

**Before the  
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**

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**Case No. 38 of 2011**

**In the matter of**

**Complaint filed by Vivek Polymer India under Sections 142 and 146 of the  
EA, 2003 for non-compliance of CGRF Order dated February 17, 2011 by  
MSEDCL**

**Shri V.P. Raja, Chairman**

**Shri Vijay L. Sonavane, Member**

Vivek Polymer India

7 & 8, Shri. Vitthal Industrial Estate,

Chinchpada, Waliv, Vasai (E),

Thane – 401 208, Maharashtra

..... Complainant

Versus

1. Chief Engineer, Kalyan Zone  
MSEDCL  
Tejshri, Jahangir Merwanji Road,  
Kalyan (W), Thane – 421 301, Maharashtra

2. Superintending Engineer, Vasai Circle  
MSEDCL  
Deepashree, 2<sup>nd</sup> Floor,  
Station Road, Navgar (E), Vasai Road  
Thane – 401 202, Maharashtra

...Opponents

## ORDER

**Dated: November 16, 2011**

Vivek Polymer India filed a complaint on March 14, 2011 seeking action under Sections 142 and 146 of the Electricity Act (“EA 2003”) and other reliefs, against the Chief Engineer (Kalyan Zone) and Superintending Engineer (Vasai Circle) of Maharashtra State Electricity Distribution Company Limited (“MSEDCL”). The prayers in the complaint are as follows:-

- “
- i. *Invocation of section 142 & 146 of Electricity Act for non implementation in respect of violation of CGRF interim order, E.A. 2003 Sec 56(1) with ACT, Rules & Regulations. Harassment & threatening to us even by not honoring CGRF letter & order.*
  - ii. *Our regular monthly consumption bill amount cheques to be accepted. Creating our 2 to 3 months bills as arrears & then demanding of payments in one stroke in not acceptable to us.*
  - iii. *Inspite of giving entire proofs of payment made to Toto packing P. Ltd **why MSEDCL wants to take legal action?** MSEDCL should be restricted to take such harassing action on consumer.*
  - iv. *Compensation of Rs.25, 000 may be awarded for harassment & as demanded by applicant towards administrative, visit to Kalyan, consultancy charges etc.*
  - v. *Respective DPC, Interest & other charges may be deleted.*
  - vi. *The cost of the petition to the petitioner.”*

2. The facts giving rise to the present complaint may be briefly referred to as follows. The Complainant is a manufacturer of various kinds of polymer bottles and has a factory at its registered address mentioned in the cause title. The Complainant is a High Tension Consumer of MSEDCL with a Contract Demand of 310 kVA and Consumer No. is 001849 027 220. M/s. Toto Packaging Limited (“TPL”) was a High Tension Consumer of MSEDCL who had sought permanent disconnection in the year 2007. According to the Complainant MSEDCL was required to refund amounts towards Regulatory Liability Charge (“RLC”) to M/s. Toto Packaging Limited from whom Additional Supply Charge (“ASC”) was recovered. However, as M/s. Toto Packaging Limited had sought permanent disconnection from MSEDCL in 2007, it could not claim the refund of RLC. Hence, TFL wished to receive RLC in the name and account of the present Complainant with the understanding that once the Complainant receives the

RLC amounts it will pay it to TFL. Hence, TFL submitted a request letter; an undertaking, and a consent letter to the present Complainant as well as to the Accounts Officer (Vasai Circle) of MSEDCL seeking *inter alia* that appropriate amounts towards RLC may be refunded to the account of the Complainant, and the Complainant will ensure a back-to-back repayment of the same to TFL. The RLC amount claimed was to the tune of Rs. 12,38,106/- as on November 3, 2009.

3. Three cheques came to be issued by MSEDCL in favour of the Complainant during the months of January, February and March 2010, totaling to Rs. 12,53,135/- for refund of RLC. Thereafter, bank statements were submitted to MSEDCL evidencing the credit of the said amount in favour of TFL.

4. Subsequently, on December 30, 2010, the second respondent visited the factory premises of the Complainant accompanied by twelve officers to inspect into alleged irregularities and threatened to disconnect supply. Thereafter, in the energy bill for January 2011, MSEDCL included the amount of Rs. 12,53,135/- as a Debit Bill Adjustment, requiring the Complainant to make a total payment of Rs. 21,27,750/- in one stroke, failing which the supply was liable to be disconnected.

5. The Complainant on being aggrieved by the alleged unlawful actions of MSEDCL, initiated proceedings under Case No. K/E/485/571 before the CGRF-Kalyan. During the pendency of the said proceedings, MSEDCL has vide letter dated February 15, 2011, notified the Complainant that TFL has submitted only photocopies of bank statements which have no evidentiary value. In reply to the same, the Complainant alleged that it has filed original bank statement of TFL together with a letter issued by the Complainant's banker (Bassein Catholic Co-operative Bank Limited) certifying that cheques issued by MSEDCL were deposited and the amounts therein were debited to the account of the complainant, and the said amounts were paid to TFL subsequently.

6. However, in order to avoid disconnection, the Complainant vide letter dated January 25, 2011 offered to pay to MSEDCL an amount of Rs. 8,74,622/- contending that the said amount is an average of the last six months of energy charges in terms of Section 56(1)(b) of the EA 2003. The Complainant sent written intimation to that effect to the CGRF-Kalyan on January 27, 2011. MSEDCL vide letter dated January 31, 2011 refused to accept the said payment and demanded full payment. Vide another letter of the same date, MSEDCL further informed the Complainant that the letter of the Complainant dated January 25, 2011 has not been signed by an authorized signatory and that thus the said letter cannot be considered to have any merit. MSEDCL filed a caveat in the Court of the Civil Judge, Vasai in apprehension of any proceeding which the Complainant may initiate.

7. CGRF-Kalyan heard the matter on February 2, 2011 in Case No. K/E/485/571. Vide an Interim Order dated February 17, 2011 the CGRF-Kalyan directed the Nodal Officer (Vasai Circle), MSEDCL as follows:-

*“The consumer vide letter under reference has filed a grievance with this forum. Accordingly the consumer has disputed an amount of Rs. 12,53,135/- against excess billing.*

*In view of the consumer’s / licensee’s submissions and emergency hearing held on 07/02/2011 at Forum’s Office, it is decided to direct the licensee (MSEDCL’s concerned office) as follows:*

***Pending the decision of the CGRF, Kalyan, the consumer’s power shall not be disconnected against the non payment of the disputed amount. Further M.S.E.D.C.L. is hereby directed to accept the consumer’s monthly regular consumption bill till finalization of the decision.***

*You are requested to take necessary action in the matter under intimation to this office.”*

8. The second Respondent filed his affidavit-in-reply on May 10, 2011. It was submitted thereunder that from March 2010, by which time RLC was fully refunded, till January 2011, the Complainant had not filed any authentic document ensuring transfer of the refund of RLC to TFL. On this ground MSEDCL had issued a letter to the complainant directing return of RLC refund amount of Rs. 12,53,135/- in one stroke.

9. At the hearing held on May 12, 2011 before the Commission, the Respondents submitted that the Complainant has not submitted any substantial document evidencing the effective refund of RLC to TFL.

10. Additional submissions were made by the Respondents on May 20, 2011. It was submitted thereunder that after the amount of Rs. 12,53,135/- was fully transferred to the Complainant, it was discovered under audit scrutiny that the said manner of payment of refund of RLC was not in consonance with the MSEDCL Circular No. PR3/Tariff/43583 dated December 15, 2008. The said Circular requires that refund of RLC should be made only to the legal successor of consumer, when the beneficiary consumer has secured permanent disconnection. It was submitted that MSEDCL is investigating into the activities of Shri. Harshad Sheth (authorized representative of the Complainant) who has made attempts to collude with various past consumers of MSEDCL for wrongful gain in

the matter of RLC refund. MSEDCL further submitted that vide Order dated April 26, 2011 the CGRF-Kalyan has disposed of Case No. K/E/485/571 and vacated the Interim Order dated February 17, 2011.

11. The Complainant filed a copy of the said Order of the CGRF-Kalyan dated April 26, 2011 in Case No. K/E/485/571. The CGRF vide its Order dated April 26, 2011 held *inter alia* as follows:-

*“ 9. Learned representative for the licensee urged with force that RLC amount of P.D. consumer illegally dealt with by the consumer and Shri. Harshad Sheth for wrongful gain and causing wrongful loss to the company. He submitted that the matter is under investigation whether there is a fraud of company’s fund. The matter is under investigation and that the grievance application as discussed supra is not signed by the authorized person hence not maintainable. Consequently interim Order issued by this Forum vide No. EE/CGRF/Kalyan/0135 dt. 17/02/2011 will have to be vacated. Since all these efforts are attainment of justice and not eclipse of justice we find proper to direct the licensee not to disconnect the supply of consumer without due course of law.*

*10. Since large number of cases filed by the consumers from Vasai Circle this Forum was busy with those cases therefore delay is caused in deciding this case. Hence this order:*

#### **ORDER**

- 1. The grievance application is disposed off as not maintainable.*
- 2. The interim Order issued by this Forum vide No. EE/CGRF/Kalyan/0135 dated 17/02/2011 is hereby vacated.*
- 3. The Consumer can file representation against this decision with the Hon. Electricity Ombudsman within 60 days from the date of this order at the following address.*

*“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”.*

12. The Respondents also submitted a copy of the police complaint which has been lodged with the Manikpur Police Station at Vasai. On October 21, 2011 the Respondents filed a letter from the Manikpur Police Station whereby it is informed that police investigation has commenced in terms of the complaint filed by MSEDCL.

13. Having heard the parties, and after considering the materials placed on record, the Commission is of the view that there is no grievance regarding refund of the RLC amounts by MSEDCL to the consumer who paid ASC. Actually, MSEDCL refunded the RLC amounts as per the facts stated above. The prayer made by the present Complainant seeks penal actions against MSEDCL for an alleged act of contravention of the CGRF's interim order. However, the said interim order came to be subsequently vacated by the CGRF in terms of its Order dated April 26, 2011 during the pendency of the present complaint before the Commission. The CGRF inter held that "2. *The interim Order issued by this Forum vide No. EE/CGRF/Kalyan/0135 dated 17/02/2011 is hereby vacated.*". Hence, the prayer made by the Complainant before the Commission for "Invocation of section 142 & 146 of Electricity Act for non implementation in respect of violation of CGRF interim order,.. " is infructuous and is hereby rejected. The reference to Section 56(1) of the EA 2003 in the first prayer also stands infructuous as the CGRF has held that "∴. *Since all these efforts are attainment of justice and not eclipse of justice we find proper to direct the licensee not to disconnect the supply of consumer without due course of law.*"

14. As regards the following prayers, the Commission can only look into non-compliance of CGRF's / Electricity Ombudsman's orders and not into merits of consumer grievances when the CGRF has rejected a representation of grievance of a consumer:

*“ii. Our regular monthly consumption bill amount cheques to be accepted. Creating our 2 to 3 months bills as arrears & then demanding of payments in one stroke is not acceptable to us.*

*iii. In spite of giving entire proofs of payment made to Toto packing P. Ltd why MSEDCL wants to take legal action? MSEDCL should be restricted to take such harassing action on consumer.”*

Moreover, the Respondents say that police investigation has commenced in terms of the complaint filed by MSEDCL. It is for the Complainant therefore to defend itself in the said criminal proceedings as well.

15. In view of the above, there is no case for invoking the penal provisions under Section 142 and / or Section 146 of the 2003 Act against the Opponents. Consequently, there is no case for award of compensation to the Complainant as sought in the prayers.

In the circumstances, the present complaint deserves to be dismissed and is therefore hereby dismissed. No order as to costs.

Sd/-  
(Vijay L. Sonavane)  
Member

Sd/-  
(V. P. Raja)  
Chairman