Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/E/1289/1519 of 2017-18

Date of Grievance	:	01/02/2018
Date of order	:	21/02/2018
Total days	:	21

IN THE MATTER CASE OF GRIEVANCE NO. K/E/1289/1519 OF 2017-18 IN RESPECT OF SUN METALLICS & ALLOYS PVT. LTD, GUT NO. 73/74/76/78, VILLAGE-LAKHAMAPUR, BHIWANDI ROAD WADA S/DN, THANE -421 303, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING FAC.

Sun Metallics & Alloys Pvt. Ltd.,
Gut No. 73/74/76/78,
Village-Lakhamapur, Bhiwandi Road,
Wada S/dn, Thane -421 303
(Consumer No. 010519027280) . . . . (Hereinafter referred as Consumer)
V/s.
Maharashtra State Electricity Distribution
Company Limited
Through its Nodal Officer,
MSEDCL, Vasai Circle, ... (Hereinafter referred as Licensee)

Appearance: - For Licensee : Smt.R.S.Desai, Dy.Manager (F & A), Vasai circle

For Consumer : Shri. Vinay Vaze (C.R))

[Coram- Shri. A.M.Garde-Chirperson, Shri. A.P. Deshmukh-Member Secretary]

1) Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressed Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code

and other conditions of supply Regulations 2005] Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.

2] Short issue involved in this case is whether the Licensee –

MSEDCL has not charged and recovered FAC strictly as per the post facto approval of Commission for period of Dec-2013, Feb-2014, Mar-2014, May-2014, Jun-2014, Sept-2014, Nov-2014 & Dec-2014.

3] Hence we would like to elaborate Observations as under:

a] The Hon'ble Commission has issued post facto approvals for FAC to be charged by the MSEDCL as per letters below.

Letter No.	Dated	Billing Months of :
01540	18th Dec 2014	Oct 2013 to December 2013
01469	11th Feb 2016	Jan 2014 to June 2014
01481	16th Feb 2016	July 2014 to December 2014

b] According to these letters the FAC approved by the Hon'ble Commission for HT industrial consumers is as under:

Billing Month		FAC approved by the MERC HT I C	FAC approved by the MERC HT I N
December	2013	-28.06	-22.46
January	2014	0	0
February	2014	0	0
March	2014	4.74	4.28
April	2014	17.11	16.41
May	2014	3.64	3.36
June	2014	14.77	13.62
July	2014	38.98	34.92
August	2014	13.01	11.18
September	2014	36.64	32.93
October	2014	60.43	55.05
November	2014	21.22	20.19
December	2014	51.92	42.59

It is prayed that the said bills for the said period be revised accordingly.

4] As far as limitation is concerned the MERC has given post facto approval for FAC in month of Feb'16 for the period of Jan'14 to Dec'14 hence cause of action is arouse in Feb'16 for the said period, hence it is well in limitation. However for the period of Dec'2013 the approval had came on 18.12.2014. Hence the point of limitation has to be considered.

On behalf of the Consumer it was submitted that bar of limitation does not apply to CGRF proceeding. Also some judgments of the Hon'ble High Court and ombudsman were relied on. Licensee also relied on the judgment of ombudsman. In the case of M/s Hindustan Petroleum Corp. Ltd. Vs. MSEDCL (W.P.no.9455 of 2011) it has been held by the Hon'ble Bombay High Court, that the period of limitation of 2 years as given in 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 starts running from the date of decision of the IGRC. This judgment of the Hon'ble High Court would entitle a Consumer to file a grievance before the IGRC any time whatever be the date when his right under the law was in fringed. He would move the IGRC even after 10 years, 20 years and then after IGRC's decision he would file grievance before the Forum within two years there from. In the above background of the decision one has to see the provision of 6.6 of MERC (CGRF & ombudsman) Regulation 2006. which may be reproduced for advantage as below.

"6.6 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."

Nowhere the provision even whispers about IGRC and it's decision. No doubt there in a provision in the MERC Regulation to move to the IGRC which is an internal grievance mechanism of the MSEDCL itself. There is no limitation period prescribed for moving IGRC. It is however expected that a Consumer moves IGRC immediately or at the earliest.

The Hon'ble Bombay High Court in the case of M/s Sarolkar (W.P. 1650 of 2012) has dealt with the above question. The case of M/s Hindustan Petroleum (W.P.9455 of 2011) was also cited and referred. It was held that period of limitation of two years has to start from the date when cause of action arose and not after the IGRC decision. Consumer has to move IGRC immediately or within a reasonable time. It is for IGRC to give it's decision within two months. Consumer may wait for two months for the IGRC decision but has to file grievance before the forum within two years from the date of cause of action.

Consumer has shown the decision of the Bombay High Court in the case of M/s Shilpa Steel (W.P. 3997 of 2016) which toes the line of M/s Hindustan Petroleum case. It is to be noted however that M/s Sarolkar's case was apparently not cited before the Bench in M/s Shilpa steel case. Only the case of M/s Hindustan Petroleum was cited.

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It was submitted that as held in the case of D.V. Laxmanrao Vs. State of Karnataka when there are two conflicting judgments of similar bench on same issue, the latter one will prevail. (Full text of the judgment not given) Herein however in the case of M/s shilpa steel which the Consumer seeks to refer and rely, the decision of M/s sarolkar's case was apparently not cited as such the principal laid down in D.V. Laxmanrao's case will not apply there.

There is also an order of the electrical ombudsman Mumbai in case no. 125 of 2016 in which a similar claim of the consumer on identical facts there in was rejected.

The issue limitation was very differently viewed by Ombudsman in Representation no.65 of 2006. Therein there was excess recovery in contravention of MERC Tariff order. The relevant paras may be reproduced herein below.

. . . . . (18) As is observed above, it is mandatory for the Respondent to implement the Commission's Order and the tariff order and to do whatever is required to be done in terms of the above. In no case, Respondent is expected to wait for any consumer to approach it, before it acts in terms of these orders. There may be several consumers who may be entitled for such refund. It is the Respondent's liability / responsibility to work out and refund the excess amount so collected without waiting for any consumer to raise the grievance. By the same logic, the present consumer was not at all required to approach the Respondent and raise a grievance seeking refund of excess collected amount when there exist the tariff order as well as the Commission's Order in this behalf. He cannot be, therefore, be penalized by way of losing his refund amount to which he is fully entitled under the Tariff Order and the Commission's Order for approaching either the IGR Cell or the Forum.

. . . . (23) Let us look at the issue from another angle. What would have been the fate of the refund which the Appellant is lawfully entitled, had he not approached the Cell or the Forum at all? This has to be answered in affirmative in view of the provisions of the tariff order and the Commission's order. Nothing can disentitle the consumer of his claim for refund with the interest, including the Appellant's action of approaching the Cell or the Forum for redress. It would be not only unfair but also ridiculous, as all other consumers who do not approach the Forum for redress, are still entitled for refund. Moreover, the action of the Respondent in not refunding the excess amount may amount to

non-compliance of directions of the Appropriate Commission under Section 142 of the Electricity Act, 2003 and with the consequences stipulated therein. Further, application of Regulation 6.6 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, holding the cause of occurrence of grievance as 1st December, 2003, would adversely affect implementation of the tariff order as well as the

Commission's order, apart from the fact that such an interpretation would neither be logical nor in the interest of the consumer. To sum up, the Appellant is entitled to get refund of excess amounts recovered with interest with effect from 1st December, 2003. The Forum's order to this extent is therefore liable to be and is hereby modified.

There are two opposite views on the point of limitation given by the Hon'ble Ombudsman in the above cases. However case no. 125 of 2016 is on facts identical to the present case in which the consumers claim was denied being beyond the period of two years in view of Regulation 6.6. This judgment of the Hon'ble Ombudsman in case no. 125 of 2016 concurs with the judgment of the Bombay High Court in M/s Sarolkar's case. We are of the view that the principle laid down in M/s Sarolkar' case & the Ombudsman in case no. 125 of 2016 will bind this forum with greater force.

As such the claim of the Consumer for month of Dec-2013 is barred by limitation as per Regulation 6.6 . mention above.

5] We have heard both sides. Considering the argument on either side. We are of the opinion that the grievance can be disposed of by giving directions to the Licensee MSEDCL to recalculate the FAC strictly as per approval of the Commission and within a fixed time limit. Hence, wherever the MSEDCL has charged FAC in the bills of the months from Jan to December 2014, other than approved by Commission needs to be recalculate and refund the excess amount recovered, to the consumer.

Hence the order.

<u>ORDER</u>

1] Grievance application of consumer is hereby partly allowed.

2] MSEDCL is directed to verify the claim of the consumer as per post facto approval given by the Commission for period of Jan'2014 to Dec'2014 and refund / adjust the amount, if any due, with interest at bank rate of RBI till the date of refund. This exercise be completed by the Licensee – MSEDCL within one month from the date of receipt of this order. Claim of Consumer for the month of Dec-2013 is rejected.

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 45 days 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 su moto or on a complaint filed by any person to impose penalty or prosecution proceeding under Section 142 & 149 of the Electricity Act.

5] Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order

Date: 21/02/2018

(A.P.Deshmukh)
MemberSecretary
CGRF, Kalyan.

(A.M.Garde)
Chairperson
CGRF, Kalyan.

NOTE:-

a) *The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.*

"Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51".

b) *Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or*

c) *delay in compliance of this decision issued under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003" at the following address:-*

"Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05"

d) *It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.*