

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.16-2016-17 No 000117 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. 091599000246)
- 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.

Complainant

Distribution



DECISION

Jawahar Shetkari Soot Girni Ltd, Dhule is HT 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 2 % Voltage Surcharge levied on Express Feeder for the period of Jan-2010 to March-2010. 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. 105 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 above period Jan-2010 to March-2010, complainant had availed HT power supply from MSEDCL at 33 KV express feeder with contract demand 6,750 KVA. Power supply at lower voltage at 33 KV than specified in SOP was availed as contract demand was more than 5,000 KVA and on this express feeder complainant was the only consumer drawing power. While auditing the electricity bills, it has been noticed by the auditors that

- during the period from Jan-2010 to March-2010 (3 months), MSEDCL had recovered 2% voltage surcharge in monthly energy bills without any provision in law made by MERC.
2. As per the MERC's order for case No. 71 of 2009 & 52 of 2010, the M.S.E.D.C.L. was not entitled to recover 2% voltage surcharge prior to 5th March-2010 for consumers connected on any kind of feeder i.e. express on non-express. Provision of 2% voltage surcharge on non-dedicated feeder was introduced from 5th March-2010 onwards. Hence, in our case imposition 2% voltage surcharges prior to 5th March 2010 was illegal & incorrect as it was against the provision of MERC's order dt.05.03.2008 for case no. 71 of 2009 and clarificatory order dt.09.11.2010 for case No. 52 of 2010. The MSEDCL also issued commercial circular No. 112 dt.15.04.2010 confirming that 2% voltage surcharge was to be applied only after 05.03.2010, copy of the circular is attached for ready reference.
 3. Complainant had requested the SE, MSEDCL to refund the voltage surcharge vide our letter dt.26.06.2016 but as complainant had not received any response, hence the grievance was lodged with IGRC. MSEDCL, Dhule. Since IGRC failed to decide on the grievance, complainant are forced to appeal with CGRF, Jalgaon for redressal of our issue.
 4. A statement of excess 2% voltage surcharge collected by MSEDCL for the period from Jan-2010 to Mar-2010 (upto 13.03.2010) is attached, the claim amount is worked out as under.
 - ✓ Amount on account of 2% VS: Rs.12,89,973/-
 - ✓ Int. at bank rate 9% till June-16: Rs. 6,80,019/-
 - ✓ Total claim amount: Rs.19,69,991/-

In view of the above, complainant request to refund the above 2% voltage surcharge amount collected illegally for the above period along with accrued interest.

5. In this regard, please note that our grievance was lodged within the time limitation period of 2 years. In this regard complainant 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. Complainant had lodged the 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 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 2% voltage surcharge (along with FAC, Elect. duty & other charges) which was illegally collected during the billing period from Jan-2010 to March-2010.
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. To take appropriate action against erring officers of MSEDCL for recovering 2% Voltage surcharge prior to March-2010 which was unlawful and violation of MERC's orders.
4. 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 गान्हाणे निवारण मंच व विद्युत लोकमाल) विनियम, २००६ तील क्लम ६.६ नुसार ज्या दिनांकस करवाहीचे करण घडले असेल त्या दिनांकपासुन दोन (२) वर्षांच्या आत जर गान्हाणे दाखल करण्यात आले नाही. तर मंच गान्हाणे दाखल करून घेणार नाही.
 २. सदर प्रकरण जानेवारी-२०१० ते मार्च-२०१० च्या कालावधीचे आहे. व हे प्रकरण दोन वर्षांच्या वर असल्यामुळे IGRC ला गान्हाणे दाखल करून घेता येणार आहे.

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. M/s. Jawahar Shetkari Sahakari Soot Girni Ltd. Is HT consumer having HT Consumer No. 091599000246 having contract demand 6750 Kva and its date of supply is 25.04.1985 with supply on dedicated Express feeder.
2. With regard to Voltage Surcharge, the following Orders were issued by the Commission :
 - i. In case No. 71 of 2009, dated 05 March, 2010: The Commission allowed 2% Voltage Surcharge as and interim measure to consumers availing supply at voltage lower than specified in the relevant Regulations. According to the Commission's Order regarding Voltage Surcharge for dedicated feeders, MSEDCL has to provide meter's at both ends should be taken. The consumer is to be billed on the basis of whichever is the higher recorded consumption, without levy of 2 % Voltage Surcharge.
 - ii. Case No. 111 of 2009 (Tariff Order), dated 12 September, 2010 : The Commission clarified that, if a consumer is supplied power through an express feeder, then instead of levying Voltage Surcharge @ 2 %, Such consumer shall be billed on the basis of consumption recorded by meters installed at the source of supply and at the consumer's end.
 - iii. Case No.52 of 2010, dated 09 November, 2010 : The Commission clarified that Voltage Surcharge cannot be levied if power supply is given on a dedicated feeder.
 - iv. Case No. 31 of 2011, dated 02, June, 2011: The Commission observed that the responsibility of installation of meters of the same class of accuracy at both the sub-station and consumer ends rests with MSEDCL, and the consumer cannot be held responsible for the same.
3. As per CE Commercial Circular No.112 dtd. 15.04.2010 : The Commission has accorded approval to levy of Voltage Surcharges as under :-
 - i. 2 % additional units are to be billed on the recorded consumption of the meter installed at the consumer end to all the existing and prospective consumers who are supplied power at voltages lower than that specified in the SOP regulation.
 - ii. This voltage surcharges shall apply to all consumers from 05.03.2010 i.e. the date of issue of MERC order till such time the Commission issues further orders.
4. The consumer has asked for refund of voltage surcharge for the period Jan 10 to Mar 2010 which is more than 2 yrs and above. Honorable CGRF is requested to reject the case under MERC/CGRF regulations clause 6.6 (c)
- 5: As the consumer is having its own Dedicated Express feeder, the contention put by the consumer is misleading. Whereas utility demands for the technical loss which it has incurred from Jan 2010 to Mar 2010

Prayer :-

1. To dismiss the case under MERC/CGRF Regulation.
2. To levy the technical loss for the period Jan 10 to Mar 10 incurred by MSEDCL.
3. To saddle the cost on the consumer.

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 officers of the Distribution Company has not given copy of the reply to the complainant . The Forum recorded with regret this lapse on the part of the Distribution Company.
3. 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 .

4. 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.
5. The issue is pertaining to the period January 2010- March 2010. The Distribution Company has charged 2% voltage surcharge in the bills of the months January 2010, February 2010 and March 2010 to the complainant.
6. The MERC by its Order dated 5th March, 2010 in Case No. 71 of 2009 has *inter-alia* approved levy of 2% voltage surcharge from the date of order for supply to the consumer at Voltage lower than that specified in SOP. Thus, the concept of charging 2% voltage surcharge was introduced with effect from 05th March, 2010. The Chief Engineer (Commercial) has also issued a Circular No. 112 dated 15th April 2010 directing that:

"The voltage Surcharge shall apply to all consumers from 05/03/2010 i.e. the date of issue of MERC order till such times the Commission issues further orders."

Hence the levy of 2% voltage surcharge in the bills for the months of January 2010, February 2010 and March 2010 is against the orders of the MERC & CE (Commercial). The complainant is therefore entitled for the refund of the same.

7. The complainant has also demanded interest on the refund amount. But it is to be noted that the complainant has raised the demand of refund of voltage surcharge first time with the SE, MSEDCL vide letter dt.26.06.2016 i.e after remaining silent on the issue for almost six years.. Hence the Forum is of the opinion that it will not be appropriate to allow interest right from 2010. The grievance actually arose in January 2010 and was in continuance till June 2016. But the complainant actually raised the issue at the end of June 2016. Considering the limitation factor of 2 years for a grievance submission, we can go back for maximum 2 years from the date of submission of the grievance. The Forum therefore directs the Distribution Company to pay interest on the refund amount at the bank rate of RBI from the period June 2014 till the date of refund as per the provisions of Section 62 (6) of the Electricity Act, 2003.
8. 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 2% voltage surcharge levied in the bills for the months of January 2010, February 2010 and March 2010.
2. The refund should be adjusted in the ensuing bill after the date of this order, along with the interest at bank rate of RBI from June 2014 till the date of refund.
3. 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.
4. 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.
5. If aggrieved by the non-redressal of his Grievance by the Forum, the complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', BandraKurla 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.


(RAJAN S. KULKARNI)
MEMBER



(D.K. MOHOD)
MEMBER-SECRETARY


(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. DIST. CO. LIMITED
Consumer Grievance Redressal Forum
Jalgaon Zone Jalgaon