



**CONSUMER GRIEVANCE REDRESSAL FORUM
KOLHAPUR ZONE : KOLHAPUR**

No. EE/KOPZ/CGRF/case No.52(2018-19) 66

Date : 04/04/2019

Order Case No.52(2018-19)

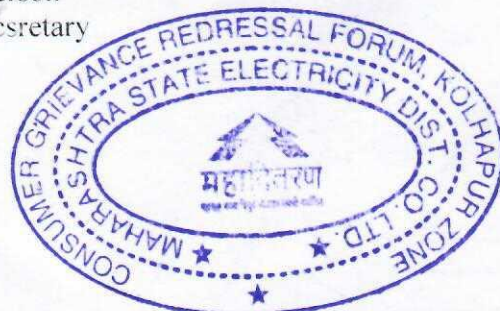
- 1) M/s. Siddhanath Fabrics 19 Ndia Pvt.Ltd
.D-1MIDC Kadegaon
Dist. Sangli
- 2) M/s.B.M. Texom
D-1 MIDC Kadegaon Dist. Sangli
- 3) M/s.K.M. Texom
D-1 MIDC Kadegaon Dist. Sangli
- 4) M/s.S.M. Texom
D-1 MIDC Kadegaon Dist. Sangli
- 5) M/s.M.M. Texom
D-1 MIDC Kadegaon Dist. Sangli
- 6) M/s.Rajlami Texom
D-1 MIDC Kadegaon Dist. Sangli
- 7) M/s.Umesh Texom
D-1 MIDC Kadegaon Dist. Sangli
- 8) M/s.Vishal Texom
D-1 MIDC Kadegaon Dist. Sangli
- 9) M/s.Neelam Fab.
D-1 MIDC Kadegaon Dist. Sangli

Applicant

V/s

- 1) The Executive Engineer-cum Nodal Officer
O&M Circle office
Sangli
 - 2) The Executive Engineer
O&M Division Office
Vita
- CORAM:-
- 1) Shri A.V. Deshapande Chairperson
 - 2) Shri N.K. Tade Member/Secrretary
 - 3) Shri P.S. Pujari Member.

Respondent



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ORDER

(Passed on this day of March. 2019)

1. The complainants, named above are praying for refund of Infrastructure cost and ORC charges , incurred and paid by them, as per the costing of the estimate under O.R.C. scheme, for the supply of New 90 H.P. 60 H.P. & 50 H.P. connected Load (K.W) sanctioned to them, vide sanction letter dated 14.07.2006 , issued by Supdt. Engineer(SC) Sangli, for their Power Looms, installed at their factories situated at Plot No. D-1 M.I.D.C.Kadegaon,Tq. Khanapur, Dist. Sangli

2. The case of the complainants , in short, is that, the estimated cost of installation of said power supply , including infrastructure cost , was Rs. 9.24.000/- as per breakup given in estimate (copy attached) and they have deposited the same , with Respondent Distribution Company, along with 15% O.R.C. Supervision charges, as mentioned in each individual Sanction letter. The Complainants are claiming that Electric Supply code and other conditions of supply, issued by Mah. Elec. Requ. Commission, dt. 20.01.2005 under the Power Vest in it , under Electric Act. 2003, does not make any provision for recovery of any charges, including infrastructure costs, towards O.R.C from consumers. That, as per the provisions of Sec.43 of the Electric Act, responsibility of developing infrastructure, except in cases of consumer availing D.D.F. facility, is of Distribution Licensee. That this position has been made clear by M.E.R.C. in case No.143 of 2011 , by its order dt. 05.01.2012 , and by the Appellate tribunal for Electricity (Appellate Jurisdiction) New Delhi in Appeal No.22of 2007 ,filed by respondent Distribution Company , by its order Dt. 14.05.2007 .That the appeal preferred by respondent Distribution Co.against the said order of Appellate tribunal, before The Hon`ble Supreme Court , is also dismissed. Therefore the respondent Distribution Company is liable to refund the O.R.C. Charges, including the cost of infrastructure, deposited by the Complainants and illegally recovered by the respondent Distribution Co.on such contentions, the complaints are praying for the reliefs stated above.

3) The respondent Co. has appeared through Dy.Executive Engineer , Sub-Divison Kadegaon, and has filed it's say , in the following manner .

"That the consumers mentioned, in accompanying list (Complainants) , have claimed S.L.C.; O.R.C. and Meter costs. Out of these consumers, Consumer No.275049008530 (Siddhanath Fabricks, through .Prop.Mahadeo Narayan Mahadik) , though has furnished Indemnity Bond, has not mentioned the receipt Number there in. The consumer Number 275040008577 (Siddhanath Fabricks Prop. Mahadeo Narayan Mahadik) though has furnish the Xerox Copy of Receipt , has Not furnished, indemnity Bond. That consumer be directed to furnish Indemnity Bond. That the complaints have claimed interest at the rate of 7 % P.A. But as per Circular No.CE/Dist/D-IV/MERC. No. 05039 dated 07.03.2018 ,the rate of interest is mentioned only as 6 % P.A. That out of these 10 consumers, the amounts refundable to 8 Consumers, are deposited in Bill revision dt. 28.11.2018 and those amounts will be deducted from the bill for the month of Dec. 2018 .That, after the consumer Numbers,275049008530 and 275040008577 Submit the complete Documents , the amounts of S.L.C.; O.R.C. & Meter costs shall be refunded as per rules."



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4) This complaint, was taken up for hearing today. The representative of the Complaints, Shri Haribhau Khapare and Dy.Executive Engineer , S.L. Mullani, for respondent Distribution company were present. Their submissions were heard at length.

5) The points, those arise for our determination, in this case, are as follows:-.

Sr.No.	Points	Findings
1	Whether the complaints, are entitled for refund of O.R.C. charges, including Infrastructure costs, incurred by them?	Yes
2	What Order?	As per final order

6) The reasons for our findings above are on below:-

REASONS

7) **Points No.s 1 & 2 :-** At the outset, it must be mentioned that the respondent Distribution company is not disputing the entitlement of the complaints for refund of O.R.C. charges , which according to the respondents, includes only S.L.C. O.R.C and meter costs only. The Say filled by respondents, before this forum which we have reproduced above, clearly shows this fact. However, the respondents are contending that out of 10 complaints, there is a short fall of same document viz. Payment Receipt, in respect of consumer No.275049008530 (Siddhanath Fabriks, through Prop. Mahadeo Narayan Mahadik) and a Indemnity Bond by consumer No. 275040008577 .It was brought to the notice of the offices of the respondent Company, that, there are only 9 complaints, and consumer No. 275040008577 , is not before this forum as the complainant. The representative of complainant, Shri Haribhau Khapare , immediately handed over the copy of receipt .as desired by the respondent , to the officers of the respondent company and that deficiency was complied. There upon the aforementioned officers of Distribution Company, showed their readiness to refund the S.L.C.; O.R.C. charges and the meter costs, to the said consumer No.275049008530(Siddhanath Fabriks, through Prop.Mahadeo Naryan Mahadik) along with other complaints .Their contention was that they would refund these amounts , along with the interest @6% P.A. as per the Circular No.CE/Distt/D-IV/MERC/No.05039 dt. 07.03.2018. According to them as per the said circular only S.L.C. O.R.C. charges and meter cost, are liable for refund, terms of the various orders and judgments of MERC, Appellate tribunal for Electricity & the Hon'ble Supreme Court. On the contrary, the representative of the complainants, Shri Khapare, vehemently submitted that the O.R.C. Charges include the infrastructure costs, and the respondent distribution Licensee cannot refuse to refund the infrastructure costs incurred by the consumers, who do not fall in Dedicated Distribution Facility Category. This controversy has necessitated the decision by this forum, thereon.



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8) The respondent company, has filed on record the copies of Circular No.CE/.Dist./D-IV/MERC/25079 dt. 12.10.2017 and also the circular No.CE/Dist./D-IV/MERC/05039 dt.07.03.2018.The circular dt. 12.10.2017 mentions that in pursuance of MERC Orders Dt.17.05.2007 in case No.82/2006 and order dt. 08.09.2006 in case No.70/2005 ,on schedule of charges various circulars are issued for refund of S.L.C.; O.R.C. Charges and Meter charges and now in pursuance of the Hon'ble Supreme Court's order in Civil Appeal No.4305/2007 ,the instructions are being issued for refund of S.L.C. ; O.R.C charges and meter costs, recovered from all consumers, in terms of directives of M.E.R.C. incase No.82/2006 , dated 17.05.2007 and 21.08.2007, alongwith **Interest** (Emphasis supplied) . The said circular lays down certain conditions for refund of the above amounts. The circular No.CE/Dist./D-IV/MERC/05039 Dt.07.03.2018, Lays down the rate of interest as 6% P.A. at which rate the interest on these amounts,is to be paid. It is Pertinent to note that both there circulars do not specifically mention the refund of Infrastructure cost, incurred by consumers, at all..

9) The Mah. Electricity Regulatory Commission, has ,in its order dt. 08.09.2005, passed in case No.70/2005, in the matter of MSEDCL Schedule of charges ,at Para No.6.4 has clearly ruled that" As per the provisions of the Electricity Act 2003 , developing Infrastructure is the responsibility of Licensee , and hence the Distribution Lincensee MSEDCL, is directed to bear the costs of infrastructure from delivery Point of transmission system to distributing mains. The supply code and conditions of supply Regulations 2005, do not speak, above recovery the infrastructure costs from consumers, while supplying the electricity to them. In case No. 82/2006 , in its order Dt.17.05.2007 , the MERC has clearly directed the MSEDCL not to collect any monies under any chage item which is not defend under the supply code and /or the its order dt. 08.09.2006.

10) The Bombay High Court in W.P.Nos.1276/2011 and Writ Petions No.1392/2011 M.S.E.D.C. Akola V/s. Y.C.Paliwal and M.S.E.D.C.L. Akola V.s Kishor Lakhotiya & another, has observed, in its Common order dt. 22.03.2013 that The Hon'ble Superme Court, as held in a Spl. Leave Petition pending before it that M.S.E.D.C.L. would be liable to refund the infrastructure costs (Service connection charges) to the consumers . In Writ Potions Hon'ble Bombay High Court, was considering the legality/ correctness of the order passed by C.G.R.F. Amaravati Zone Akola directing the M.S.E.D.C.L. Company to refund the infrastructure costs with interest, to the consumers. On the basis of the Dictum of Hon'ble Supreme Court mentioned in the said Judgment, Hon'ble Bombay High court has dismissed there Writ Petions upholding the order of C.G.R.F. Amaravati Zone Akola. It thus appears that it is now well settled Law that except in cases of DDF the respondent M.S.E.D.C.L. cannot recover any charges for supply of Electricity, including the infrastructure costs, from the consumers, and if recovered, it is Liable to refund the same to the consumers, along with the interest.





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11) We Note, with same surprise, that despite the clear finding of Hon'ble Bombay High court and Hon'ble Supreme Court, in its order which is refereed by High court, in its order in W.P.No,s 1276/2011 and 1392/2011 dt.22.03.2018, No. clear circulars are issued by M.S.E.D.C.L. making it clear that O.R.C. Charges are inclusive of Infrastructure cost incurred by Non- DDF consumers. Such clear instructions, shall avoid the disputes between the officers of M.S.E.D.C.L. and consumers (Non DDF) Be that as it may be above position of Law, makes, it clear that the complainants are entitled to refund of S.L.C. ;O.R.C. charges including infrastructure cost incurred by them, and the meter cost, along with the interest, at the rate of 6% P.A. from the date of supply of connection i.e. w.e.f. 20.1.2007 till the date of filing of this complaint, only. We have therefore answered the point No.1 above in the affirmative, and we proceed to pass the following order.

ORDER

- 1) The present complaint is allowed.
- 2) The respondent M.S.E.D.C.L. shall refund the S.L.C. charges ; ORC charges including the infrastructure costs, incurred by complainants, as per Abstract of Estimate, amounting Rs. 9,24,000/- by adjusting the said amount from the future Electricity Consumption Bills payable by the complainants. The interest on these amounts, shall be @ 6% from the date of supply of connection, i.e.20.01.2007, till the Date of filing from complaint, only and said interest amount shall also be adjusted from the future energy bills to be paid by complainants.
- 3) The refundable amounts, along with interest payable there on, for the above period; shall be repaid to each of the complainants, as per the actual amounts paid by them, and reflected in the receipts produced by them.
- 4) This order shall be complied, within a period of two months from date of this order.
- 5) If consumers are not satisfied with this order, they are at liberty to prefer appeal within Sixty days before Electricity Ombudsman. Secretary- OMBUDSMAN Maharashtra State Electricity Regulatory Commission, 606/608 Keshava building, Bandra Kurla Complex, Mumbai- 400051. Phone No. 022-26592965
- 6) Respondent to inform about implementation of this judgment and order, to this Forum; as per Case 8.7 of MERC (CGRF & Elect. Ombudsman) Regulation 2006.

(P.S. Pujari)
Member

(N. K. Tade)
Member/Secretary

(A.V. Deshpande)
Chairperson

I am not agree with above order (case No. 52/2018-19). The separate opinion is hereby given and enclosed herewith

Differed opinion of Shri. N. K. Tade, member secretary CGRF Kolhapur.

As per MERC instructions and MSEDCL circular, The complainants M/s Sidhanath Fabrics and others 8, of Kadegaon had already been given the recovered amount in respect of ORC charges, SLC and meter cost by MSEDCL.

As per circular No. CE/Dist/D.IV/MERC/25079 dtd. 12.10.2017 and CE/Dist/D-IV/MERC/5039 dt. 07.03.2018 issued as per directives of Hon. Supreme Court , it is clearly mentioned that the SLC, ORC and meter charges recovered from new HT/LT cons in period from 21.01.2005 to 20.05.2008 shall be refunded. Also as per 7 no. condition of circular it is clearly mentioned that SLC, ORC and meter charges shall not be refunded in the case where consumer have opted for DDF supply.

The referred MERC order 148 of 2011 Dt. 05-01-2012 is not applicable to this matter as order only clarify the difference between the service connection charges and DDF.


In view of above it is not appropriate to refund the estimated amount by only observing abstract of unaudited estimate which is signed by only Assistant Engineer who is not competent to sanction or approve such type of estimate of amount Rs. 9,24,000/-.

In para-II of this order, it is mentioned that, "Therefore the respondent Distribution Company is liable to refund the ORC charges, including the cost of infrastructure, **deposited by Complainants** and illegally recovered by the respondent Distribution Company on such contentions, the complainants are praying for reliefs stated above."

It will be appropriate to refund the amount recovered from the consumer / applicant other than approved scheduled charges by the MSEDCL, where as in this matter the applicant has not produced any evidence before the forum regarding the charges deposited to MSEDCL. It is liability of applicant to produce the evidence of payment made to MSEDCL in front of forum.

Hence the complaint is liable to be dismissed.

Date : 04-04-2019.


N. K. Tade
Member Secretary,
CGRF Kolhapur.

