

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
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**Case No. 14 of 2009**

**In the matter of  
Complaint filed by Shri. P.S. Ballani for non-compliance of Order dated  
28.1.2009 passed by the CGRF Kalyan Zone.**

**Shri. V. P. Raja, Chairman  
Shri. S. B. Kulkarni, Member  
Shri. V.L. Sonavane, Member**

Shri P.S. Ballani ...Complainant

Vs.

The Executive Engineer (Nodal Officer) ..... Opponent  
Maharashtra State Electricity Distribution Co. Ltd.

**ORDER**

October 29, 2009

Shri P.S.Ballani, filed the present complaint on behalf of Late. Shri. S.K. Ballani on 13.4.2009, invoking Section 142 of the Electricity Act, 2003 ("EA 2003"), and seeking directives against Maharashtra State Electricity Distribution Company Limited, alleging that there has been non-compliance of the order dated 28.1.2009 passed by the CGRF, Kalyan Zone.

2. The facts as stated in the complaint are as follows:
- a) The Complainant is the consumer of the Opponent. The Complainant has two electric meter connections being Consumer No. 021510143733 and Consumer No. 021510144560 at Ballani Compound, Kunj Bahar, Vithalwadi, Station Road, Ulhasnagar 421 003, Dist. Thane (M.S.). The connections are for a



single phase for lighting purpose and a three phase for industrial purpose. Until 1998, there were no disputes over the bills.

- b) In October 1998, the single phase meter was burnt. The Opponent replaced it with a new meter immediately. However, such replacement was not recorded in the Consumer Personal Ledger (CPL). Complainant continued to receive bills for the electricity consumption but the said bills were only for the three phase connection whereas the Complainant was under the impression that the bills were combined for both the meters.
- c) The floods in 2005 damaged both the meters. The Opponent replaced the three phase meter since there was no record of the single phase meter with the Opponent. Bills continued to come with respect to the three phase meter reading.
- d) On 11.3.2006, the Junior Engineer, Camp No. 3, Ulhasnagar conducted a routine check of the Complainant's premises. The inspection revealed that the premises had two connections and the Complainant was billed only for one since 1998. Accordingly, a recovery of Rs.3,12,383/- for 52986 units was raised by the Opponent for the period October 1998 to April 2006 (91 months). Further, it was observed that the CPL that showed the single phase meter as 'permanently disconnected' had arrears of Rs.47,892/- before October 1998. Hence the total bill raised was for Rs.3,60,275/-.
- e) The Opponent then changed the tariff for the Complainant from Industrial to Commercial, to which the Complainant raised objections through letters dated 16.3.2009 and 30.3.2009. The Complainant through the said letters also refused to pay interest and late payment charges raised by the Opponent for the period October 1998 to April 2006. However, the Complainant paid Rs.1,00,000/- on 15.1.2007 and Rs.1,00,000/- on 24.3.2007 towards part payment of the bills raised by the Opponent.
- f) On 12.6.2008, Opponent's flying squad inspected the premises and found the below referred irregularities:
- Excess connected load of 24 kVA
  - Security Deposit paid was less
  - Penalty was not levied for excess MD registered in the meter
  - Consumer was billed with LT V-B tariff whereas he should have been billed with LT V-A tariff since MD registered was more than 27 HP
  - Consumer power factor was low
  - Single phase supply was used for commercial purpose
- g) Based on the Flying Squad Inspection Report, Opponent raised a bill of Rs.1,18,800/- for the period October 2007 to May 2008, against the tariff difference, fixed charges and excess load penalty. The assessment was duly signed by the Complainant.
- h) On 20.6.2008, the Complainant applied for additional 35 HP load on three phase meter. The Opponent did not sanction the load due to arrears.



i) On 3.12.2008, the Complainant registered the grievance with the CGRF, Kalyan for excessive billing. During the hearing on 24.12.2008, CGRF observed that there were some other connections in Ballani Compound and decided to inspect the premises personally on 19.1.2009. On inspection, the CGRF observed and confirmed in its Order dated 28.1.2009 that there were two meters in the name of the consumer. The Opponent failed to issue bills for a long period, for which, the consumer complainant is not at fault. The consumer has applied for additional load on three phase meter and the same should be released by the Opponent herein after affecting change of name from Shri. S. K. Ballani to Shri. P. S. Ballani. The additional load was not released by the Opponent due to arrears in the other connections in the compound. Further, the CGRF observed in its Order dated 28.1.2009 that the assessment made by the Flying Squad regarding the irregularities was correct and the Opponent was entitled to recover the same. However, it observed and confirmed that the Complainant is not running any computer institute as alleged by the Opponent and thus lighting load through single phase meter was used by the Complainant for industrial purpose, hence the Complainant was liable for industrial tariff. Taking into account the provisions of Section 56(2) of the EA 2003, the CGRF observed that the Complainant was liable only for the arrears for 24 months and not 91 months as claimed by the Opponent. Based on the above observations, the CGRF in its Order dated 28.1.2009 ruled as under:

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- 1) *The assessment provisional bill of Rs.3,60,275/- issued to consumer is hereby quashed and set aside.*
- 2) *The licensee should adjust the payments made by the consumer, if any, towards above provisional bill, in ensuing energy bills from the date of decision.*
- 3) *The licensee should issue a fresh assessment bill for 2 years i.e. for 13974 units without interest and DPC.*
- 4) *The licensee should charge Industrial tariff for lighting purpose to single phase connection.*
- 5) *The consumer should pay Rs.1,18,800/- towards irregularities observed by Flying Squad.*
- 6) *The licensee should release additional load after effecting change of name (existing consumer's name is Shri S.K. Balani and the name of the consumer applied for additional load is Shri. P.S. Balani).*
- 7) *After effecting the change of name, the additional load should be released within one month from the date of completion of formalities.*
- 8) *The consumer's prayer to grant cost of Complaint is rejected.*
- 9) *The Stay Order for disconnection issued by forum vide Letter No. EE/CGRF/Kalyan/379, dated 17/12/2008 is hereby vacated.*
- 10) *The compliance should be reported to the forum within stipulated time limit.*
- 11) *Consumer can file appeal against this decision with the Ombudsman at the following address.*  
*“Maharashtra Electricity Regulatory Commission,*



606/608, Keshav Building, Bandra-Kurla Complex,  
Mumbai 51”

*Appeal can be filed within 60 days from the date of this order.*

- 12) *Consumer, as per section 142 of the Electricity Act, 2003 can approach Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission, (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003.”*

3. The Complainant has thus approached this Commission submitting that he is awaiting the implementation of the CGRF Order dated 28.1.2009 and has been making regular payments of current bills to maintain the *status quo*. The Complainant complains that the Accounts Dept, MSEDCL is creating additional complications by not serving the bills against single phase meter consumption from January 2009. The Complainant submits that he informed MSEDCL about the said discrepancies vide letter dated 16.3.2009, and next day, on 17.03.2009 a bill was served on the Complainant. However, the said bill is charged on commercial tariff from 4.7.2007 till 20.12.2008 whereas the Complainant submits that he has made the payment on 21.1.2009 against last bill received dated 8.1.2009. The Complainant submits that he has approached the Commission after receiving the current bill dated 4.4.2009 and wherein again no bill is issued for single phase meter consumption.

4. The Opponent in its reply dated 25.5.2009 has accepted that the Complainant is not liable to pay delayed payments on the bill raised for the period of October 1998 to April 2006 since there were no bills issued to the Complainant during this period. The Opponent alleges that the parties have reached a settlement for the bill raised for October 1998 to April 2006 and that vide letter dated 2.4.2007 the Complainant has agreed to pay balance payment of the bill in 8 to 10 instalments after the two payments of Rs.1,00,000/- each on 15.1.2007 and 24.03.2007. The Opponent further submits that on inspection by its Flying Squad on 26.12.2008 the Opponent observed that the electricity was used by the Complainant for commercial purpose for its Computer Institute and not for the industrial purpose as claimed. The Opponent also alleges that on being caught red handed for misuse of electricity, the Complainant on 3.12.2008 filed a complaint before CGRF, Kalyan disputing the bills for May 2007 to October 2008.

5. The Opponent submits that the CGRF has ordered that the Opponent should recover dues only for a period of 2 years as provided under Section 56 (2) of the EA 2003. It submits that the CPL showed record of one phase connection as permanently disconnected but the Complainant has consumed 52986 units through the meter and therefore bill raised for 8 yrs period is for the live consumer. The Opponent also submits that it is aggrieved by CGRF's Order dated 28.1.2009 on the interpretation of Section 56 (2) of the EA 2003 and after seeking proper legal advice the Opponent shall challenge the CGRF, Kalyan Order in High Court on the ground that the amount in question shall become due for the first time on the date of issuance of bill. It thus submits that there is no intentional delay in implementing the said Order.



6. On a hearing held before the Commission on 28.5.2009, the Opponent submitted that it has filed a Writ Petition before the Bombay High Court under Articles 226 and 227 of the Constitution and that the admission of the said petition is expected with stay order being granted. The Commission directed the Opponent to issue bills of single phase meter to the Complainant, and adjourned the matter.

7. On the next date of hearing on 10.7.2009, the Commission directed both the parties to submit their settlement terms within one month from the date of hearing.

8. In view of the aforesaid directives, the Complainant conveyed to the Commission vide his letter dated 4.8.2009 that a meeting was held with the Opponent on 1.8.2009, however the amicable settlement could not be arrived at as the Complainant objected on the tariff being charged at commercial rate and also refused to pay interest on the bills which the Opponent failed to issue in time. Vide the aforesaid letter the Complainant made an additional prayer as follows:

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*Till the final corrected bill issued to me (as per your directions) all the accounts may be freezed as on today and I may be issued the Bills for current bills only, for payments.*”

9. The Opponent vide his letter dated 6.8.2009 submitted to the Commission that during the hearing held before the Bombay High Court on 27.7.2009, the following Order was passed:

*“The parties have already appeared before the Maharashtra Electricity Regulatory Commission which is the forum constituted under the Electricity Act, 2003. Therefore, even though on law, we have admitted the above writ Complaint, so far as interim relief is concerned, let the Maharashtra Electricity Regulatory Commission deal with the matter under the said Act. Hence no interim relief at this stage.”*

The Opponent prayed that the Commission may stay the Order of CGRF till the High Court decides the matter.

10. The matter was heard on 17.9.2009 before the Commission. The Complainant in reply to the Opponent's written submissions accepted that vide letter dated 2.4.2007 the Complainant had agreed to pay the balance payment in 8 to 10 instalments after the two payments of Rs.1,00,000/- each on 15.1.2007 and 24.3.2007. However, the Complainant submitted that two payments of Rs.1,00,000/- each were made under protest and due to the threat by the Opponent that the electricity supply will be disconnected unless the Complainant pays the billed amounts and that the issue will be settled after the payments. Complainant submitted that he has since then been paying the amounts on current bills minus the arrears.

11. The Opponent submitted that on the visit to the Complainant's premises it was observed that the Complainant uses electricity for commercial purpose to run its



Computer Institute and thus commercial tariff shall be applicable to the Complainant. The Complainant refuted the argument by submitting that the computer systems are used as back office support for his industrial activity and the same has been confirmed by the CGRF on its inspection on 19.1.2009.

12. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the prayers made by the Complainant requires to be examined in light of applicable law. The Petitioner has prayed as under:

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1. *Immediate Compliance of an Order;*
2. *Issue an order against payments to be recovered by MSEDCL, till the corrected bill is issued to me. ( I have already made an excessive payment, in very huge amounts;*
3. *Order against disconnections for non-payments of any bill other than bill issued as per order by CGRF.”*

As regards the first prayer, noncompliance of an order passed by the Consumer Grievance Redressal Forum attracts penalty in accordance with the provisions of Regulations 8.6, 8.7 and 22 of the “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006” read with Section 142 of the EA 2003. The said Regulations provide as under:-

*“8.6 The order of the Forum shall be binding on the consumer and the Distribution Licensee.*

*8.7 Any order passed or direction issued by the Forum shall be implemented or complied with by the Distribution Licensee or the person required by the order or direction to do so and within the time frame stipulated in the order/ directions and further intimation of such compliance shall also be made to the Forum within the time frame stipulated in that regard in the order/ directions.*

*“22. Punishment for non-compliance of orders  
Without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under the Act, non-compliance of Regulations 8.7 or 17.18 in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Commission may initiate proceedings suo motu or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Act.”*

The Opponent submitted that there is no intentional delay in implementing the said CGRF’s Order. The Commission does not sustain the contention of the Opponent that there has not been any intentional delay in complying with the Order dated 28.01.2009 passed by the CGRF Kalyan Zone. In the case of *Chairman SEBI Vs. Shriram Mutual Funds* 2006 Vol.5 SCC 361, the observation made by the Supreme Court with reference to *mens rea* in regard to violation or contravention while dealing with the SEBI Act, is reproduced as under:





*“In our opinion mens rea is not an essential ingredient for contravention of the provisions of a civil Act. In our view, the penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act is established and therefore the intention of the parties committing such a violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract levy of the penalty irrespective of the fact that whether the contravention is made by a defaulter with any guilty intention or not. This apart, unless the language of statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. Hence, we are of the view that once a contravention is established then the penalty has to follow and only the quantum of penalty is discretionary.”*

In the case of *UOI & Ors. Vs. Dharmendra Textile Processors* 2008 Vol.13 SCALE 233, the Supreme Court gave the proposition in regard to *mens rea* while dealing with the FERA. The following is the observation:

*“The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as in the case in the matter of prosecution under Section 276C of the I.T. Act. The breach of a civil obligation which attracts penalty under Section 23(a) of FERA 1947 and the finding that the delinquent has contravened the provisions of Section 10, FERA, 1947 would immediately attract the levy of penalty under Section 23, irrespective of the fact whether the contravention was made by the defaulter with any 'guilty intention' or not. Therefore, unlike in a criminal case, where it is essential for the 'prosecution' to establish that the accused had the necessary guilty intention or mens rea to commit the alleged offence with which he is charged before recording his conviction in cases of contravention of the provisions of Section 10 of FERA, the obligation on the part of the Director of Enforcement would be discharged when it is shown that the blame on the conduct of the delinquent had been established.”*

The above two judgments rendered by the Supreme Court, have been relied upon by the Appellate Tribunal for Electricity recently in its judgment dated 31 July, 2009 in Appeal No. 53 of 2009. Hon'ble Tribunal has held that penalty is attracted as soon as the contravention of the statutory obligation or the violation of the direction issued is established. In these cases, the intention of the parties committing such a violation becomes wholly irrelevant. A breach of civil obligation attracts penalty in the nature of fine under the provisions of the EA 2003. The contravention would immediately attract levy of penalty irrespective of the fact whether contravention is made by the defaulter with guilty intention or not. Unless the language in the statute indicates the need to establish the presence of *mens rea*, it is wholly unnecessary to ascertain whether such a violation was intentional or not. In regard to the violation of the direction or the contravention, it is generally sufficient to prove that the default in complying with the said directions has occurred. Once the violation or contravention is established then the penalty has to follow and only the quantum of penalty is discretionary. Hon'ble Tribunal held as under:



*“19. The perusal of Section 142 of the Act as well as the ratio decided by the Supreme Court with reference to the violation of the directions or contravention of the rules would make it clear that once it is shown that the contravention or the violation of the directions of the Commission has taken place, the imposition of penalty by the Commission on such person is a natural consequence. In other words, the power to impose penalty gets invoked as soon as the contravention of rules and directions as contemplated under Section 142 of the Act is established.”*

13. In light of the above, in the facts of this case if the Opponent does not comply with the CGRF's Order then the Opponent would be liable to pay penalty under Section 142 of the EA 2003. The Opponent is therefore directed to explain within two weeks from the date hereof as to why penalty under Section 142 be not imposed on it.

14. As for the second prayer, the Hon'ble Supreme Court in its Judgment dated 14th August, 2007 in Appeal (Civil) No. 2846 of 2006 has held that billing disputes of any nature between consumers and distribution licensees are to be initiated with the CGRFs and thereafter with the Electricity Ombudsman. The Commission cannot entertain such grievances and billing disputes. Moreover, in the judgment of the Appellate Tribunal for Electricity dated 30th March, 2009 in Appeal No. 180 of 2008, the Appellate Tribunal considered the following judgments:-

- (i) 2007 Aptel 356, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. DLF Services Ltd.;
- (ii) 2007 Aptel 764, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vs. Princeton Park Condominium
- (iii) AIR 2008 SC 1042, MSEDCL Vs. Lloyd Steel Industries Ltd.

The Appellate Tribunal held as under:

*“14. On going through the Judgments referred to above and also the provisions under Sections 42(5) and 42(6) of the Act, it is clear that there cannot be any controversy with regard to the position of law which has already been settled to the effect that the consumer has got the remedy to get the grievance redressed by filing a complaint before the Grievance Cell and thereafter by filing the Appeal before the Ombudsman which is final and no Appeal could be filed before the State Commission.”*

In its judgment dated 30th March, 2009 in Appeal No. 181/08, the Appellate Tribunal held as under:-

*“Even when there is no appeal provided as against the above order passed by the Ombudsman, the State Commission cannot usurp the jurisdiction of the Grievance Redressal Forum or the Ombudsman by going through the validity of the order passed by the Ombudsman.”*





...  
*This contention cannot be countenanced in view of the decision taken by this Tribunal as well as Supreme Court wherein it has specifically been held that the Consumer cannot approach the Commission for Redressal of his grievances as there is specific remedy available for the Consumer to approach the concerned authorities like the Grievance Cell and the Ombudsman whose award is final and against which no appeal will lie with the Commission."*

15. As for the prayer to stop disconnection, it cannot be entertained by the Commission, since it arises from the issue of non-payment of electricity bill by the Complainant and falls under the category of billing dispute in which the Commission has no jurisdiction.

16. In view of the above, the Commission will not have the jurisdiction to stay the CGRF's Order as sought for by the Opponent, as then it will be to disturb the scheme of Sections 42(5), (6), (7) of the EA 2003 and the CGRF Regulations and the machinery available thereunder.

17. There is a direction to the Opponent to explain within two weeks from the date hereof as to why penalty under Section 142 be not imposed on it.

18. List this Complaint for further directions after two weeks.

Sd/-  
(V.L. Sonavane)  
Member

Sd/-  
(S.B. Kulkarni)  
Member

Sd/-  
(V. P. Raja)  
Chairman



(P. B. Patil),  
Registrar, MERC