

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 39 and 41 OF 2021

In the matter of billing as per MERC's Order in Case No. 131 of 2020 & Others

- A. Agarwal Fastners Pvt. Ltd. (Rep. No. 39 of 2021)
B. Sai Ice Industries (Rep. No. 41 of 2021) Appellants

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Palghar (MSEDCL)..... Respondent

Appearances:

Appellant : Harshad Sheth, Representative
Respondent : 1. Kiran Nagaonkar, Superintending Engineer
2. Rajiv Vaman, Asst. Law Officer


Coram: Deepak Lad

Date of hearing: 12th August 2021

Date of Order : 18th August 2021

ORDER

Both these Representations are filed individually on 25th May 2021. The cause of action arose post issue of Maharashtra Electricity Regulatory Commission (the Commission)'s order dated 13th November 2020 in Case No. 131 of 2020 & Others and therefore, these Representations are being dealt under Regulation 19.1 of the Maharashtra Electricity


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Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020). These Representations have challenged the respective individual Orders dated 28th April 2021 passed by the Consumer Grievance Redressal Forum, MSEDCL Vasai (the Forum).


2. The Forum, by its individual orders dated 28.04.2021 in Case No. 21 and 23 of 2021 have dismissed the grievance applications.

3. The issue involved in these two Representations being common, both are combined for the purpose of this order. The Appellants submissions in their respective representations in brief is as below: -

(i) The Appellants are industrial consumers details of which are tabulated below:

S.N.	Name	Consumer No.	Sanctioned Load (KW)	Contract Demand (KVA)	Address
A	Agarwal Fastners Pvt. Ltd. (Rep. No. 39 of 2021)	3659038000	1583	1500	Plot No. 11, Gut No. 256, Village- Chahade Tq. & Dist. Palghar
B	Sai Ice Industries (Rep. No. 41 of 2021)	3019026890	220	250	Plot No. F4/18, MIDC Tarapur, Boisar, Tq. & Dist. Palghar

(ii) There was complete lockdown from 22.03.2020 due to Covid-19 epidemic. The Appellants have received huge bills on kVAh basis for the month of April 2020. As the premises remained locked due to lockdown period as per Government restrictions, Appellants were unable to maintain their Power Factor (PF) near to unity as the capacitors remained in 'On' position, resulting in recording of higher kVAh units. Though Appellants had consumed much less real power (kWh), they were required to pay huge amount due to leading PF with higher kVAh units.



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- (iii) The Statistical Data of the Appellants for consumption and Power Factor from February to April 2020 are as below:

Rep. No.	39/2021		41/2021	
Month	Agarwal Fastners Pvt.Ltd.		Sai Ice Industries	
	KWh	PF	KWh	PF
Feb-20	279375	0.963	72572	0.950
Mar-20	202306	0.816	53934	0.831
Apr-20	059235	0.300	8391	0.147
May-20	164820	0.600	46031	0.590


- (iv) Various industrial organizations have filed Petitions before the Commission regarding issue raised due to implementation of kVAh billing from April 2020 pursuant to lockdown due to Covid-19 epidemic. The Commission therefore issued Common Order on 13.11.2020 in Cases of 131, 135, 143, and 144 of 2020 in respect of kVAh billing methodology for the lockdown period.
- (v) Improper implementation of the Commission's order by the Respondent resulted in loss to the Appellants. The spirit of the order has not been implemented by the Respondent. The Appellants have been denied their legitimate refunds pursuant to the said order. This happened due to considering Power Factor (PF) of entire month of March 2020 instead of for only 22 days of March 2020. The relevant data up to 22.03.2020 is available with the Respondent as MRI has been downloaded by it. Even the Respondent could have considered PF of February 2020 being more than 0.90 as per the Commission's order para 19 b & c.
- (vi) Lockdown resulted in capacitors remaining in 'on' position and fed reactive power to the system which culminated into poor PF. Therefore, kVAh component became very high and resulted in higher billing. In this entire condition, Appellants were not able to approach their factory premises for corrective actions. This has been taken care of by the Commission in its order dated 13.11.2020 in Case No. 131 of 2020 & Others. Therefore, the Respondent should have considered the consumption and PF of the Appellants till the lockdown commenced. However, it


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considered the recorded consumption for the entire month of March 2020 instead of only 22 days. Production in the factory was totally stopped from lockdown. Even the Respondent could have considered PF for February 2020 in which there was normal production. The action of the Respondent has resulted in grave financial injury to the Appellants.

- (vii) The Appellants have filed grievances with Internal Grievance Redressal Cell (IGRC) on 14.12.2020 and with the Forum on 28.01.2021. The Appellants requested Meter Reading Instrument (MRI) Report of March 2020 by their additional submissions in the Forum for ascertaining their PF as on 22.03.2020 but the information was not provided by the Respondent. During the hearing in Forum, it was again requested. However, the Forum erred on this issue and did not insist MSEDCL to give MRI report as per Consumer Demand. Working days of March 2020 were 22 days but readings were taken for 31 days, and PF calculated for 31 days instead of actual 22 days. The Forum, by its individual order dated 28.04.2021 have dismissed the grievance applications in Case No. 21 and 23 of 2021 respectively. The Forum failed to understand the basic issue and rejected the grievances stating that it has no jurisdiction in this case as far as going beyond the mandate of the Commission's order.
- (viii) The Appellants referred Para No. 19 of the Commission's order dated 13.11.2020 in. The Forum has erred in not considering the preceding month's consumption and PF while passing the order. In the entire case Commission's order has been wrongly interpreted.
- (ix) Therefore, Hon'ble Electricity Ombudsman is requested to set aside the order of the Forum and the Respondent be directed to consider the consumption for 22 days of March 2020 for passing necessary relief.
- (x) If there is no data for 22 days of March 2020 then the consumption and PF of February 2020 may be considered & necessary relief be given by revising bill for the month of April 2020.


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4. The Respondent has filed its reply in these Representations separately by email dated 09.07.2021. However, common points are taken and noted as below:

- (i) That, MSEDCL denies all contention of Rep.No.39 and 41 of 2021 except those herein admitted below.
- (ii) That, the Appellant has misinterpreted the order dated 13.11.2020 of the Hon'ble Commission passed in Petition No. 131, 135, 143 and 144 of 2020 filed by Chamber of Marathwada Industries & Agriculture, Khandesh Industrial Development Association, Krishna Valley Chamber of Industries and Ambad Industries and Manufacturers Association respectively for seeking modification in Multi Year Tariff (MYT) Order in Case No. 322 Of 2019 dated 30.03.2020 and to issue appropriate directives with respect to kVAh billing methodology.
- (iii) That, the Hon'ble Commission heard all above petitions and considering the pandemic and difficulties faced by consumers during lockdown, allowed following relief in its common order dated 13.11.2020. The relevant portion of paragraph 19 of the Commission's order is quoted below: -

"19.....

- a. *This relief is applicable to eligible consumer from all consumer categories to whom PF incentive/penalty mechanism or kVAh billing mechanism is applicable.*
- b. *Consumer is eligible only if its monthly consumption during lockdown period of April or May is lower than or equal to 25% of consumption of March 2020. In case, the actual consumption of March 2020 is not available (due to shutdown/closure), then available actual consumption of immediate precedent month shall be used. Further, in case of billing of consumers based on assessed consumption during lockdown period, then monthly consumption during lockdown period shall be computed based on actual meter reading data as and when was available.*
- c. *Billed PF of eligible consumer for March 2020 or other preceding month whose consumption is used for reference purpose at 'b' above shall be used to arrive at reference PF. Consumer would be eligible for relief only if its Reference PF is equal to or above 0.90 (lead or lag).*
- d. *If actual PF of eligible consumer during lockdown period is lower than Reference PF then, Reference PF shall be used for billing purpose. In case of higher actual PF than Reference PF then billing shall be based on actual PF. Intent of use of 'Reference PF' is only to give relief to the eligible consumers (as mentioned above) for the PF penalty for LT consumers and reduce kVAh billing for HT consumer.*
- e. *In case of LT consumers.....*



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- f. *In case of HT consumer, if consumer is eligible for use of 'Reference PF' as per 'd' above, then its monthly kVAh shall be derived by using kWh recorded during lockdown period and 'Reference PF'.*
- g. *This relief is applicable only for the month of April and May 2020. Eligible consumer may get benefit for none or any 1 or all 2 months depending upon whether consumption during that month is lower than threshold limit specified in 'b' above. As monthly consumption is basis of eligibility, no additional certification from consumer of any sort be asked for.*
- h. *Distribution Licensees may revise electricity bills of eligible consumers based on above principle and credit the refund amount in equal instalments (equal to numbers of months eligible for relief) in upcoming electricity bills of consumers.”*

(iv) That, MSEDCL has complied with the order of the Hon'ble Commission and passed benefits to all eligible consumers in billing month of Nov.2020 as per methodology approved by the Commission. The Appellant is not eligible for any relief as per above methodology. The KWh reference Consumption of the Appellant for March 2020 was available. The KWh consumption of April or May was more than 25% of reference Consumption, as applicable for individual case, and PF of reference month was less than 0.90. The comparative statement was provided on energy bill of Nov.2020.

(v) That, the Appellant did not dispute the compliance of order but only disputed the month of reference consumption and desired the reference consumption of Feb.2020 shall be taken, however, the Hon'ble Commission clearly stated that reference consumption of March 2020 shall be taken and in case non- availability the reference consumption of Feb.2020 shall be taken. The reference consumption of March 2020 is available with MSEDCL and hence the question of taking reference consumption of Feb.2020 doesn't arise at all. After due consideration of effective lockdown from 22.03.2020, the Hon'ble Commission has passed the order. The Appellant, by misinterpreting the order of the Hon'ble Commission, has sought the relief. Hence, as stated below the kVAh billing was implemented as per Hon'ble Commission's order therefore the allegation of Appellant against MSEDCL is without any merit.



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- (vi) That, all issue raised herein in this Representation is amounting to asking for review of order dated 13.11.2020 of the Hon'ble Commission passed in Case No. 131, 135, 143 and 144 of 2020. If Appellants were not happy with the dispensation given by the Hon'ble Commission, they could have filed petition for Review or clarification to the Hon'ble Commission or else could have filed Appeal with the Hon'ble APTEL, New Delhi. The allegation of consumers does not fall within the definition of Grievance as provided under the CGRF Regulations 2006.
- (vii) That, the Commission granted above relief which will provide relief to consumers who have already installed equipment for PF correction but were not able to operate the same due to lockdown. The para 19 of the Commission's order is speaking one which throws light on the subject matter:
- (viii) That, the kVAh billing has been implemented from 01.04.2020 as per directives of the Hon'ble Commission in tariff order 30.03.2020 in MYT Case No. 322 of 2019. The kVAh billing was not implemented all of a sudden by the Commission. Public hearing was held, and the order was then passed. The Hon'ble Commission at Para No. 16.5 and 17.3 in the said order states as below:-

"16.5 In view of the above, the Hon'ble Commission concludes that consumers were well aware about the proposed plan to implement kVAh based billing w.e.f. 1 April 2020. In fact, they had a period of almost 18 long months (starting from MTR Order dated 12 September 2018) to take necessary actions and prepared itself for kVAh based billing. Reason of Covid-19 pandemic now being cited for their inaction is unjustifiable as lockdown was imposed only on 25 March 2020 onwards, which affected only last few days of 18-month period available with consumers.

17.3 The PF incentive penalty mechanism is not the new concept and has been in practice for several years. In the past, consumers have earned incentives through this mechanism. It is not correct to dispense with penalty mechanism by citing reason of Covid-19 pandemic. Whenever the consumer uses electricity, it is its responsibility to maintain PF towards unity. Apart from being a statutory requirement and technical necessity for secure grid operations, the tariff philosophy has also included the PF incentive/penalty mechanism for encouraging consumers to achieve unity PF. Hence, the Hon'ble Commission is not inclined to consider the request for waving off PF penalty as prayed for by the Petitioners."


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- (ix) That, as such the issue of non-compliance of the Commission order raised herein through these Representations amounts to exercising exclusive jurisdiction of the Hon'ble Commission under Section 142 and 146 of Electricity Act, 2003.
- (x) The Forum in its order dated 28.04.2021 in Grievance No. 21 and 23 of 2021 has rightly addressed all issues and rejected the Grievance of Appellant. In view of above, it is requested to reject the Representation of Appellant.


5. The physical hearing was held on 12.08.2021 at newly inaugurated CGRF Office Vasai by observing Covid-19 epidemic appropriate behaviour.

6. The Appellant and the Respondent argued in line with their written submissions and the arguments of both the parties are fully covered above in their respective submissions and hence not repeated here.

Analysis and Ruling

7. Heard the parties and perused the documents on record. Basic prayer in these two representations is that the Respondent did not interpret the order of the Commission in Case No. 131 of 2020 & Others in letter and spirit. The Appellants further argued that even the Forum erred in interpreting the order properly.

8. The Commission in its order in Case No. 131 of 2020 & Others has allowed relief to be passed to eligible consumers, eligibility of which is provided in para 19 (b) quoted above at paragraph 4 (iii) of this order. On plain reading of this paragraph, it is clear that the Commission has clearly spelt out consumption of March 2020 as a basic consumption. It has not prescribed any qualifying clauses for "*consumption of March 2020*" as such. While passing the order, the Hon'ble Commission was aware of the fact that the lockdown has been enforced from 22.03.2020. Knowing this well, the Commission has simply said that "*consumption of March 2020*" and billed PF of eligible consumer needs to be considered. Therefore, the undersigned cannot add or alter any word in the said paragraph 19 (b) or (c) or interpret it otherwise.



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Therefore, there is no question of considering consumption of March 2020 for 22 days only and PF of February 2020 for passing necessary relief. If this is considered, it will amount to altering the order of the Commission which is not permitted. The Appellants were having the knowledge of this order and therefore they could have filed Review of the order of the Commission or sought clarification. However, they opted for grievance redressal mechanism.

9. In view of this, the prayer of the Appellant does not stand scrutiny to the unambiguous text of para 19 (b) or (c) of the Commission's order in Case No. 131 of 2020 & others. Therefore, the Representations cannot be allowed and hence rejected.

Sd/
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