

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE

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Consumer Grievance Redressal Forum
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No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./554/30-2016-17/

Date: 02/11/2016

(BY R.P.A.D.)

In the matter of
Excess Recovery of Fuel Adjustment Charges

Date of Submission of the case : 06/09/2016

Date of Decision : 02/11/2016

To.

1 M/s.Paris Ispat Pvt. Ltd.,
S.R.No. 151, Plot No. 1 to 8 ,
At post Velhale Tq. Sangamner ,
Dist. Ahmednagar 422605
(Con.No. 155709005810)

Complainant

2 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar,
3 Executive Engineer,
Maharashtra State Electricity Distribution Com. Ltd.
Sangamner Divn. Office
Dist. Ahmednagar.

Distribution Company

DECISION

M/s. Paris Ispat Pvt. Ltd. . (hereafter referred as the Complainant). Sangamner is the industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Respondent). The Complainant has submitted grievance against MSEDCL for excess recovery of Fuel Adjustment Charges . The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But not satisfied with the decision of the Respondent , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.152 of 2016 on 06 /09/2016.

The Forum in its meeting on 14/09/2016, decided to admit this case for hearing on 27/09/2016 at 1.00 Pm in the office of the forum . A notice dated 15/09/2016 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. J.S.Chavan , Nodal Officer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

1. The Commission has issued the order in Case No. 43 of 2012 on 15th June, 2012 and permitted to MSEDCL to recover the un-recovered FAC amount of Rs.1483 Crore from its consumers through monthly bills in 6 equal installments starting from the month of June 2012 to November 2012. The amount of Rs. 247 Crore per month was to be recovered proportionately from the consumers as per their respective category and slab in conformity with the principle specified in Regulation 82.10 of the Maharashtra Electricity Regulatory Commission (Terms and Condition of Tariff) (Amendment) Regulations, 2011.
2. MSEDCL accordingly issued Circular No.162 dated 19th June, 2012 for recovery of the additional FAC to be levied in the billing month June, 2012 and the remaining was to be recovered in the bills for the month of July, August, September, October and November of 2012.
3. As per the order of the MERC, the recovery was to be made only in 6 equal monthly installments starting from June, 2012 to November, 2012, i.e. from 1st June, 2012 to 30th November, 2012. MSEDCL has recovered additional FAC for more than 6½ months for the period from 08th May, 2012 to 30 Nov. 2012. MSEDCL has shifted the billing period during the FAC recovery and as a result recovery is made for more than six months. As per the Circular dated 13th April 2012, the auto reset was to be done from 1st May, 2012 and accordingly the billing period for June 2012 would have been from 1st June to 30th June, 2012.

Demand of the Consumer

The additional FAC recovered for the period from 8th May, 2012 to 31st May, 2012 to be refunded with interest at the rate of 9 % per annum.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 26/09/2016 from the Nodal Officer Ahmednagar Circle. MSEDCL, and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

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Action by IGRC :

1. Internal Grievance Redressal Cell , Ahmednagar Circle conducted hearing on 03/08/2016 for the complaint submitted on 15/06/2016
2. After hearing both the parties IGRC gave decision as per letter dated 05/08/16 as under:
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Observations by the Forum:

1. The complainant has demanded refund of the amount of additional Fuel Adjustment Costs (FAC) recovered by the Distribution Company for the period from 8th May, 2012 to 31st May, 2012 .The IGRC has rejected the grievance pointing out that the complainant has filed a Writ Petition in the Aurangabad Bench of Bombay High Court against the Distribution Company which is pending for decision.
2. It is true that the Writ Petition (Stamp No. 5204/2016.) against the MSEDCL was filed in the Aurangabad Bench of Bombay High Court on 16/02/2016 by the complainant. The same was registered by the Hon'ble Bench under WP No. 2019 of 2016 . In the said petition, the complainant has challenged the recovery of Additional Charges like:
 - i. ASC (Additional Supply Charges)
 - ii. IASC (Incremental Additional Supply Charges)
 - iii. RGPPL(Additional Capacity Charges for Ratnagiri Gas & Power Pvt. Ltd)
 - iv. AEC (Additional Energy Charges)

done by the Distribution Company during the period May, 2007 to May, 2008 and requested the Hon'ble Court to direct the authorities of the Distribution Company to refund the same. This petition was disposed off by the court with following order dated 31/03/2016:

Mr. A.S. Bajaj, learned counsel for respondent No. 2, on instructions, submits that Chief Engineer, (Commercial) MSEDCL would take decision upon the claim made by the petitioner within a period of two weeks from today.

2. In the light of that, writ petition stands disposed of. No costs.

3. If any of the party is aggrieved by the decision, they are entitled to take steps in accordance with law. Interim order passed by this court under order dated 22nd February, 2016 shall continue for a period of two weeks from today. Needless to state that after expiry of two weeks period, the same would come to an end.

3. The complainant then filed a Writ Petition (Stamp No. 16131/2016) against the MSEDCL in the Aurangabad Bench of Bombay High Court on 06/05/2016 . The same was registered by the Hon'ble Court under WP No. 6252 of 2016 on 15/06/2016. The following order was passed on 16th June 2016 by the Hon'ble Court

The petitioner claims refund of the amount to the tune of Rs.9,29,00,000/- (Rupees Nine Crores twenty nine lakhs) based on tariff order, which claim has been rejected. The petitioner has been issued a bill for a sum of Rs.5,21,99,863/-. The petitioner assures to deposit 50% of the bill amount within a period of three weeks from today.

However the court was informed by the Distribution Company that the petitioner has not deposited the bill amount as directed by the court. The Hon'ble Court passed following order on 24th August 2016 :

None appears for petitioner.

2. *Mr. Bajaj, learned counsel for respondent informs that pursuant to the order dated 16th June, 2016 of this Court, the petitioner has not deposited current bill amount. The petitioner is directed to deposit the current bill amount. In the event of default, appropriate orders including vacation of interim order would be passed.*
3. *Stand over to 07-09-2016. To be listed in urgent category.*

This petition is still pending with the Hon'ble High Court . The plain reading of the copy of the this petition and the written statement filed by the Distribution Company reveal that the issue raised in

the petition pertains to Additional Charges recovered during May, 2007 to May, 2008. The issue raised by the complainant in the present representation to the Forum is :

Refund of the amount of additional Fuel Adjustment Costs (FAC) recovered by the Distribution Company for the period from 8th May, 2012 to 31st May, 2012

4. This issue is not covered in the said petition pending with the High Court. As such the IGRC failed to properly appreciate the issue and hence rejected the grievance on the grounds of matter under litigation. The IGRC has also referred to itself as the Forum. In fact the IGRC is just a cell/committee not the Forum in terms of the MERC CGRF & EO Regulations.
5. Forum disagreeing with the IGRC decision and has examined the demand of the complainant as per foregoing paras.
6. The Commission in its order dated 15th June, 2012 Case No. 43 of 2012 has directed as under:

"Therefore, the Commission allows the Petitioner to recover an accumulated amount of around Rs. 1483 Crore from its consumers through monthly energy bills in six equal installments, from June 2012 to November 2012. The additional amount as above will be recovered proportionate to the tariff charged to the consumers as per their respective category and slab in conformity with the principles specified in Regulation 82.10 of Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) (Amendment) Regulations, 2011.

Total unrecovered FAC amount of Rs. 1483 Crore (hereinafter total unrecovered FAC) is to be recovered in 6 equal monthly installments, total monthly recovery amount in such case will be Rs. 247 Crore (in each month), (hereinafter, FAC recovery amount)."

7. However the Distribution Company has recovered additional FAC from the Complainant for the period from 14th May, 2012 to 30th November, 2012. Total period from 14th May, 2012 to 30th November, 2012 exceeds six months of 30 days. A "Month" has been defined under Regulation 2.1 (r) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) [*Supply Code Regulations*] and in relation to billing charges it means English Calendar month or any period of 30 days. As such the Distribution Company has recovered additional FAC from the Complainant for more than six months.
8. As per the instruction No. (iv) of the MSEDCL Circular dated 13th April, 2012 provides as under: -

*The auto reset to be done at the 00 hours at the start of the month i.e. **on dated 01.05.2012;** the verification of the data is to be done from 01st to 4th day of the month and then the bills to be issued on 5th day of every month.*

9. The Complainant is therefore entitled for the refund of the additional FAC recovered for the period from 8th May, 2012 to 31st May, 2012 with interest at the bank rate of RBI till the date of refund.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should refund the additional FAC recovered for the period from 8th May, 2012 to 31st May, 2012 with interest at the bank rate of RBI till the date of refund.
2. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.

3. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can 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 Electricity Act, 2003.
4. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Rajan S. Kulkarni)
Member

(Hari V. Dhavare)
Member-Secretary

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum, Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Circle office, Ahmednagar .