

CONSUMER GRIEVANCE REDRESSAL FORUM,
AKOLA ZONE, AKOLA.

“ Vidyut Bhavan ” Ratanlal Plot, Akola. Tel No 0724.2434475

ORDER.

Dt. 13/06/2017

Complaint No. :- 21/ 2017

In the matter of refund of infrastructure cost with interest and refund of testing charges and cost.

Quorum

Shri. R.A. Ramteke ,Member-Secretary
Shri. D.M.Deshpande-Member (CPO)

Shree Shyam Agro Processors,
Murtizapur, MIDC, Murtizapur
Con.No. Ind- 322219063430

:-

Complainant.

....Vrs.....

Ex. Engineer MSEDCL,
O&M Rural Division, Akola.

:-

Respondent

Appearances: -

Complainant Representative

:-

Shri. Ashish S. Chandarana

Respondent Representative

:-

Shri. P.N.Fulzele Dy. Ex.Engineer.

1. On being aggrieved by the fact of not providing remedy by IGR cell Akola. Under deemed intimation on 26.09.2016,24.10.2016,22.12.2016,21.01.2017 and 17.02.17, the complainant approached this forum as per clause 6.2 and 6.4 of MERC CGRF Ombudsman regulation 2006.

2. Complainant's case in brief is that in spite application to NA-MSEDCL at Murtizapur on 26.09.2016,24.10.2016,22.12.2016, 21.01.2017and 17.02.17, S.D.O MSEDCL, Murtizapur has not refunded the cost of infrastructure incurred by complainant or did not forward the complaint to IGRC Akola for solving the grievance. According to complainant, the intimation given to official (who are not part of IGR cell)

to whom consumer approach due to lack of general awareness of IGR cell established by Distribution licensee or the procedure for approaching it, shall be deemed to be the intimation for the purpose of regulation-2006 unless such officials forthwith direct the consumer to IGR cell. According to complainant, in view of above the complaint can be admitted in CGRF as per provision of regulation 2006 and requested forum to admit the complaint.

3. As per the synopsis reproduced by the complainant, NA- MSEDCL have given approval to load enhancement on 01.12.2015 from existing load of 107 HP to 171 HP under Non-DDF CCRF Scheme vide EE/AKL/ Non-DDF CCRF/32 Dt. 01.12.2015, wherein augmentation of DTC was proposed from 100 KVA to 200 KVA. According to complainant NA- MSEDCL on 16.12.2015 issued demand note amounting Rs. 3000/- towards transformer testing charges vide Sr.No.43749 in violation of schedule of charges approved by MERC and payment is effected by complainant on 16.12.2016 vide MR.No. 2268381 and NA- MSEDCL put the augmented asset in service on 06.01.2016. According to complainant SDO MSEDCL Murtizapur prepared WCR on 17.02.2016 Rs. 262355.00 adding 10% labour excluding the testing charges, transportation cost and T & P cost and thus committed error. It is alleged that approval to WCR was given by Executive Engineer Rural division Akola on 25.07.2016 after 5 months and 8 days, disallowing 10% labour, transportation cost, and T & P cost & testing charges in violation of standard practice followed by MSEDCL. According to complainant Executive Engineer Rural division Akola is guilty for delay in approving the audited WCR for 5 month 8 days and hence made applicable for retrospective billing. According to complainant the matter is persued with Executive Engineer Rural division Akola during more than 10 visits to his office during these 5 months. Therefore according to complainant the intimation for solving the grievance was given to SDO MSEDCL Murtizapur on five occasion as mentioned in para I but is not attended by NA- MSEDCL uptill now. According to complainant they have not received any refund towards

infrastructure cost but continued paying interest to bank on the amount against credit facility. According to complainant in similar case of Non-DDF CCRF refund MSEDCL have considered WCR with 10% Labour, 5% Transportation charges, and 1.5 % T&P citing case of M/S Rasoi Spices Akola and requested forum to settle the grievance on similar lines. According to complainant amount of Rs. 288012.98 is receivable from NA- MSEDCL towards refund of infrastructure cost. It is alleged that refund is delayed due to gross negligence on the part of SDO and E.E. MSEDCL for 5 month and 8 days though the asset is put to use on 06.01.2015 and hence N.A. MSEDCL is liable to pay interest from 06.01.2015 at 18% P.A. According to complainant no chronology of refund is maintained by N.A. MSEDCL and refund is processed only on visit of consumers and hence likely malpractice can not be ruled out. Complainant prayed for refund of infrastructure cost Rs.288013.00 with 18 % interest and cost Rs.1000/- with request of appropriate action against responsible officer of N.A. MSEDCL. Complainant Annexed with complaint copy of WCR forwarded to E.E.(R) , copy of approval of WCR by EE, quotation for Rs.3000/-, receipt of Rs.3000/-, complaint letter dated 26.09.2016, 24.10.2016,22.12.2016,21.01.2017and17.02.17, WCR of M/S. Rasoi Spices Akola and energy bill for March-2017.

4. Belated reply came to be filed on 17.05.2017. According to N.A.the industrial connection for 107 HP was released on 25.10.2008 with connection No. 322219063430. According to N.A. while releasing connection infrastructure was created such as HT 11 KV line 0.5 Km, DTC 100LVA under Non DDF CCRF Scheme by complainant and cost Rs. 274117/- was refunded through bills. According to N.A. complaint submitted application for enhancement of load by 64 HP which was sanctioned under Non DDF CCRF Scheme on 01.12.2015, involving the requirement of 200 KVA distribution transformer. According to N.A.MSEDCL distribution licensee can recover the expenses and referred provisions of supply code regulation 2005 No. 3.3, 3.3.1,3.2.(a), and 18. According to N.A.MSEDCL, Distribution licensee shall be authorized

to recover all expenses reasonably incurred on such work from complainant based on schedule of charges approved by commission under regulation 18 of supply code 2005. According to N.A.MSEDCL supply of electricity to complainant is dedicated as no other consumer is fed from this DTC. According to N.A.MSEDCL against sanction of estimate under Non DDF CCRF Scheme benefit was given to complainant in year 2012 and according to N.A. benefit is not available 2nd time at the time of augmentation. It is stated by N.A.-MSEDCL that estimate EE/R/ Non DDF CCRF/32 dt. 01.12.2015 is sanctioned by Executive Engineer by mistake, and prayed for dismissal of complaint with cost. N.A.MSEDCL annexed with reply energy bill for April 2017 and copy of supply code regulation-2005.

5. Forum, before proceeding decided the matter of admission of the complainant, as satisfied and convinced that complainant has given intimation to official (who are not part of IGR cell) i.e. SDO MSEDCL Murtizapur who failed to solve the grievance or failed to submit the grievance to IGR cell and hence complaint is admissible and within the jurisdiction of CGRF as per provision of section 6.2 and 6.4 of MERC CGRF and Ombudsman regulation 2006. MSEDCL in their reply have not objected this aspect and preferred to remain silent on this issue.

6. Complainant representative Mr. Ashish Chandarana and Mr. P.N.Fulzele Dy.Ex.Engineer NA-MSEDCL were present for hearing scheduled on 08.06.2017. Heard both complainant and NA- MSEDCL. Mr. Ashish Chandarana for complainant filed copy of rejoinder alongwith documents such as circular No. 243 Dt. 25.04.2017 issued by MSEDCL,CE/Dist/Circular/22197 dt. 20.05.2008, IGRC Order 1766 dt. 03.05.2017 and MSEDCL reply to IGRC in complaint No. 602 dt.0303.2017 at the time of hearing on 08.06.2017. Mr. Ashish Chandarana for complainant urged that testing charges of Rs.3000/- are recovered illegally by N.A. and gave reference of MERC case No. 70 dt. 08.09.2006. and urged that same should be refunded to

complainant as recovered despite contrary direction by MERC in case No. 70 of 2006. Mr. Ashish Chandarana for complainant brought to the notice of forum a letter on record dtd. 25.07.2016 wherein 10% labour cost is deducted by N.A. Executive Engineer Akola from WCR prepared by SDO Murtizapur and approved Rs. 238505/- for refund. Mr. Ashish Chandarana specifically brought to the notice of forum the Non DDF CCRF Scheme refund by MSEDCL to M/s. Rasoi Spices at MIDC Akola wherein infrastructure cost is refunded with 10% Labour, 5% Transportation charges, and 1.5 % T&P which is filed on record. Shri Ashish Chandarana urged that in similar case of complainant N.A. MSEDCL admitted the claim of consumer on 2nd occasion as seen from letter filed on record with rejoinder addressed to IGRC Akola by N.A. MSEDCL and thus complained the disparity by N.A. MSEDCL in respect of complainant, for ulterior motives. Mr. Ashish Chandarana for complainant urged that they never applied for DDF facility as quoted by MSEDCL in their reply. It is specifically brought to the notice of forum by representative for complainant that it is not disputed fact that earlier connection to complainant is under Non DDF CCRF for which refund is given by MSEDCL and hence according to Mr. Ashish Chandarana it is wrong and misleading on the part of MSEDCL to say that infrastructure is DDF. Mr. Ashish Chandarana specifically brought to the notice of forum, the provision of circular No. 22197 dt. 20.05.2008 filed on record and its applicability for upgrading the connections and urged that N.A. MSEDCL violating their own circular and submitting false reply on record. Mr. Ashish Chandarana referred circular No. 243 filed on record vide which 10.8% interest on security deposit is conveyed to be approved by MERC and requested forum to accept their prayer for grant of interest on infrastructure cost Rs. 288012.98 from 06.01.2015 and urged that loss of revenue to MSEDCL towards payment of interest be recovered from the guilty officers of MSEDCL specifically from SDO Murizapur and E.E.(R) Akola as per principle laid down in Lucknow Development Authority Vrs M.K.Gupta in 1994 SCC(1) 243 the order issued by Hon. Supreme court of India.

7. Mr.P.N.Fulzele Dy.E.E. and authorized representative for N.A. MSEDCL filed during hearing order passed by CGRF Bhandup in case No. 437 urged that though the application for Augmentation is not disputed, the estimate for augmented infrastructure was sanctioned in Non DDF CCRF Scheme by mistake for the reason that said consumer is dedicated from augmented transformer and no other consumer is fed. In support of N.A. MSEDCL specifically brought to the notice of forum the consent exercised by complainant which is for Non DDF CCRF Scheme. N.A.representative further urged that original connection was sanctioned in Non DDF CCRF Scheme and refund is credited to the account of complainant and benefit can not be extended for 2nd time and urged that the defence of N.A. MSEDCL is limited to the reply filed on 12.05.2017 which is on record. N.A.representative further urged that N.A. MSEDCL do not have any, say on rejoinder submitted by complainant filed on record and admitted the facts submitted by complainant rejoinder. N.A.representative could not submit any document to support their stand that 2nd time Non DDF CCRF Amount can not be sanctioned , on a query from forum.

8. Forum have gone through the complaint on record, reply by N.A., rejoinder by complainant and arguments on record by complainant and N.A.MSEDCL . Forum is of the view that grievance submitted by complainant is for incorrect refund of infrastructure cost approved by N.A. MSEDCL for Rs.238505.00 instead of Rs.288012.98. Forum arrived at the conclusion that plea taken by N.A. MSEDCL about DDF Scheme is after thought as defense is taken only after filing complaint with CGRF, which is misleading and attempt on the part of MSEDCL to deny the rightful claim of complainant to approach consumer forum. Forum is of the view that N.A. MSEDCL have not understood the purpose of formation of consumer forum as envisaged in Electricity Act-2003, which is not only to give relief to the consumers but in a long way will help MSEDCL to improve their performances. In the present case how can MSEDCL reject the total claim of refund of infrastructure cost under the pretext of DDF when

SDO Murtizapur agreed the claim for Rs. 262355.00 while recommending for refund and Executive Engineer approving for refund of 238505.00 that too in Non DDF CCRF Scheme . The plea taken by N.A. MSEDCL about the work done under dedicated distribution facility is far from the fact on record that original connection is sanctioned under Non DDF as per MSEDCL and consent on record for augmentation is also for Non DDF CCRF Scheme which is for refundable infrastructure cost. The order filed on record by N.A. MSEDCL passed by Hon'ble CGRF Bhandup does not support MSEDCL wherein refund was claimed despite consent by consumer for DDF Scheme. In that order estimate was sanctioned under DDF Scheme and consumer had opted for DDF scheme & payment of 1.3% supervision charges. In the present matter the issue to be decided by Forum is whether WCR prepared by SDO and approved by Executive Engineer is correct or not. From the documents filed on record forum is of the view that MSEDCL have deviated from the practice followed and excluded 10 % Labour, 5% Transportation charges, 3% centages , and 1.5 % T&P while preparing estimate and finalizing WCR , which are added even when work is executed by MSEDCL through their own schemes. Forum is of the view that N.A. MSEDCL should correct WCR for Rs. 288012.98 which includes Rs. 3000/- testing fee recovered in contravention of MERC orders issued in case No.70 of 2006. The complainant's claim for interest from 06.01.2015 of 10.8% as per MERC approval on record has not been opposed by N.A. MSEDCL but Forum is of the view that complainant is entitled for interest of 8% as per RBI rate from 06.01.2015 as MSEDCL denied refund from Feb-2015 without sufficient cause. Forum is of the view that payment of interest is loss to the MSEDCL because of negligent and deliberate attitude on the part of MSEDCL and should be recovered from guilty officers after due enquiry as per principle laid down in Lucknow Development Authority Vrs M.K.Gupta decided by Hon.Supreme court of India. Forum is not inclined to accept the claim of complainant for cost of RS. 10,000/-. With these observations forum proceeds to pass following unanimous order.

// ORDER //

1. That the Complaint No.21/2017 is hereby partly allowed.
2. The N.A. MSEDCL is directed to refund infrastructure cost spent by complainant Rs. 288012.98 by revising WCR after adding 10% Labour, 5% Transportation 3% centages and 1.5 % T&P and refund of Rs.3000/- testing fee, in the forthcoming bill payable by complainant.
The N.A. MSEDCL is directed to pay interest at 8% per annum as per RBI rate, payable from 07.01.2015 on Rs. 288012.98 till credited in the bill and amount so arrived should be credited in the forthcoming bill payable by complainant.
4. The N.A. MSEDCL is directed to recover the interest amount payable to complainant from guilty officers of MSEDCL after due enquiry as per principle laid down in the matter of Lucknow Development Authority Vrs M.K.Gupta in 1994 SCC(1) 243, in the order of Hon. Supreme Court.
5. No order as to the cost.
6. The N.A. MSEDCL is directed to submit the compliance report within period of one month to the forum from this order.

Sd/-
Member/Secretary

Sd/-
Member (CPO)

Contact details of Electricity Ombudsman appointed by MERC (CGRF&EO) Regulations 2006 under Regulation 10:

THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni, Nagpur-440 013.
Phone : 0712-2596670

No.CGRF /AKZ/ AKL/108

Dt. :- 13.06.2017

TO,
The Nodal Officer/Executive Engineer
Rural Division, MSEDCL, Akola.

The order passed on 13/06/2017 in the Complaint No. 21/2017, is enclosed herewith for further compliance and necessary action.

Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Akola Zone, Akola.

Copy fwc to :-

1. Superintending Engineer O&M Circle, MSEDCL, Akola.
2. Shree Shyam Agro Processors, Murtizapur, MIDC, Murtizapur,
C/o Shri Ashish Subhash Chandarana, Samudra Vihar Apartment , Flat No.3 Near Datta
Mandir Ramdas peth ,Akola. -444001