

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.17-2016-17/ (BY R.P.A.D.) No 000127 Date: 31 JAN 2017

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 Company



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 from MSEDCL towards additional FAC for the Period 11-May-2012 to 31-May-2012 (21 days). 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. 106 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, Additional FAC was applicable for 6 months period from 1st June 2012 to 30th Nov-2012. However in the complainant's case, additional FAC was recovered for the extra period from 11.05.2012 to 31.05.2012 (21 days). The Complainant had requested vide letter dt.19.12.2012 to refund the excess additional FAC recovered. But so far refund has not been made, hence the application was lodged with IGRC to resolve the grievance. However decision of IGRC is not acceptable, hence now complainant is preferring this grievance application with CGRF, Jalgaon to resolve our issue.

2. The MSEDCL recovered additional FAC in line with Commercial Circular No. 162 dt.19.06.2012 as below.

Sr.	Billing month	Period		Units, Kwh	Addl. FAC Charges, Rs.
1	Jun-12	11.05.2012	11.06.2012	3534782	1,723,049.13
2	Jul-12	11.06.2012	11.07.2012	3226273	1,597,327.76
3	Jul-12	11.07.2012	02.08.2012	2375190	1,175,956.57
4	Aug-12	02.08.2012	01.09.2012	3174930	1,514,124.12
5	Sep-12	01.09.2012	01.10.2012	3591180	2,165,840.66
6	Oct-12	01.10.2012	01.11.2012	3610170	2,177,293.53
7	Nov-12	01.11.2012	30.11.2012	3479220	2,438,933.22
			Total	22991745	12,792,524.99

3. As per the circular additional FAC was to be recovered from June-2012 to Nov-2012, however in this case it was excess recovered from 11.05.2012 to 31.05.2015 (21 days) which is against the directives of MERC.

The claim amount on pro-rate basis for 21 days is calculated as below:

$$\begin{aligned} \text{Total FAC due for refund on pro-rate basis} &= \text{Rs. } 17,23,049.13 \times 21/31 \\ &= \text{Rs. } 11,67,227/- \end{aligned}$$

4. On representation dt.19.12.2012, the SE MSEDCL forwarded their claim to CE Comm. for further necessary action/approval vide letter dt.24.12.2012, but CE Comm. didn't took any action on letter of SE Dhule and therefore refund was not granted so far. Further complainant had also not received any communication/refund after regular follow up with CE Comm. MSEDCL towards this claim.
5. The Complainant also request to pay the interest on refundable amount at bank rate as applicable under this section of EA-2003 till refund is made.
6. In this regard, please note that the 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 application with SE MSEDCL Dhule on 19.12.2012 and subsequently with IGRC on 27.08.2016 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 the above excess additional FAC amount **Rs.11,67,227/-** collected illegally for the above period.
2. To pay interest as per section 62(6) of Elect. Act-2003 at bank rate to be calculated From June-2012 onward till credit of refund amount due.
3. To take appropriate action against erring officers of MSEDCL for recovering additional FAC for 21 days more; which was unlawful and violation of MERC's order.
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 27/08/2016 .
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 कलम 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. याप्रमाणे सदर प्रकरण हे दोन वर्षांपेक्षा अधिक कालावधीती असल्याने खारीज करण्यात येत आहे.

२. सदर प्रकरण मे-२०१२ च्या कलावधीचे 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. The HT consumer M/s. Jawahar Shetkari Sahkari Soot Girni Ltd. Is HT consumer having consumer No. 091599000246.
2. As per circular No. 162 dt. 19.06.2012, Additional FAC was applicable for the period of Jun 2012 to Nov 2012. The additional FAC charged to the consumer during the period of Jun 2012 to Nov 2012 only through IT system. There is no excess additional FAC recovered from consumer. Consumer claim for refund the additional FAC charged for the period of 11.05.2012 to 31.05.2012 on prorata basis, which is included in the bill for the month of Jun 2012 & bill issued on dt. 16.06.2012. The bill issued in the month of Jun 2012 is for the period of 11.05.2012 to 11.06.2012 and in this bill additional FAC charges as per circular No. 162 dt. 19.06.2012 and that is correct.
3. Consumer was applied at Dhule circle on dt. 19.12.2012 for refund of additional FAC of charged in the month of Jun 2012 for the period of 10.05.2012 to 31.05.2012 (21 days) on prorata basis. Hence the consumer representation was submitted to Hon. CE (Comm) on dt. 24.12.2012 for the further clarifications and orders in this matter.
4. The amount charged towards the additional FAC for the billing month Jun 2012 is as per circular and that amount cannot be refunded to consumer. Hence the issue of interest u/s 62 (6) of Electricity Act 2003 cannot be admitted.
5. MSEDCL has recovered the legal amount from consumer towards the addition FAC as per order of Hon. MERC and consequence circular No. 162 dt. 19.06.2016. Also the grievance is for the period of 11.05.2012 to 31.05.2012, before 4-5 years ago. Hence the consumer grievance before 2 years cannot be admitted before Hon. CGRF as per section 6(6) of CGRF regulation.
6. MSEDCL recovered the legal amount from consumer towards the additional FAC and therefore the amount recovered in the billing month Jun 2012 for the period 11.05.2012 to 31.05.2012 (21 days) cannot be refunded. The consumer grievance is before 4-5 years and as per section 6(6) of CGRF regulation, the consumer grievance cannot be admitted before Hon. CGRF.

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 27/08/2016. 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 Commission has issued the order in Case No. 43 of 2012 on 15th June, 2012 and permitted to MSEDCL to recover the un-recovered FAC amount of Rs.1483 Crore from its consumers through monthly bills in 6 equal installments starting from the month of June 2012 to November 2012. The amount of Rs. 247 Crore per month was to be recovered proportionately from the consumers as per their respective category and slab in conformity with the principle specified in Regulation 82.10 of the Maharashtra Electricity Regulatory Commission (Terms and Condition of Tariff) (Amendment) Regulations, 2011.
6. MSEDCL accordingly issued Circular No.162 dated 19th June, 2012 for recovery of the additional FAC to be levied in the billing month June, 2012 and the remaining was to be recovered in the bills for the month of July, August, September, October and November of 2012.
7. As per the order of the MERC, the recovery was to be made only in 6 equal monthly installments starting from June, 2012 to November, 2012, i.e. from 1st June, 2012 to 30th November, 2012. MSEDCL has recovered additional FAC for more than 6½ months for the period from 11th May, 2012 to 30 Nov. 2012. As a result recovery is made for more than six months. Thus extra recovery is made for additional FAC for the period 11th May, 2012 to 31st May 2012 (21 days). The complainant needs to be refunded this extra amount computed on pro rata basis.

8. The complainant has also demanded interest on the refund amount . It is seen that the complainant applied for the said refund to the Distribution Company on 19.12.2012 . The matter was also referred to the CE (Commercial) . But the Distribution Company did not provide any decision neither rejected the claim. The matter remained pending for almost 4 years. Hence the complainant is justified in claiming the interest for delay. The Forum therefore directs the Distribution Company to pay interest on the refund amount at the bank rate of RBI till the date of refund as per the provisions of Section 62 (6) of the Electricity Act, 2003.
9. There has been inordinate delay in taking decision by the concerned office. It is also ridiculous to note that , the Distribution Company did not decide the claim for 4 years and later rejected the same on the flimsy grounds that the claim is not within 2 years conveniently ignoring the fact that the said claim was made in past within 6 months of cause of grievance. The Forum brings these facts to the notice of the Chief Engineer , Jalgaon Zone and suggests to take suitable action against the employees responsible for dealing this case.
10. 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 extra recovery made for additional FAC for the period 11th May, 2012 to 31st May 2012 (21 days) computed on pro-rata basis by adjustment 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', 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.