution system. Therefore, **if consumer is frequently exceeding its Contract Demand, it is duty of the Distribution Licensee to appropriately update the system loading data and accordingly increase/regularize its Contract Demand, and make necessary upward/ supporting changes in the distribution system to maintain reliable supply so as to be able to cater to such increased demand.** This problem is pertinent where the Consumer overloads the system by exceeding the Contract Demand and not vice versa. The Consumer is bound to follow the stipulations related to grid safety which in this case is to avail load within the sanctioned limits. In the present case, EGPL is declining to regularize its Contract Demand and for that it is taking shelter of Supply Code Regulations under which application of consumer is a must for revision in contract demand. Such refusal of enhancing Contract demand in spite of regularly using the higher demand than what was contracted may cause detrimental effect on reliability of distribution system and hence, it is not in the interest of consumers at large.

**20. Refusal of consumer to regularize its Contract Demand after exceeding such demand on three occasions in a calendar year necessitates enhancement of the Contract Demand irrespective whether the Consumers applies for the same or otherwise.**

21. The Commission has noted the difficulty of the Distribution licensee to give effect to the specific provision of Tariff Order when read with Supply Code Regulations and therefore, could not take appropriate action due to regular breaching of contract demand on earlier occasions until so pointed out by CAG. Considering the importance of reliable operation of the distribution/transmission network, **the Commission hereby invokes its inherent powers to remove difficulty under Supply Code Regulations, 2005 and rules that Distribution Licensee can enhance the Contract Demand of the consumer when the consumers exceeds the contract demand on more than three occasions during a calendar year, irrespective whether the Consumer submits an application for the same or otherwise.** However, before such revision of Contract Demand, Distribution Licensee must give 15 days notice to such consumer.

(viii) Further, the Commission in Order dated 12.09.2018 in Case No 195 of 2017, clearly states:

  
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*“... In case the consumer exceeds its Contract Demand (including during the non-peak hours, i.e., 22:00 hrs. to 06:00 hrs.) in any particular month, the Load Factor Incentive will not be payable to the consumer in that month....”*


Further, it is stated vide above referred order *“...The Load Factor incentive will be available only if the consumer has no arrears with the Distribution Licensee, and payment is made within seven days from the date of the electricity bill....”*

Appellant's breached the CD in December 2017 (5369 KVA). The payment of bill dated 06.01.2018 for the month of December 2017 is paid on 20.01.2018 vide receipt no 6447601. Therefore, the Appellant is not eligible for Load Factor Incentive.

- (ix) After receipt of application for reduction in CD from Appellant on 20.01.2018, was reduced from 5412 kVA to 4990 kVA.
- (x) On 22.10.2018, Appellant submitted a letter to the Superintending Engineer, Pune Rural Circle to recalculate its load factor with CD of 4990 KVA for December 2017 and January 2018 billing.
- (xi) The Forum has rejected the grievance vide its order dated 16.08.2019.
- (xii) In view of the above, it is prayed not to consider Appellant's representation to recalculate load factor with CD of 4990 KVA for December 2017 and January 2018 bills and the representation of Appellant may kindly be rejected with cost.

5. The Appellant has filed its additional submission by email on 23.12.2019 stating as under: -

- (i) Though the Appellant is not in agreement with the Commission's reasoning and judgment in Case No. 60 of 2018 and reserve its right for further appeal in this matter with appropriate forum, MSEDCL has submitted in its reply that Load Factor Incentive has been calculated by revision of CD which has been approved by the Commission in its Order dated 01.01.2019, approving all such cases of revision in CD calculation of Load Factor Incentive by MSEDCL. However, the order stipulates that before such revision of CD, Distribution Licensee must give 15 days' notice to such consumers.

  
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- (ii) In Appellant's case, the notice was issued by SE (PRC) on 12.12.2017, which was received by the Appellant sometime on 15/16.12.2017 and 15 days' notice period makes it obligatory for MSEDCL to revise its CD in the month of January, 2018 only and not for the month of December, 2017 as has been done by MSEDCL.
- (iii) Thus, the Appellant's request to direct MSEDCL to revise the bill for December, 2017 with existing CD of 4990 KVA and calculate Load Factor Incentive accordingly and refund the amount due with interest @ 18% per annum.
- (iv) Since, the Appellant has already made payment of bill of December, 2017, there is no question of waiver of interest on amount to be recovered by MSEDCL.
- (v) The Distribution Licensee has also raised the objection that Appellant's bill for December, 2017 was paid on 20.01.2018, which was beyond the due date of making payment to avail load factor incentive, which was on 12.01.2018. The factual position is that the payment was made by the Appellant on 11.01.2018, which was within the due date and hence got Load Factor Incentive duly credited in the bill. MSEDCL should recheck its record to verify the facts.
- (vi) The provisions of Section 62 (6) of the Act must be strictly implemented otherwise the Distribution Licensee can always harass innocent consumer by raising such fictitious demand and the Appellant is forced to make such payment for fear of disconnection of power supply.

### **Analysis & Ruling**

6. Heard both the parties and perused the documents on record. The Appellant totally denied the arguments of the Respondent that it is not entitled for relief as the bill has been paid after due date. On the contrary, the bill for the month of December 2017 has been paid within time and therefore relief cannot be denied on this account. The Respondent argued that it will check the record for receipt of the bill.

7. Apart from above, the entire case revolves around the argument advanced by the Appellant that Respondent was supposed to have issued 15 days' notice to it for revising the CD as per the Commission's order. In order to examine this issue, it is necessary to understand the factual position and logic and reason of issuing 15 days' notice. The Respondent issued


  
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notice for breach of CD on 12.12.2017 which the Appellant as per its submission is received on 15/16.12.2017. Presuming 16<sup>th</sup> to be the date of receipt of notice by the Appellant, 15 days will end on 30.12.2017. It is not the case of the Appellant that he is not aware of having breached the CD right from August 2017. As a matter of fact, the Appellant should have taken corrective steps to contain itself within the sanctioned CD of 4990 KVA in September 2017 itself but I am aghast to note that it continued to violate in October, November and even in December 2017 with utter disregard for grid security. The Commission's order in Case No. 60 of 2018 specifically mentions about the grid security involved in violating the contracted demand by consumers at large. In this case, payment of penalty for violation of sanctioned CD has been assumed as a norm by the Appellant. On the contrary, penalty is an exception and not the rule. Penalty is intended to trigger some corrective action on the part of the violator. Earning penalty on the violation of CD cannot be an aim of any utility.

8. From the table at para 4 (ii) above, the Appellant has exceeded CD initially in the month of August 2017 which happened to be the maximum of four months demand from August 2017 to November 2017. The Appellant has recorded the maximum demand of 5412 KVA in August 2017. The Respondent has rightly revised the CD for the month of December 2017 as 5412KVA. There cannot be two opinions on the fact that the Appellant was well aware of its conduct in exceeding the CD not only for the month of August, September, October, November 2017 but even in December 2017 too. Being a HT consumer, the Appellant was also aware of the stringent provisions such as penalty for exceeding the CD and revising the CD by the Respondent if such breach occurs more than three times in a calendar year. Even assuming for the sake of argument that the Respondent has issued notice as directed by the Commission and which is well within time, it is to be understood that there is no window open whatever for any reversal or any other remedy that could be applied, than to revise the CD to the maximum reached in those four occasions / months. Therefore, the intention of the Commission in stipulating the issue of 15 days' notice to such consumers is mere informative in nature as the CD is being revised to that reached to maximum through such breaches. Even going beyond this, the notice would have no impact on the Appellant because it has again exceeded the CD and reached to 5369 KVA in December 2017. Therefore, there cannot be any merit in the argument of the Appellant that the Respondent has not issued the notice timely.

  
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9. Provision of applying penalty for exceeding the CD as a matter of fact is an opportunity given to the consumer to correct its processes so as to be within the limits of the CD because grid security is at stake. It was, therefore, expected that in the first breach i.e. August 2017, the Appellant should have taken call on its processes so that it will contain within the CD but the Appellant without bothering for the signal by way of penalty has gone ahead in successive breach for September, October and November 2017 as if it has a right to exceed the CD by paying the penalty. This is completely abuse of the provisions in the orders of the Commission. The Appellant is simply harping on the notice issued by the Respondent that too on unsustainable ground. The Appellant, being on the wrong side of the law cannot pray for grant of equity in its favour. The principle of “*One who seeks equity must do equity*” and “*He who comes into equity must come with clean hands*”, applies in this case.

10. In view of this, the prayer of the Appellant in the representation does not inspire confidence and therefore, not sustainable. Hence, the representation is rejected with no order as to cost.

11. The Secretariat of this office is directed to refund an amount of Rs.25000/- deposited by the Appellant immediately.

Sd/-  
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Electricity Ombudsman (Mumbai)

  
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