

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

Office of the
Consumer Grievance Redressal Forum
AjanthaChauphuli , Old M.I.D.C.
Jalgaon 425 003

No./ CGRF/JLGZ/DHL Circle/DHL U Dn/C.No.15-2016-17/ **No 00010** Date: **31 JAN 2017**
(BY R.P.A.D.)

Date of Submission of the case : 30/11/2016
Date of Decision : 30/01/2017

To.

1) Jawahar Shetkari Soot Girni Ltd.
Hutatma, Shirish Kumar Nagar,
PO : 112, Dhule, Tal-Dist-Dhule.
(Consumer No. 900039009850)

Complainant

2) Executive Engineer & Nodal Officer ,
Maharashtra State Electricity Distribution Co LTD.
Circle office, Dhule.

3) Executive Engineer ,
Maharashtra State Electricity Distribution Com. Ltd.
Division office, Dhule Urban.

Distribution Company



DECISION

Jawahar Shetkari Soot Girni Ltd, Dhule is HT (Tariif category HT-IC) consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company) has filed a complaint regarding Grievance against MSEDCL for refund of excess charged FAC for the months Dec-2013, Feb-2014 & May-2014 (3 month). The complainant has filed a representation to the Forum against the order passed by the Internal Grievance Redressal Cell (IGRC) , MSEDCL, Dhule Circle Office. The representation in Schedule "A" is registered at inward no. 104 on 30.11.2016.

It was decided to admit this case for hearing after consulting the Forum . The matter was fixed for hearing on 30/12/2016 at 12.00 p.m. in the CGRF Office, Jalgaon and a notice to that effect was sent to the complainant 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 , Dhule for submitting para wise comments to the Forum on the grievance within 15 days under intimation to the consumer. The copy of this notice was also endorsed to the Superintending Engineer, Circle Office , Dhule and Executive Engineer ,Dhule Urban Division.

Shri D.B.Survade. Manager (F&A) & Shri B.S.Jadhav, Dy. Manager (F&A) Circle Office , Dhule, represented the Distribution Company during the hearing. Shree T.N.Agraval & Shri Satish S.Shaha represented by the complainant.

Consumer's Representation in Brief :

1. During the months Dec-13, Feb-14 & May-14 (3 months), the complainant has noticed that the FAC charged by MSEDCL is not according to Commercial circulars issued for billing FAC

for the respective billing month. While auditing the electricity bills, it has been noticed by the auditors that during the above period (3 months), MSEDCL had recovered extra FAC charge in monthly energy bills without any provision in law made by MERC and circulars issued to that effect.

2. Statement of excess charged FAC by MSEDCL is given below.

Sr.	Billing month	Bill dt.	Circular No. & dt.	FAC as per circular	FAC levied in bill	Diff. of rate	KWH consumed	Refund claim Rs.
1	Dec-13	13.01.14	189- 24.12.13	-28.06	-7.97	20.09	1277892	2,56,729/-
2	Feb-14	08.03.14	-	Nil	4.74	4.74	1184764	56,158/-
3	May-14	10.06.14	193- 08.05.14	3.64	14.77	11.13	1182607	1,31,624/-
Total claim, Rs.								4,44,511/-

3. The complainant had lodged claim with SE, MSEDCL Dhule vide letter dt.26.06.2016 and with IGRC on dt.12.08.2016, but IGRC regretted to consider the grievance on the reason that the grievance should have been lodged within 2 years period which is incorrect. Section 6.6 of CGRF regulation quoted by IGRC is not relevant to IGRC as it is applicable to CGRF only.

4. In this regard, please note that the grievance was lodged within the time limitation period of 2 years. In this regard attention is invited to the judgment dt.19.01.2012 of Hon. High Court for case No. 9455 of 2011 M/s Hindustan Petroleum Corporation. Vs MSEDCL as per which the consumer has to file the grievance with CGRF within 2 years from the date of decision of IGRC. The complainant had lodged application with SE MSEDCL Dhule on 26.06.2016 and subsequently with IGRC on 12.08.2016 and now Grievance is being lodged with CGRF within stipulated period of 2 years which is within limitation period of 2 years as specified in the above High Court judgment. Further section 6.6 of CGRF regulations quoted by IGRC is applicable to Consumers Grievance Redressal Forum (CGRF) and not to IGRC. Hence MSEDCL's plea to reject the grievance on time limitation period is incorrect.

RELIEF SOUGHT

1. Allow refund of the above excess FAC amount Rs.4,44,511/- collected illegally for the period mentioned along with accrued interest.
2. To pay interest as per section 62(6) of Elect. Act-2003 at bank rate to be calculated till date of release of actual payment.
3. Compensation for mental agony, man hrs for follow up, travelling exp. etc. Rs.25,000/-

Action by IGRC :

1. The complainant submitted the grievance to the Internal Grievance Redressal Cell, Dhule, Circle office on 08/08/2016 .
2. Under letter dated. 27/10/2016, the IGRC took following decision:
 १. महाराष्ट्र विद्युत नियामक आयोग (ग्राहक गाऱ्हाणे निवारण मंच व विद्युत लोकमाल) विनीयम, २००६ तील क्लम ६.६ नुसार ज्या दिनांकस करवाहीचे करण घडले असेल त्या दिनांकपासुन दोन (२) वर्षाच्या आत जर गाऱ्हाणे दाखल करण्यात आले नाही. तर मंच गाऱ्हाणे दाखल करून घेणार नाही. याप्रमाणे सदर प्रकरणे हे दोन वर्षापेक्षा अधिक कालावधीती असल्याने खारीज करण्यात येत आहे.

२. सदर प्रकरण डिसें-१३ ते मे-१४ च्या कालावधीचे आहे. व हे प्रकरण दोन वर्षांच्या वर असल्यामुळे IGRC ला गा-हाणे दाखल करून घेता येणार नाही.

Arguments from the Distribution Company.

The Manager (F&A), Dhule Circle office has submitted a written reply to the Forum by letter no. 8377 dated 28.12.2016 which states as under:

1. FAC charged during the month of Dec 2013, Feb 2014 and May 2014 charged as per Circular No. 187 dt. 13.11.2013 and Circular No. 194 dt. 11.06.2014 respectively.
2. FAC charged in the month Dec 2013 @ -7.97 Ps P/U as per circular No. 187 dt. 13.11.2013, in the month of FAC is Zero and in the month of May 2014 FAC charged @ 14.77 Ps. P/U as per circular No. 194 dt. 11.06.2014.
3. It is also clear that the consumer grievance is for the period of Dec 2013 to May 2014. The period of consumer grievance is before 3 years and as per section-6.6 of CGRF Regulation complaint may not be admitted before Hon. CGRF.
4. MSEDCL not recovered the any excess amount from consumer towards FAC. Hence there is no issue of interest. MSEDCL charged the FAC as per regulation, law and circulars issued by competent authority time to time.
5. Consumer grievance submitted before Hon. CGRF is for the period of Dec 2013 to May 2014. The cause of action in this matter is before 3 years. Hence the grievance of consumer cannot be admitted before Hon. CGRF as per section 6.6 of CGRF regulation.

MSEDCL not recovered extra amount towards FAC for the month of Dec 2013, Feb 2014 and May 2014. FAC recovered as per circulars issued by competent authority time to time and FAC charged through IT system, which is Unique for MSEDCL.

Consumer grievance is before 3 years, which cannot be admitted before Hon. CGRF as per section 6.6 of CGRF Regulation.

Hence the complaint may be dismissed without any interest and cost.

Observations by the Forum:

After considering the representation submitted by the consumer, comments and arguments by the Distribution Company, all other records available, the Forum records the following observations/findings :

1. As per the regulation 6.12 of the CGRF & EO Regulations , 2006 the Nodal Officer who is not below the rank of the Executive Engineer " shall act as the co-ordinator for filing of reply, making submissions, providing issue-wise comments on the Grievance..... etc" before the Forum and / or the Electricity Ombudsman. The Forum has clearly pointed out in its notice for hearing that an officer not below the rank of the Executive Engineer should remain present . But the Forum has noted in this case that , the Manager (F & A), who is not authorized to file a reply , has directly submitted the reply to the Forum. It is also noted that the Nodal Officer & Executive Engineer , Dhule Circle Office has not attended the hearing and deputed the Manager (F & A) to attend the hearing without quoting any valid reason about his absence. This is against the regulation 6.12. This matter is brought to the notice of the Nodal Officer and Chief Engineer, Jalgaon Zone for necessary action.
2. The Forum had issued a notice to the Nodal Officer & Executive Engineer , Dhule Circle Office along with the copy of the grievance for submitting para wise comments to the Forum on the grievance within 15 days under intimation to the consumer. But the concerned officer of the Distribution Company has not given copy of the reply to the complainant . The representative of the complainant objected this . Hence the Forum gave opportunity to the complainant to submit comments on the reply of the Distribution Company before 07/01/2017. The Distribution Company was also asked to submit a detailed para wise reply to the grievance before 07/01/2017.

3. The Distribution Company has not submitted any reply as directed by the Forum. But the complainant has offered comments on the letter dt.28.12.2016 submitted by MSEDCL as below:
- The MSEDCL has referred wrong FAC Circular No. 194 dt.11.06.2014 which is applicable for the FAC to be levied for the month of June-2014. However our claim is for the month of May-2014 for which relevant FAC circular No. 193 dt.08.05.2014 may be referred. For other two months also MSEDCL referred wrong circulars, say 187 for the month of Nov-2013 and 189 for the month of Dec-2013.*
 - We have correctly mentioned FAC circulars issued by MSEDCL applicable for respective months. The MSEDCL in the hearing held on 30.12.2016 tried to mislead the forum by producing irrelevant FAC circulars instead of applying the correct FAC circulars.*
 - In this regard, please note that our grievance was lodged within the time limitation period of 2 years. In this regard we invite attention to the judgment dt.19.01.2012 of Hon. High Court for case No. 9455 of 2011 M/s Hindustan Petroleum Corporation. Vs MSEDCL as per which the consumer has to file the grievance with CGRF within 2 years from the date of decision of IGRC. We had lodged our application with IGRC on 08.08.2016 and Grievance is being lodged with CGRF within stipulated period of 2 years which is within limitation period of 2 years as specified in the above High Court judgment. Further section 6.6 of CGRF regulations quoted by IGRC is applicable to Consumers Grievance Redressal Forum (CGRF) and not to IGRC. Hence MSEDCL's plea to reject the grievance on time limitation period is incorrect.*
4. The Distribution Company has pleaded that "Consumer grievance is before 3 years, which cannot be admitted before Hon. CGRF as per section 6.6 of CGRF Regulation". The regulation 6.6 of the CGRF & EO Regulations, 2006 mandates as under:

"The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."

However the Hon'ble Bombay High Court has mandated on the limitation factor for approaching the Grievance mechanism vide order dated 19/01/2012 in the matter of M/s. Hindustan Petroleum Corporation Ltd v/s MSEDCL in W.P.No.9455 of 2011. The Hon'ble High Court has given following ruling in this regard :

"15 A perusal of the impugned order shows that the CGRF and the Ombudsman have proceeded on an erroneous assumption that cause of action has arisen on 1st July, 2008 and, hence, the grievance filed before the Forum at Sangli on 14th October, 2010 is beyond two years. Thus reasoning clearly over looks the definition of the word "Grievance" as provided under Regulation 2 (c) of the 2006 Regulations. Though time spent by the Petitioner before the Consumer Court cannot be excluded, one cannot lose sight of the fact that the Petitioner approached the Internal Consumer Grievances Cell for the first time on 14th October, 2010 and that grievance was rejected by the Internal Consumer Grievances Cell on 27th October, 2010. This, according to me is the date on which the cause of action for filing a complaint or Grievance before the Forum as defined under Regulation 2(c) really arose."

Hence , "cause of action of submitting grievance to the forum arises when IGRC does not redress the grievance. In other words, the cause of action starts after the decision of IGRC."

In this case , the complainant submitted grievance to the IGRC , Dhule Circle on 08/08/2016 . The IGRC rejected the grievance by letter dated 27/10/2016 . As such in this case, the cause of action arose on 28/10/2016. Hence the Forum can admit these case as the grievance is submitted within 2 years in terms of the regulation 6.6 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 and

the interpretation by the Hon'ble Bombay High Court in the above referred order dated 19/01/2012. The point raised by the Distribution Company is therefore not valid and acceptable.

5. The Forum also clarified that the limitation of 2 years under the regulation 6.6 of the CGRF & EO Regulations, 2006 is imposed on the Forum and not on the IGRC. The IGRC has misinterpreted this regulation. The IGRC which is internal mechanism of the Distribution Company and the field offices of the Distribution Company have no limitation of 2 years for dealing with any complaint of the consumer. Hence the IGRC has erred in rejecting the case.
6. The issue is regarding charging of Fuel Adjustment Costs (FAC) in excess of the rates declared/approved. The Distribution Company has issued the circulars for FAC rates for the months mentioned in the grievance as under which received the post facto approvals for the same by MERC as per letters below:

CE (Commercial) Circular No. & Date	For Billing Months of :	Relevant MERC Letter No. & Date for post Facto Approval	For Billing Months of :
189 Dtd 24 th Dec 2013	December 2013	01469, Dtd 18 th Dec 2014	October 2013 to December 2013
No Circular	February 2014	No order	-
193 Dtd 8 th May 2014	May 2014	01463, Dtd 11 th Feb 2016	March 2014 to June 2014

According to the above MSEDCL Circulars/Post Facto approvals of MERC, the FAC rates for the relevant months are HT I C are as under :

Billing Month	FAC rate declared by the MSEDCL/approved by the MERC
December 2013	-28.06
February 2014	Nil
May 2014	3.64

7. The Distribution Company in its letter dated 28/12/2016 to the Forum has quoted CE (Commercial) Commercial Circular number 187 Dated 13.11.2013 and No. 194 Dated 11.06.2014 to justify that FAC rates applied are correct. In fact the Circular number 187 is about the FAC rate to be applied for November 2013 (not for December 2013) and the Circular number 194 is about the FAC rate to be applied for June 2014 (not for May 2014). The concerned officer has submitted the reply without verifying the contents of the circulars and even not cared to go through the correct circulars quoted by the complainant. The Forum regrets to take note of such a careless reply and brings this to the notice of the Chief Engineer, Jalgaon Zone for appropriate action.
8. The Distribution Company has charged the FAC in the bills of the months of December 2013, February 2014 and May 2014, over and above the rates as above, the same needs to be refunded with interest at the bank rate of RBI as per the provisions of Section 62 (6) of the Electricity Act, 2003.
9. The demand for compensation for mental agony, man hours for follow up, travelling exp. etc. can not be considered by the Forum as the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005/14 do not provide for the same.

In view of the observations and directions as elaborated in the preceding paragraphs the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should refund whatever, excess FAC charged over and above the MSEDCL declared /MERC approved rates in the bills of the months of December 2013., February 2014 and May 2014 in the ensuing bill after the date of this order, along with the interest at 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.

— sign —
(RAJAN S. KULKARNI)
MEMBER

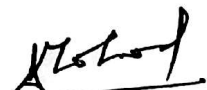
— sign —
(D.K.MOHOD)
MEMBER-SECRETARY

— sign —
(SURESH P.WAGH)
CHAIRMAN

**Consumer Grievance Redressal Forum
Jalgaon Zone**

Copy for information and necessary action to:

1. Chief Engineer , Maharashtra State Electricity Distribution Company Ltd. , Jalgaon
2. Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Dhule.


Member-Secretary/Executive Engineer
MAH. STATE. ELECT. DIS T. CO. LIMITED
Consumer Grievance Redressal Forum
Jalgaon Zone Jalgaon