

**CONSUMER GRIEVANCE REDRESSAL FORUM,
AMRAVATI ZONE, AMRAVATI.**

*" Vidyut Bhavan" Shivaji Nagar, Amravati, Amravati : 444603 Tel No 0721
.2551158*

Dt.27/06/2017

Complaint No. 9 / 2017

**In the matter of refund of meter cost with interest , security deposit
with interest & SOP Compensation, revision of bill for excess FAC
charge collected and refund of excess FAC with interest.**

Quorum

**Shri . S. R. Chitale, Member/Secretary
Shri. D. M. Deshpande-Member (CPO)**

M/s. Raviraj Industries,
Rani Mata Chowk, Chapmanwadi,
Yavatmal
Consumer No:- HT-370019004910
LT-370019043130

Complainant

.....Vrs.....

Superintending Engineer,
MSEDCL, O&M Circle,
Yavatmal

Respondent

Appearances :

Complainant Representative:- Shri Ashish Chandarana

Non Applicant :- Shri R. V. Bommi, Jr. Law Officer
With Shri N. B. Golhar , Asstt. Accountant

1. On being aggrieved by the decision of IGRC, Yavatmal issued vide IGRC order dated 15/02/2017, complainant Shri Ashish Chandarana for M/s Raviraj Industries, Yavatmal approached this Forum under clause 6.4 of MERC CGRF OMBUDMAN Regulation 2006 for resolving the grievance.

2. The complainant M/s. Raviraj Industries was LT consumer of N.A. MSEDCL and subsequently upgraded to HT consumer. According to complainant N.A. MSEDCL have recovered cost of metering Rs.22400/- at the time of release of LT connection in violation of approved schedule of charges on 07/04/2007 and have not refunded the cost of meter in spite several direction by MERC conveyed to N.A. MSEDCL through Circulars. According to complainant the security deposit Rs.35000/- after closer of LT account was not refunded even after numerous follow up in written as well as oral till filing representation to IGRC, Yavatmal. According to complainant S.D.Rs.35000/- is refunded by cheque dated 31/01/2017 and interest on S.D. and meter cost is yet to be refunded. According to complainant N.A. MSEDCL have recovered in H.T. billing from December 2013 excess FAC charges in contravention of their own H.O. Circulars till June 2015 amounting Rs. 2,41,750.34/- and reproduced chart showing incorrect FAC by N.A. MSEDCL and correct FAC calculation. According to complainant opportunity to counter submission is denied by IGRC, Yavatmal in rejecting the application on the ground of complying CGRF Akola order 11/2015 under protest in respect of M/s. Balaji Electro Smelter Ltd. According to complainant IGRC, Yavatmal have committed error in rejecting the claim as time barred as per regulation 6.6 of MERC CGRF Regulation 2006 as provision of regulation 2006 are not applicable to IGRC but to CGRF only. According to complainant order passed by CGRF, a quasi judicial body is binding precedent irrespective complied under protest and ought to have been followed in present complaint. Complainant referred section 62 (6) of

E.A. 2003 and accordingly the excess amount shall be recoverable with interest from N.A. MSEDCL. According to complainant 14.75% interest is allowable since complainant is paying 14.75% interest on working capital. Complainant annexed with complaint MSEDCL Circular 34307 dated 03/09/2007, IGRC order, demand note and receipt for Rs.35,000/- S.D. Application for refund dated 20/07/2016, RTI application dated 04/11/2015, DYEE, MSEDCL letter No. 5029 dated 18/11/2015 and copy of cheque dated 31/01/2017 for Rs.35,000/-

3. Complainant M/s. Raviraj Industries prays as follows

[i] Admit the complaint under clause 6.4 of MERC CGRF Ombudsman Regulation 2006 with expeditious hearing.

[ii] Direct N.A. MSEDCL to pay interest on S.D. Rs.35000/- at 14.75% compounding interest and SOP of Rs.100/- per week from 07/09/2008 to 31/01/2017 and direct to recover loss from guilty officers of N.A. MSEDCL as per provision laid down in the matter of M/s. Lucknow Development Authority V. M.K. Gupta.

[iii] Direct N.A. MSEDCL to refund excess recovery towards FAC from December 2013 to June 2015 with interest 14.75%.

[iv] Direct N.A. MSEDCL to pay cost of Rs.10000/- to complainant.

[v] Permit complainant to file submission, additions as may be necessary.

[vi] Any other relief Hon'ble CGRF may deem fit.

4. Reply came to be filed by N.A. MSEDCL on 26/05/2017. According to N.A. MSEDCL it is fact on record that electric supply to complainant's industry was upgraded to HT from LT. According to N.A. MSEDCL recovery of meter cost is not disputed but complaint is time barred

as correctly decided by IGRC as per resolution 6.6. of MERC CGRF Ombudsman Regulation 2006. According to N.A. complaint before IGRC is true in respect of S.D. RS.35,000/- and refunded through cheque dated 31/01/2017. According to N.A. Rs.25976/- is refundable towards interest from 17/04/2007 to 31/01/2017 and brought on record calculation sheet with DV dated 23/05/2017. According to N.A. Circular for payment of interest for 2016-17 was issued by their Corporate Office on 25/04/2017 and thereafter office note was put up and Rs.25976/- will be refunded on receiving funds from Corporate Office. According to N.A. part of the claim as regards excess charged FAC is time barred as per resolution 6.6. of Regulation 2006 and balance claim can not be entertained. According to N.A. order of CGRF Akola in complaint No. 11/2015 is complied under protest by MSEDCL and hence present complaint be disposed office accordingly.

5. According to N.A. MSEDCL contentions of complainant regarding levy of FAC contrary to Circulars of H.O. is denied. N.A. MSEDCL submitted separate sheet for calculation of FAC from Circular No. 198 dated 07/08/2014 up to 218 dated 02/06/2015 stating calculation submitted by complainant to be totally incorrect. N.A. MSEDCL brought on record detail calculation as per Circular No. 199 and compared with the calculation submitted by complainant for Circular No. 199 stating to be misinterpreted by the complainant to misguide the Forum. According to N.A. calculation of FAC submitted by complainant in the chart are incorrect and IGRC have correctly rejected the claim. N.A. MSEDCL have denied the compounding of interest and according to N.A. utmost care to resolve the issue in total after IGRC order has been taken and Rs.25976/- will be paid at the earliest. According to N.A. MSEDCL grievance of the consumer on the count of interest on security deposit is redressed effectively and rest of issues time

barred rightly according to IGRC hence requested Forum to dismiss the present complaint. Along with reply documents such as calculation sheet for interest amount Rs.25975.99, calculation sheet for FAC from 07/08/14, and energy bill from Dec. 13 to June 15 and FAC Circular No. 189 to 216 annexed.

6. Rejoinder dated 04/06/17 is submitted by complainant to Forum with reply to N.A. Complainant referred MERC Case No. 70/2015 dated 08/09/2006, MSEDCL commercial Circular No. 43 dated 27/02/2006, MERC Case No. 82/2006 and requested Forum to refund the cost of meter as regulator MERC by orders have directed MSEDCL to refund cost of meter collected in violation of schedule of charges. According to complainant cause of action is not applicable to judicial order passed by MERC. According to complainant order passed by MERC in respect of schedule of charges is still in force. According to complainant calculation sheet for payment of interest is disputed not applicable as interest is payable at the end of respective year. According to complainant SOP compensation after 30 days of application is payable as per Regulation 2005 and 2014. According to complainant N.A. MSEDCL have harassed consumer deliberately. Complainant in rejoinder referred Circular No. 219 dated 03/07/15, issued by Corporate Office of MSEDCL admitting the fact of anomaly committed in FAC calculation from Circular No. 191 and restoration to earlier practice followed. According to complainant order passed by CGRF in similar cases is binding precedent unless set aside by Competent Court. Complainant referred order passed by Hon'ble Bombay High Court in W.P. No. 9455 of 2011 in the matter of M/s Hindustan Petroleum Corporation Ltd Vs. MSEB and others wherein exclusive issue of cause of action is dealt. According to complainant the Circular rectifying the wrong practice in calculation of FAC is issued on 03/07/15 and complainant approached IGRC on 23/12/16 well within the

limitation of cause of action. Complainant annexed with rejoinder Circular No. 219 dated 03/07/15, order passed by Bombay High Court in W.P. 9455/2011.

7. N.A. MSEDCL filed reply to rejoinder at the time of hearing on 14/06/17. According to N.A. refund application was received on 20/07/16 and after completion of formalities on 09/12/16 S.D. was refunded by cheque dated 31/01/17. According to N.A. grievance pertaining to refund of interest only is pending and will be redressed shortly. N.A. submitted that simple interest is only calculated in the accounting system of MSEDCL and compounding of interest is never allowed. According to N.A. ignorance of law is not excusable therefore limitation prescribed. According to N.A., Forum can not entertain any non-compliance of MERC orders and denied other issues mentioned in the rejoinder on the part of limitation prescribed as per resolution 6.6. of MERC CGRF regulation 2006. N.A. denied allegations of deliberate attempt to harass complainant. According to N.A. FAC is levied as per Circular. Even Circular NO. 219 is not much useful to complainant as according to N. A. no relief is given in the Circular No. 219. According to N.A. citation quoted by complainant is not useful to complainant in present matter as there is inordinate delay in making grievance. According to N.A. interest on S. D. Rs.25976/- will be paid at the earliest and requested to dismiss the complaint.

8. Heard Shri Ashish Chandarana learned representative for complainant and Shri R.V. Bommi, Jr. Law Officer learned representative for N.A. MSEDCL. Mr. Ashish Chandarana urged on the point of cause of action that it is not applicable for refund of meter cost and referred case No. 70/2005 whereby direction are given to N.A. MSEDCL to refund meter cost collected by MSEDCL and Corporate Office of MSEDCL ratified the direction

and instructed to all Superintending Engineer MSEDCL by Circular dated 03/09/2007 filed on record to refund meter cost. Learned representative for complainant brought to the notice of Forum that N.A. MSEDCL is silent on this issue. Mr. Ashish Chandarana brought to the notice of Forum towards Clause No. 6.6. of Regulation 2006 wherein specifically word "Forum" is used and is not applicable for IGRC. Mr. Ashish Chandarana urged that citation in W.P. 9455 of 2011 decided by Bombay High Court in respect of limitation is precedent and accordingly cause of action arose when grievance was rejected by IGRC Yavatmal in respect of FAC and refund of meter cost both. Mr. Ashish Chandarana urged on the points raised in the complaint and rejoinder specifically on extract of Circular No. 219 issued by N.A. MSEDCL and brought to the notice of Forum that MSEDCL Corporate Office have admitted the fact that deviation from the previously followed practice before issue of Circular No. 191 for levy of FAC resulted in certain anomaly.

9. Mr. Bommi, Jr. Law Officer and learned representative of N.A. MSEDCL stressed on the point of limitation of cause of action and justified rejection of grievance by IGRC on this count for refund of meter cost and part of excess FAC recovered. Mr. Bommi opposed the complaint for refund of excess FAC recovered as correctly levied by MSEDCL. Mr. Bommi however agreed to refund interest amount Rs.25976/- at the earliest. Mr. Bommi, Jr. Law Officer opposed payment of SOP as according to him grievance is redressed after the application by complainant on 20/07/16 and completion of formalities without any delay. Mr. Bommi, Law Officer urged that grievance of compounding of interest should not be allowed to be accepted as standard practice can not be deviated.

10. Heard Shri Ashish Cahandarana, learned representative of the complainant and Shri R. V. Bommi, Jr. Law Officer, the learned representative of the N.A. This Forum have gone through complaint on record with annexure, reply filed by N.A. with annexure, rejoinder with annexure filed by complainant and reply to rejoinder by N.A. The grievance of the complainant pertaining to part of FAC and refund of meter cost has been rejected by IGRC on the ground of limitation and partly allowed the grievance of refund of interest on S.D. and excess FAC. The complainant is aggrieved on both points. In so far as ground of limitation is concerned, Forum proposes to decide the question of limitation by this order and Forum is of the view that, the grievance made by the complainant was well within limitation.

11. The internal grievance cell, Yavatmal held under rule 6.6. of MERC (CGRF and Electricity Ombudsman) Regulation 2006, the IGRC has no power and jurisdiction to admit any grievance unless it is filed within two years from the date on which the cause of action has arisen. IGRC, Yavatmal in rejecting the matter has not decided as to when the cause of action actually arose in the matter of refund of meter cost and part of FAC. Also not held as to which part of excess FAC is time barred on this count and thus order passed by IGRC, Yavatmal suffer from apparent error. The cause of action has not been defined in Regulation 2006. Regulation No. 2.1(d) and 2.1(e) of MERC (CGRF Ombudsman) Regulation 2006 defines term IGR cell and Forum in reference to the grievance. According to which CGRF is the Forum established by Distribution Licensees pursuant to sub section (5) of Section 42 of E.A. 2003 and regulation 2006 and IGR Cell is the first authority to be contacted by the consumer for redressal of his/her grievance notified by Distribution Licensees. This Forum is of the view that IGR Cell, Yavatmal is not the "Forum" as contemplated by Section 42(5) of E.A. 2003

and clause 6.6. of the reregulation 2006 and committed apparent error on this count in rejecting the grievance. Forum find substance in the submission of complainant that cause of action is not applicable to the refund of meter cost as there are the direction issued by MERC in Case No. 70/2005 and ratified by MSEDCL through their Circular on record. Forum is of the view that directions regarding schedule of charge under case No. 70/2005 are applicable and in force incorporated in each of tariff order issued after 2005 by regulatory commission till amended. Therefore, Forum is of the view that cause of action in respect of refund of meter cost is continuous cause of action till it is refunded. Forum finds considerable force in submission of complainant that cause of action in refund of excess FAC arose when corporate office of MSEDCL have accepted the mistake and anomaly in calculating FAC by field officer issued vide circular No. 219 dated 03/07/15. Forum is of the view that IGRC, Yavatmal has committed apparent error in rejecting the part of FAC refund on this count of limitation. Forum is of the view that order passed in writ petition No. 9455 of 2011 by Hon'ble Bombay High Court supports the plea taken by complainant vide which cause of action for submitting a grievance to CGRF arises when the IGR Cell does not redress the grievance.

12. In view of the aforesaid discussion, Forum hold that the grievance made by the complainant was within limitation and would not have been dismissed on that ground by IGR Cell, Yavatmal and hence admitted to decide on merit.

13. N.A. MSEDCL have not disputed the collection of meter cost in 2007 Rs.22400/- and not opposed the refund of Rs.22400/- on merit. Forum is of the view that meter cost is collected in violation of direction by MEREC which are ratified by corporate office of N.A. by directing field staff

including N.A. to refund the meter cost by issuing Circular on record. Forum is of the view that meter cost Rs.22400/- should be refunded to the complainant immediately with interest as excess amount is utilized by MSEDCL from date of receipt till refunded by cheque or D.D. but within 30 days, as per provision of Section 62(6) of E.A. 2003.

14. N. A. MSEDCL have opposed the payment of compounding interest on security deposit Rs.35000/- refunded on 31/01/17 on the ground of practice followed by MSEDCL and provision in the accounting system which are not justified reason for depriving complainant of yearwise payment of interest from 2007-08. Forum is of the view that complainant is entitle for interest on interest amount amounting Rs.25975.99 yearwise at the rate reproduced in the chart by MSEDCL till 31/01/17. For example interest payable on 01/04/08 according to chart submitted by MSEDCL is Rs. 2013.70. MSEDCL to calculate the interest for 9 years up to 31/01/17 at the rate applicable for particular period given in the chart and likewise for 01/04/09 to 31/01/17 and should be paid immediately but within 30 days along with refund of Rs.25975.99 by cheque or D.D. since permanently disconnected on L.T.

15. N.A. MSEDCL have opposed the grievance of excess recovery towards FAC by citing example as per Circular No. 199 to be correctly applied. The Chief Engineer(Commercial) has issued Circular No. 219 dated 03/07/15 with reference to subject " FAC billed in the billing Month" by making reference of Circular No. 190 and 191. After considering the recitals of both these circulars, it has been mentioned in the said Circular No. 219 in Para 2

“ Such deviation from previously followed practice has resulted in certain anomaly in respect of levy of FAC “

It is also mentioned in last para of said Circular as –

“ Thereafter the FAC will be generated for a billing month and same shall be charged for the respective billing month irrespective of the month in which the bill is generated.

Forum have examined the energy bill issued as per Circular No. 199 for charging FAC as per clarification in Circular No. 219 dated 03/07/15. MSEDCL applied Circular No. 199 for consumption of August 2014 as against to be applied for consumption of Sept. 2014 as per clarification in Circular No. 219. Forum have checked the statement on record submitted by MSEDCL and complainant from Circular No. 189 to 218 and found that MSEDCL have charged wrong and incorrect FAC in the energy bill and statement submitted by complainant is found to be correct. Even the MSEDCL have misinterpreted Circular No. 189 applicable for consumption of Dec. 2013 and not at all applied and used when there was no anomaly in the Circular. The plea taken by MSEDCL in opposing the grievance on the ground of complying CGRF Akola order in 11/2015 under protest is not correct unless otherwise challenged and set aside by Competent Court. Forum have noted the adverse attitude towards consumer protection on the part of N. A. MSEDCL which is contrary to the provision of Electricity Act 2003.

16. N.A. MSEDCL opposed compensation as per SOP Regulation as settled in grievance within time after submission of application on 20/07/16, which is not true when N. A. MSEDCL have

accorded approval for LT to HT conversion and effected from 08/08/08. Forum is of the view that unless closer of account in LT upgradation was not possible. N.A. MSEDCL have remain silent on the RTI application dated 04/11/15 and reply to it by Dy.E.E. MSEDCL dated 18/11/15 filed on record. Forum is of the view that 20/07/16 is not the first date for application of refund of S.D and therefore complainant is entitle for SOP compensation amounting Rs.100/- per week from 08/08/08 as per SOP regulation 2005 read with amendment in 2014. Forum is of the view that complainant has not claimed SOP compensation earlier than claimed before CGRF not even before IGRC, Yavatmal and hence not admissible as time barred under limitation. Forum is not inclined to admit claim towards cost.

With above observation Forum proceeds to pass following unanimous order :-

ORDER

1. The Complaint No. 9/2017 is hereby partly allowed.
2. The N.A. MSEDCL is directed to refund meter cost Rs.22400/- collected at the time of LT connection along with interest 8% payable from date of LT connection till refund by cheque. The meter cost with interest should be refunded by cheque or D.D. within 30 days of this order.
3. The N. A. MSEDCL is directed to refund interest on S.D. amounting Rs. 25976/- along with interest on interest amount calculated at the applicable rate of interest yearwise as mentioned in Para 14 above by Cheque or D.D. within 30 days of this order.
4. The N.A. MSEDCL is directed to refund excess FAC charged from Dec. 13 to June 2015 amounting Rs.2,41,750.34 by correcting the energy bill as per statement of complainant and amount be

adjusted in the forthcoming bill payable by the complainant, along with interest payable at 8% per annum on 241750/- from July 2015 till adjustment in bill.

5. The N. A. MSEDCL is directed to recover the loss of revenue to MSEDCL on payment of interest from guilty officers of MSEDCL after due enquiry as per principle laid down in M/s. Lucknow Development Authority Vs. M. K. Gupta in 1994 SCC(i) 243 decided by Hon'ble Supreme Court of India.
6. No order as to cost.
7. The N.A. MSEDCL is directed to submit compliance report to this Forum within one month of issue of 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 / AZ/ Amravati/ No 1 9 8 6 /

Dt. 27/06/2017

TO
The Nodal Officer,
Superintending Engineer
MSEDCL, O&M Circle,
Yavatmal

The order passed on 27/06/2017 in the Complaint No. 9/2017, is enclosed herewith for further compliance and necessary action.



Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Amravati Zone, Amravati

Copy to:

The Chief Engineer , MSEDCL, Amravati Zone, Amravati

Copy to :-

M/s. Raviraj Industries, Rani Mata Chowk Chapmanwadi, Yavatmal

Consumer No:- HT-370019004910

LT-370019043130