

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

“ Vidyut Bhavan” Ratanlal Plots, Akola : 444001 Tel No 0724 .2434476

Dt.07/09/2015

Complaint No.11 / 2015

**In the matter of grievance about incorrect electric bills /FAC charges, cost
and other reliefs, etc.**

Quorum :

Shri T.M.Mantri, Chairman

Shri D.M.Deshpande, Member

Shri. R.A. Ramteke ,Member-Secretary

M/s.Balaji Electro Smelters Ltd Complaint No.11/2015

MIDC, Yavatmal Complainant

.....Vrs.....

The Superintending Engineer, MSEDCL,CO, Yavatmal .. Respondent

Appearances :

Complainant Representative : Shri Ashish Chandarana

Respondent Representative : Shri. R.V.Bommi, Jr.Law Officer

1. Being not satisfied with the order of IGRC, Yavatmal, the complainant has approached this Forum for redressal of grievance. In substance the complainant's case that it is a HT Consumer having connection of 33 KV voltage with contract demand of 2900 KVA. The matter is pertaining to Circulars issued by the Licensee for charging of FAC from time to time and till the Circular No.187 of November 2013, FAC has been charged correctly. However, subsequently the charges having not been calculated correctly, thereby excess

amount has been recovered. Reference has been made to filing of earlier Complaint No.208/2014, wherein order was passed to remand the case to IGRC, Yavatmal vide order dated 13-2-2015. The IGRC Yavatmal has passed order dated 23-4-2015, which according to the complainant being not correct, approached this Forum.

2. The complainant has averred that after complainant's approach to the Forum, N.A. has agreed about the commission of mistake in charging FAC and refunded Rs.308459/- towards excess recovery of FAC.

3. The reference has been made to the Circular No.187 for the month of Aug.2013 to be levied in the billing month of November 2013 and alleged that the N.A. has charged FAC accordingly. Reference has been made to Tariff Order of MERC dated 16-8-2012. It is alleged that since long time, the N.A. is levying the FAC charges with gap of after 3 months and the N.A. has obtained Commission's prior approval after Tariff Order dated 16-8-2012, thereby the procedure followed by the MSEDCL was accepted in respect of levying of FAC during operation of the said Tariff Order. The complainant has given details of FAC charged by the N.A. and with 3 month's gap from January 2012 to Aug. 2013. Further averred that thereafter the charges of FAC were changed without following any procedure. The complainant has its alleged details of Circular No.189 and No.190 adopted by the N.A. and further averred of accepting the mistake, the amount of Rs.308459=90 has been refunded after complainant's approach to this Hon. Forum.

4. As per the complainant the N.A. has changed the procedure by pre-poning the charge of FAC for one month by Circular No.191 though there was no change in the procedure mentioned in Annexure of each Circular. It has been alleged by the complainant that N.A.'s stand is that it is following instruction of I.T. about levying of FAC . Reference has been made to

Annexure-A of each Circular with averment that neither the N.A. has sought any permission from the MERC for pre-ponement of FAC nor given opportunity of hearing to the consumer. Hence action on the part of N.A. is illegal and void. Reference has been made to the letter dated 15-11-2014 of N.A's office, the Complainant has narrated instances of not following of the procedure and charging FAC and in any case according to the complainant, instruction to I.T. are in violation of the Circular. Though the complainant has raised the issue but N.A. did not reply the same. The action on the part of N.A. of illegal charges of FAC resulting in excess recovery and as referred under Section-62 (6) of Electricity Act, 2003 sought relief of interest at the Bank rate with other reliefs alongwith the direction to the N.A. to charge correct FAC and for refund of excess amount recovered so also claimed cost of R.10,000/- Alongwith the complainant copies of certain documents came to be filed.

5. The N.A. has submitted reply opposing the claim of the complainant stating that this grievance of excess recovery of FAC charged having been already redressed, the complaint has unnecessarily filed the present complaint without any cause of action. Hence the complaint is devoid of merits and there is no prima-facie losses, damages and inconvenience caused to the complainant. Hence the complaint needs to be rejected. Reference has been made to the Annexure enlisted in the list of documents in that respect.

6. It is stated that FAC is charged as per the Circulars issued by the Corporate Office from time to time. Reference has been made to the Circular prior to the Circular No.191 and tried to make interpretation thereof. According to the N.A. the phrase " In the billing month and to be billed in the month are one and the same " According to the N.A. though the complainant

is aware of fact that it has been not charged in excess has claimed incorrectly . Reference has been made to the sheet which stated to be given during the hearing before the IGRC, with averment that the correction was made and refund has been given in February 2015, hence the complainant is not entitled for further any relief.

7. According to the N.A. there is printing mistake on 3rd Page of the Circular No.191 with averment that the first page being the main page of the Circular it should be given importance. The said mistake has been rectified by giving reference to the Circular No.209. According to the N.A. the grievance of the complainant about FAC to be charged has already been redressed in February 2015 by giving refund of Rs.308459=90, hence the complaint needs to be dismissed with compensatory cost of Rs.10,000/- Alongwith the reply copies of certain documents came to be filed.

8. Heard Shri Ashish Chandarana, the Learned Representative of the complainant and Shri R.V. Bommi, Jr. Law Officer, the Learned Representative of the N.A. This Forum has also gone through the written notes of argument filed on behalf the parties. As is clear that in the present matter the controversy is in respect of manner and method of levying FAC in the electric bills. Admittedly FAC is the part of Tariff and Tariff is being determined by the MERC. It is also admitted position after the Tariff order the methodology of FAC calculation and recovery thereof has to be approved from the Commission. So needless to say that without change in Tariff Order or without approval /sanction of MERC, the FAC also could not be changed or altered. From the record and submissions made, the controversy about levying of FAC charges is in relation to Circular No.189 onwards i.e. from

November 2013. The tariff order of MERC is dated 16th August 2012 and it is also not in dispute that since long time the Licensee was levying the FAC with a gap of 3 months. Needless to mention the earlier Circulars specially Circular No.187 wherein after 3 months period FAC has been levied in the billing month as per the rate prescribed in each Circular. From the record, it is clear that this well established practice of levying FAC has been changed and more particularly at the time of implementation of Circular No.189 and instead of 3 months' period, two months period has been made applicable, thereby pre-poning of levying of FAC by one month, which resulted in making of grievance by the Complainant. Here, it is pertinent to note that the complainant has made the grievance by approaching the N.A. The complainant's claim /request has been totally opposed and it was the stand of the N.A. that it is adopting correct way, resulting in approach to the Forum. During the pendency of the matter before the Forum, the N.A. has admitted about levying of incorrect FAC and shown refund of Rs.308459=90 alleging excess amount recovered towards FAC. As per submissions made it was because of mis-interpretation of the Circular and rectification made in the Circular NO.209 of 1-4-2015. In fact the N.A. admitted that it has committed mistake in levying of FAC in Electric bills of the complainant and made refund of Rs.308459=90, so it is clear that earlier stand of the N.A. in strongly disputing the request / claim of the complaint in that respect was incorrect.

9. Even if one goes through further claim of the complainant, it is clear neither the N.A. nor the IGRC has duly considered the matter in proper prospective . The stand and submission on behalf of the N.A. is that there is discrepancy in the Circular in the wording mentioned on the first page of the Circular with that of the wording of internal pages (Annexure) and it may be

typing mistake and according to the N.A. the complainant is trying to take undue advantage thereof. As already observed above, it was long standing practice of charging of FAC for 3 months and this in pursuance to the approval given by the MERC. Now according to the N.A. this practice was changed for charging of FAC pre-poning by one month but the Annexure of Circular concerned does not mention of any change in the procedure. So in fact there is no change in the Circular for making change in the procedure of pre-poning of change of FAC. In any case FAC being part of tariff, it was necessary to bring to the Notice of MERC and to get its approval. Needless to say that even without giving opportunity of hearing to the consumer, this has been done. It has been already observed above that even after the Tariff Order of 2012, the N.A. has followed the earlier well established procedure about levying of FAC, so if any change was to be made subsequently, certain obligations, as referred to above, were required to be followed by it that has not been done. From the Statement of calculation of excess FAC filed by the complainant and the Office note dated 4-2-2015 filed by the N.A. with its reply, it is clear that the FAC to be followed in the billing month from March 2014, there has been difference and in the Office Note of N.A. for April 2014, it has been referred for 2 Circulars. At this stage, it needs to be mentioned here that the complainant has been continuously making grievance. The Chief Engineer (Commercial) has issued Circular NO.219, dated 3rd July 2015 with reference to subject " FAC billed in the billing month" by making reference of Circular No.190 and No.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 the previously followed practice has resulted in certain anomaly in respect of levy of FAC. The matter has been discussed with

the Competent Authority when it has been decided to again switchover to the practice of levy of FAC which was followed till issue of Circular No.191.”

10. Alongwith the said Circular, Annexure-A has been attached like other Circulars and also given further direction to meet the impact of such revision observing that..... thereafter FAC will be prescribed for the billing month and the same shall be charged for respective billing month, irrespective of month for which the bill is generated. So that apparently, it is clear that the Head office / Concerned Authority has realized about the deviation made during the intervening period from the procedure / settled practice, resulting in anomaly in respect of levying of FAC. The Statement filed by the Complainant as well as Office note of the HO, as referred to above, clearly points this anomaly which needs to be rectified. So in view of the Circular No.219, it is clear that there is a substance in the grievance of the complainant.

11. From the record, it is clear that the stand and defense of the N.A. has not been consistent at all. At the initial stage,, the N.A. has strongly opposed / repudiated the claim of the complainant. Lateron it has admitted about the recovery of excess amount of FAC till the period of Circular No.190 and even according to N.A. it has refunded Rs.308459=90. In such circumstance how the N.A. has again taken stand which was in consistent with the earlier settled practice which was approved by the MERC resulting in incorrect levying of FAC, till issue of Circular No.219 dated 3rd July 2015. Consequently the N.A. is liable to refund the excess FAC recovered from the complainant during this intervening period by excluding the amount of Rs.308459=90. Therefore even as per the said Circular No.219 the changes are required to be from Circular No.190 which will be applicable for the billed in April 2014 for consumption of

March 2014 and Circular No.191 for the consumption of April 2014. Thereby further circulars will have to be given effect accordingly in the office note of N.A. till Circular NO.219.

12. At this stage, it needs to be mentioned that the complainant has filed application for seeking certain documents to be produced by the N.A. for resolving the controversy and to bring before the Forum about the correctness of the stand taken by the N.A. in opposing the claim of the complainant. In view of the submissions made by both the parties sufficient longer time was granted on the request of N.A. for seeking instructions from the Head Office. In spite of granting such time, the N.A. has vaguely opposed the application and even gone to the extent of submitting that the N.A. it is not representing the Licensee but only Yavatmal Circle. The said stand on the part of the N.A. is not correct but being representative of the Licensee, it cannot be permitted to say that it does not representing the Licensee. In like manner, the submission made by the N.A. that in pursuance to Circular No.219, whatever deviations caused, was already refunded to the complainant i.e. refund of Rs.308459=90 thereby redressing the entire grievance of the complainant, cannot be accepted. Even on going through the plain reading of Circular No.219 and that Office Note of the N.A., it clearly shows that the said submission of the N.A. that the complainant's grievance is redressed completely with the refund of Rs.308459=90 is not correct. Consequently, the Complainant is entitled for reliefs in the form of direction to the N.A. for correcting the energy bills of the complainant from December 2013 till issuing of Circular NO.219, by making refund of excess amount charged from time to time. Needless to say that the amount of Rs.308459=90 has to be deducted from the amount so arrived at, having been refunded.

13. The complainant has also claimed interest , relying upon Section 62(6) of Electricity Act, 2003. On going through the said Section, it is clear that the amount exceeding the tariff determined under the said Section is to be recoverable by the person entitled alongwith the interest at Bank rate. According to the N.A. it is not liable for payment of interest , however, upon considering the provision under the Statute, there is no scope to escape when there is excess recovery from the complainant. Here, it needs to be mentioned that the complainant has submitted that it is the only consumer in the said Circle from whom the excess recovery has been made and though asked for the N.A. to show any case of the similar type from which such recovery is made, the N.A. neither given reply nor any document has been produced to oppose the claim of the complainant on that ground. On the contrary, it has been tried to say that the complainant cannot seek such information and has no *locus-standi* to ask for such information. This Forum thinks that the stand taken by the N.A. in that respect is not just and proper. If they had followed the same and similar methodology – practice in levying of FAC to the other consumers from the Circle, then they could have brought this before the Forum. But opposing such request on technical and irrelevant ground cannot be justified, specially when the N.A. is Public Undertaking. Admittedly there cannot be disparity amongst the consumers of the N.A.

14. During the course of submission, the Learned Representative of the complainant has vehemently submitted that it is the only consumer who has faced this mistake of levying of excess amount i.e. Rs.3,29585=00 as shown in Office note. That has not been controverted from the side of the N.A. In any case it was expected from the N.A- Public Undertaking to come with clean hands by bringing of the facts / documents relating to the controversy before

this Forum, that having not been done, there appears to be substance made by the complainant by drawing adverse inference in that respect. As already observed above by the Circular No.219, referred to above, it has been admitted that the practice adopted earlier by the N.A. has resulted in anomaly in respect of levying of FAC and consequently complainant's claim/grievance needs to be answered in the affirmative.

15. The complainant has also asked for cost of Rs.10,000/- This Forum thinks that such demand / claim is exaggerated. However, it cannot be ignored that the complainant has to take various efforts / steps to approach various authorities for redressal of the grievance and there has been changes in the stand of the N.A. from time to time as observed above which requires awarding of reasonable cost. With such observations, this Forum proceeds to pass the following unanimous order:

ORDER

1. That the complaint No.11/ 2015 is hereby partly allowed. The N.A. is directed to issue correct energy bills of the complainant from December 2013 onwards as per para-11 above by taking into account the amount of Rs.308459=90 already refunded and to refund excess amount of FAC charged from the complainant.
2. The N.A. is liable to pay interest at the rate 6 % p.a. on the excess amount recovered as per Section – 62(6) of the Electricity Act, 2003. Needless to say that whatever amount is payable to the complainant in pursuance of this order, needs to be adjusted in the forthcoming bills payable by the complainant.
3. The N.A. is also liable to pay cost of Rs.2000/- to the Complainant.

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

Sd/-
(R.A.Ramteke)
Member/ Secretary

Sd/-
(D.M.Deshpande)
Member

Sd/-
(T.M.Mantri)
Chairman

No.CGRF / AMZ/ Akola/

Dt. 08 /09/2015

To

The Superintending Engineer,
MSEDCL,
Circle Office,
Yavatmal

The order passed on 07-09-2015 in the Complaint No. 11/2015, is enclosed herewith for further compliance and necessary action.

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

Copy to:

M/s Balaji Electro Smelters Ltd, Plot NO.B-18,MIDC, Yavatmal-445001

For information.