



Consumer Grievance Redressal Forum, Kalyan Zone
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No. **K/E/1128/1349 of 2016-17**

Date of Grievance : 01/03/2017

Date of order : 14/09/2017

Total days : 199

IN THE MATTER CASE OF GRIEVANCE NO. K/E/1128/1349/2016-17 IN RESPECT OF NAKKI HOSPITALITY P. LTD. SURVEY NO. 12, HISSA NO.1, VILLAGE KOLHI, POST KAMAN, TAL. VASAI (E), DIST. PALGHAR, PIN CODE-401201, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING FAC.

Nakki Hospitality P. Ltd.,
Survey No.12, Hissa No.1,
Village Kolhi,
Tal. Vasai (E),
Dist. Palghar Pin code 401 201.
(Consumer No.001849035930) (Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited
through its Nodal Officer,
MSEDCL, Vasai Circle, (Hereinafter referred as Licensee)

Appearance : - For Licensee- Shri Waman, ALO, Mrs. Desai, Dy. Manager,
Mrs. Dambe-UDC, Vasai Circle.

For Consumer-Shri Harshad Sheth- CR

[Coram- Shri A.M.Garde-Chirperson, Shri A.P. Deshmukh-Member Secretary
and Mrs.S.A.Jamdar- Member (CPO)].

1] Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of
Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'.

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This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission. Hereinafter referred as ‘Supply Code’ for the sake of brevity. Even, regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] The grievance of the consumers in all the cases pertaining to FAC recoveries are taken up for decision. The grievance is that the Licensee has not charged and recovered the FAC strictly as per post facto approval of Commission for the period of December 2013 to January 2015. The consumers, therefore, prayed to give directions to the Licensee to recalculate the FAC and refund excess amount collected from them together with electricity duty and interest as per RBI rate.

3] Hence we would like to elaborate observations as under:

a] The Hon’ble Commission has issued post facto approvals for FAC to be charged by MSEDCL as per letters below:-

Letter No.	Dated	Billing Months of :
1540	18/12/2014	Oct 2013 to December 2013
1469	11/02/2016	Jan-2014 to June 2014
1481	16/02/2016	July 2014 to December 2014
265	03/06/2016	Jan-2015 to June-2015
406	29/07/2016	July 2015 to Jan-2016

b] According to these letters the FAC approved by the Hon’ble Commission for HT industrial consumers is as under :

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Billing Month		FAC approved by the MERC HT I C	FAC approved by the MERC HT I N
December	2013	-28.06	-22.46
January	2014	0	0
February	2014	0	0
March	2014	4.74	4.28
April	2014	17.11	16.41
May	2014	3.64	3.36
June	2014	14.77	13.62
July	2014	38.98	34.92
August	2014	13.01	11.18
September	2014	36.64	32.93
October	2014	60.43	55.05
November	2014	21.22	20.19
December	2014	51.92	42.59
January	2015	90.52	81.38
February	2015	22.92	24.89
March	2015	16.74	8.75
April	2015	140.20	126.60
May	2015	140.20	124.45
June	2015	- 43.44	- 45.59
July	2015	55.46	54.89

It is prayed that the said bills for the above said period be revised accordingly.

4] We have heard both sides and gone through the above referred post facto approvals given by the Hon'ble MERC and same is mentioned in the above table. So-far as the period during the month of December 2013 to March 2014 is concerned, it is observed that the Hon'ble MERC has given post facto approval for the month of December 2013, vide it's letter No.1540 dated 18/12/2014, but the Licensee has levied FAC as per approved rate of FAC for the month of November 2013. The Licensee has brought the said fact to the notice of the Hon'ble MERC vide it's letter dated 26/3/2014 and also submitted the FAC calculations for the period of September 2013 to December 2013 (which was to be levied during December 2013 to March 2014).

The Hon'ble MERC in its letter No.1469 dated 11/2/2016 while giving post facto approval of FAC, submission of MSEDCL for the month of October 2013 to March 2014 (which was to be levied from the month of January 2014 to June 2014) elaborated the MSEDCL's request regarding revision of FAC rate for the period of December 2013 to February 2014. The Para 9.3 is reproduced as under:-

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9.3--- MSEDCL in its letter dated 26 March, 2014 submitted the FAC calculations for the period of September 2013 to December 2013. In this letter, MSEDCL has stated that there was a possibility of under-recovery of Additional FAC (payable to MSPGCL as per Order dated 4 September 2013 in Case No.44/2013) and AEC 1 to 4 (as per order dated 5 September 2013 in Case No. 95 of 2013) for August 2013 and September 2013 against higher refund of FAC due in December 2013. Hence, instead of refund Rs.267.53 crore in December 2013 and Rs.90.89 crore in January,2014. MSEDCL continued refund Rs.32.17 crore (which is approved FAC refund to be levied in November, 2013) in these months. Further, MSEDCL has not levied FAC of Rs.74.74 crore in February, 2014.

In its letter dated 26 March, 2014, MSEDCL has provided the reconciliation (provided in the below table) of FAC refundable/recoverable amount for the period pertaining to September 2013 December 2013 with the actual refunded / recovered in the period December 2013 to March 2014. MSEDCL has also provided details of under-recovery of additional FAC(allowed as per MERC order dated 3 September, 2013 in case No.28 of 2013) in the following table.

Month	FAC to be levied (Rs. Crore)	FAC billed in the month.	FAC amount levied / refunded) (Rs. Crore)	Balance FAC amount to be adjusted in Mar 14 (Rs. crore)	Under recovery of FAC 2 (Rs.crore)	FAC to be billed in March 14 (Rs.crore)
Aug 2013	(32.17)	Nov.2013	-	-	82.13	
Sept 2013	(267.55)	Dec 2013	(32.17)	(235.39)	18.48	
Oct 2013	(90.89)	Jan 2014	(32.17)	(58.73)	34.84	
Nov2013	74.74	Feb 2014	0	74.74	39.81	
Dec 2013	61.88	Mar 2014	-	61.88	13.35	
Total				157.50	188.62	31.12

Based on the above reconciliation, MSEDCL has arrived at an FAC outstanding of Rs.31.12 Crore which was levied in March 2014.

The Commission observes that the period of reconciliation is limited and effect of the same has been passed on to the consumers within three months. Hence, the Commission has allowed the same.

5] From the above para, it is clear that the Hon'ble MERC has allowed the Licensee to recover FAC for the months December 2013 and January 2014 as per the FAC rate of November 2013 and not levied FAC for the month of February 2014, considering the under recovery of Addl. FAC. Balance FAC (Rs.31.12 crore) was charged in the month of March 2014. Hence, in that situation the table for FAC charges for the month of December 2013 to March 2014 is given as under:-

Billing Month		FAC approved by the MERC HT I C	FAC approved by the MERC HT I N
December	2013	- 7.97	- 6.24
January	2014	- 7.97	- 6.24
February	2014	0	0
March	2014	4.74	4.28

6] So-far-as the FAC charging rate during the period from April 2014 to June 2015, is different from the post facto approval given by the Hon'ble MERC which is due to change in philosophy for applying FAC vide different circulars issued by the Licensee are as under:-

- i] Circular No. 189 dated 24/12/2013,
- ii] Circular No.190 dated 10.3.2014,
- iii] Circular No.191 dated 5/4/2014 and
- iv] Circular No. 219 dated 3/7/2015.

7] After considering above facts, letters and circulars, this Forum has come to the conclusion that the Licensee should strictly apply the FAC charge as per post facto approval given by the Hon'ble MERC.

8] There are some cases in which the point of limitation is raised by the Licensee. It is contended that the grievances have been filed after the period of two years hence, there is bar of limitation under Section 6.6 of MERC (CGRF & Ombudsman) Regulations 2006. The cause of action arose in December 2013 but the grievances filed before IGRC in February 2017 and before CGRF in April 2017. Licensee relied on the order of Hon'ble Ombudsman, Mumbai in Case No.125/2016 dated 22/2/2017. However,

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as the post facto approval of FAC for the month of December 2013 is given vide Ltr. No. 1540 dated 18/12/2014 and for the months of January 2014 to June 2014 is given vide Ltr. No. 1469 dated 11/2/2016 in which FAC rate for the month of December 2013 is also reconsidered. This being so MERC post facto approval on the basis of which FAC was recovered is the cause of action instead of the billing month in which FAC was charged i.e. for December 2013). Hence the cause of action arose on 11/2/2016, such as the applications filed in the month of February 2017 are also within limitation even as per Section 6.6 of MERC (CGRF & Ombudsman) Regulations,2006.

9] Thus, to conclude, the Licensee has to verify the claim of the consumer for the month of December 2013 to January 2015 and recalculate the FAC as per post facto approval given by the Hon'ble MERC and refund any excess amount recovered from the consumer.

10] The delay is caused due to a complicated question involved and arguments heard from time to time. Some of the cases were having common issue of AEC 1 to 4, Addl. FAC and FAC in which, this Forum is waiting for some orders of Hon'ble MERC in some pending matters but ultimately due to long passage of time the matters were to be disposed off.

Hence the order.

ORDER

1] Grievance application of consumer is hereby allowed.

2] MSEDCL is directed to verify the claim of the consumer as per post facto approval given by the Commission and refund / adjust the amount, as found due with Electricity Duty and interest at bank rate of RBI till the date of refund.

3] Needless to say that whatever amount is payable to the consumer, the same needs to be refunded /adjusted in ensuing bills from the date of receipt of this order.

4] The compliance report to be submitted within the period of two months from the date of this order.

Date: 14/09/2017.

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

(A.P.Deshmukh)
Member Secretary
CGRF, Kalyan.

(A.M.Garde)
Chairperson
CGRF, Kalyan.

NOTE

- a) The consumer if not satisfied, may file representation against this order before the Hon. 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”.

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or

- c) delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.