

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/091/2015

Applicant : M/s. Spentex Industries Ltd.,
A-31, MIDC Industrial Area,
Butibori,
Nagpur : 440 122.

Non-applicant : Nodal Officer,
The Superintending Engineer,
Nagpur Urban Circle,
MSEDCL,
NAGPUR.

Applicant :- In Person.

Respondent by 1) Shri Dhoble, Executive Engineer, NUC, Nagpur.
2) Shri Dalal, A.O., NUC, Nagpur.

Quorum Present : 1) Shri Shivajirao S. Patil,
Chairman.

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 24.6.2015.

1. The applicant filed present grievance application before this Forum on 6.5.2015 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).

2. Applicant's case in brief is that applicant is consumer of M.S.E.D.C.L. connected at 33 kV voltage. Applicant has a contract demand of 6150 kVA. M.S.E.D.C.L. issued energy bill for August 2013 by adding AEC 1 to AEC 4 charges amounting to Rs. 57,37,797/- illegally. As per Commission's order in Case No. 95/13, AEC 1 and AEC 2 are to be charged in the billing month of September 2013 and other amount i.e. Rs. 106.44 Crores, Rs. 628.90 Crores are to be collected from the consumers in six months from October 2013 as per order of Commission in Case No. 28/13 and are to be collected as FAC charges. Similarly, amount of Rs. 596.12 Crores which shall be recovered by MSPGCL from MSEDCL as Annual Fixed Charges of Khaperkheda Unit No. 5 for financial year 2012-13 was to be recovered in six equal monthly installments starting from the month of October 2013 and MERC allowed it to collect from the consumers the fixed charges component fixed by MSPGCL vide order in case No. 44/13. Copy of Commission's order in case No.95/13, 28/13 & 44/13 is enclosed at Exhibit No. 2,3 & 4. Applicant paid energy bill of August 2013 under protest and submitted a request letter dated 16.9.2013 to MSEDCL to issue corrected energy bill to the applicant for August 2013.

3. Applicant further submitted that MSEDCL issued energy bill of September 2013 again adding AEC amount of Rs 53,57,205.70 in violation of Commission's order. M.S.E.D.C.L. did not issue corrected energy bill for August 2013 and again added wrong AEC charges from September 2013 to December 2013 in energy bill till filing of this grievance application. Therefore applicant filed present grievance application.

4. Applicant further submitted that as per Appellate Tribunal for Electricity in Appeal No. 295 of 2013, Tata Motors Vs. MERC & MSEDCL, as per order passed on 22.8.2014, set aside all orders passed by MERC on the ground that State Commission should have followed mandatory provisions laid down u/s 64 & 86(3) of Electricity Act 2003 by issuing public notice and giving opportunity to the consumers to raise the objections and only after considering these objections should have determined the tariff. Therefore Appellate Tribunal for Electricity set aside order passed by MERC and remanded the matter to State Commission to give opportunity to the parties concerned as per provisions of Section 64 of Electricity Act 2003 and here the matter in transparent manner & pass the final order uninfluenced by its earlier findings as expeditiously as possible and Appellate Tribunal for Electricity made it clear that no opinion is expressed on merits in the said order. In view of above, impugned order is set aside and the matter is remanded back to State Commission to pass consequential order as per directions in the judgement. As per Appellate Tribunal for Electricity in Appeal No. 23/14 and Interim Appeal No. 30/14 and 31/14 and the Appeal No. 65/14, specific order is passed to the effect that "It is noticed that the order passed on 5.9.2013 has already been set aside in Appeal No. 295/13 and matter has been remanded back for redetermination. Consequently, the impugned Order dated 29.10.2013 challenged in this Appeal has also to be set aside and remanded for redetermination. Order accordingly. In view of the order, it is open to the appellant to approach the Distribution Company for refund of the amount which has been collected earlier". In view of

above Appellate Tribunal orders, applicant approached office of Superintending Engineer, Nagpur Urban Circle, Nagpur and submitted letter dated 19.9.2014 for refund of AEC amount, wrongly collected Rs. 2,81,78,894/-. But till date, M.S.E.D.C.L. has not taken any positive action nor replied to the Appellant. Hon'ble Electricity Ombudsman Nagpur has passed another order in Case No. 68/14, 88/14, 89/14, 90/14, 91/14, 92/14, 93/14, 94/14, 95/14, 117/14, 122/14 & 127/14, which is enclosed at Annexure 14. Therefore applicant is entitled for refund of amount of Rs. 2,81,78,894.78 wrongly recovered amount against AEC for the period from August 2013 to December 2013 and claimed interest on the said amount.

5. Non applicant M.S.E.D.C.L. denied applicant's case by filing reply Dated 15.5.2015. It is submitted that as per Commission's order in case No. 95/13, it is stated that charges of AEC 1 & AEC 2 are to be levied by M.S.E.D.C.L. for the period of six months from September 2013 onwards. M.S.E.D.C.L. has rightly charged the charges in the bill generated in the month of September for which amount was due to be paid. Accordingly, MSEDCL started recovering charges from the month of September 2013 for which bill is raised in the month of August 2013. Charges of AEC 1, AEC 2, AEC 3 and AEC 4 has been applied and as per instructions given by Head Office to the respective I.T. centers for generation of bills. In the Commission's order it is stated that amount is to be recovered from the month of September 2013 onwards. So the bills generated and issued in the month of September 2013 for which the due date was in the month of September 2013 and the amount is being recovered in the month of

September 2013 is just and correct. As per Commission's order, the Commission has allowed to recover the charges in 6 monthly installments whereas MSEDCL has recovered the charges only for 5 months. One month is still balance. Accordingly MSEDCL has referred this matter for applicability and clarification of AEC charges.

6. M.S.E.D.C.L. further submitted that Appellate Tribunal for Electricity has set aside impugned order passed in case No. 95/13 and remanded the matter to the State Commission to give opportunity to the parties concerned as per provisions of Section 6.1 of the Electricity Act and make it clear that APTEL are not giving any opinion on merits. There are no specific directions of APTEL in judgement in Appeal No. 295/13 for refund of the amount that it recovered from the consumers in the form of Additional Electricity Charges. Hence the question of refund of AEC amount to the consumer does not arise. In order to avoid multiple litigation, MSEDCL filed miscellaneous application No. 95/13, before the Commission for earlier disposal of the matter in view of APTEL Judgement in Appeal No. 295/13 on 3.11.2014. In the application MSEDCL requested that Hon'ble Commission that it may take up the matter at the earliest and dispose off the matter expeditiously so as to avoid future litigation. This will also provide clarity to the consumers of the State. In view of misc. application No. 95/13 filed before the Commission, application of the applicant for refund of additional Electricity Charges is kept pending till further clarification from the Commission. Grievance application deserves to be dismissed.

7. Forum heard the arguments of both the sides and perused the record.

8. It is pertinent to note that on 22.8.2014, Hon'ble APTEL – Appellate Tribunal for Electricity (Appellate Jurisdiction) has passed the order in Appeal No. 295/13 in the matter of TATA Motors Vs. MERC & MSEDCL on 22.8.2014. On careful perusal of this Judgement, it is crystal clear that in this matter, order passed by Hon'ble MERC in case No. 95/13 Dt. 5.9.2013 is challenged. In this land mark Judgement in Appeal No. 295/13, TATA Motors Vs. MERC & M.S.E.D.C.L. decided on 22.8.2014, Hon'ble APTEL on page No. 56/58 & 57/58 held as under :-

81. SUMMARY OF OUR FINDINGS

“(a) The impugned Order has been passed in violation of section 62, 64 and 86 (3) of the Electricity Act 2003. The State Commission should have followed the mandatory procedures contemplated u/s 64 and 86 (3) of the Electricity Act 2003 by issuing public notice and giving opportunity to the consumers to raise objections/suggestions on the retail supply of tariff proposed and only after considering these objections/suggestion, should have determined the tariff.

(b) As per Section 62 (4) of the Act, the tariff may not ordinarily be amended more frequently than once. However, the tariff can be amended more

than once in a financial year in respect of any changes in terms of fuel surcharge formula as may be specified by the State Commission. This Tribunal has held earlier that the tariff can be revised without following the procedure u/s 64 provided the revision in tariff is in terms of the Fuel Surcharge Formula as specified by the State Commission through Regulations or by the Tariff Order. The Impugned Order was not an amendment in tariff as per the specified Fuel Surcharge Formula.

(c) We, therefore, set aside the Impugned Order and remand the matter to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of the Electricity Act and hear the matter in a transparent manner and pass the final order uninfluenced by its earlier findings, as expeditiously as possible. We want to make it clear that we are not giving any opinion on the merits”.

9. Therefore as per authority cited supra, order passed by Hon'ble MERC in case No. 95/13 Dt. 5.9.2013 is set aside and matter is remanded back to State Commission with certain specific directions.

10. As the matter is remanded back by Hon'ble APTEL to State Commission with certain directions, therefore the matter is

subjudice and pending before Hon'ble MERC for decision in the light of observations given by Hon'ble APTEL in the authority cited supra.

11. Therefore though in the authority cited supra, appellant was different i.e. M/s. TATA Motors Ltd. but same issue and same subject matter is decided by Higher Authority and therefore now the matter is subjudice before State Commission and matter is remanded back and hence present grievance application is untenable at law before this Forum, as per Regulation 6.7(d) of the said Regulations. According to Regulation 6.7 (d) of the said Regulations, Forum shall not entertain Grievance *“where a representation by the consumer, in respect of the same Grievance is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority”*. Therefore as same subject matter is decided by Hon'ble APTEL and matter is pending before MERC and therefore this Forum has no jurisdiction to decide present Grievance application.

12. We must bear in mind that we have to make legal and proper interpretation of regulation 6.7 (d) of the said regulations. It is true that no representation of the applicant is individually pending before Hon'ble MERC. However, though in the authority cited supra, appellant was different i.e. Tata Motors Ltd. but same issue and same subject matter i.e. whether recovery of AEC 1 to AEC 4 from entire consumers in the State of Maharashtra is legal & proper or not. This same issue and same subject matter is

decided by Higher Authority and grounds / issue / subject matter of present grievance application is also covered in the same matter as the applicant is one of the consumers of MSEDCL and therefore as the matter is remanded back and not finalized by Hon'ble Commission, present grievance application is untenable at law before this Forum as per regulation 6.7 (d) of the said regulations. According to regulation 6.7 (d) of the said regulations, Forum shall not entertain grievance **“where a representation by the consumer in respect of same grievance is pending in any proceedings before any Court, Tribunal or Arbitrator or any other authority, for a decree or award or final order has already been passed by any such court, tribunal, arbitrator or authority”**. Therefore the same subject matter is decided by Hon'ble APTEL and matter is remanded back and pending before Hon'ble MERC, hence this Forum has no jurisdiction to entertain this grievance application.

13. Hon'ble APTEL passed order in Appeal No. 23/14 and Appeal No. 65/14 Dt. 11.9.2014 & held as under :-

“We have heard the Learned counsel for the parties. It is noticed that the Order passed on 5.9.2013 has already been set aside in Appeal No. 295 of 2013, and the matter has been remanded for re-determination. Consequently, the impugned Order dated 29.10.2013 challenged in this Appeal has also to be set aside and remanded for re-determination. Accordingly, Ordered.

In view of the above Order, it is open to the Appellants to approach the Distribution Company for refund of the amount, which has been collected earlier.

With these observations, both the Appeals are disposed of”.

14. It has been specifically observed in the said authority that it is upto the applicant to approach Distribution Company for refund of amount which has been collected earlier. This order is dated 11.9.2014.

15. It is pertinent to note that as per order passed by Hon'ble APTEL in case No. 295/13 Dt. 22.8.2014, impugned order of Hon'ble MERC regarding AEC has been set aside and the matter is remanded to State Commission to give opportunity to the parties concerned as per provisions of Section 64 of Electricity Act 2003 and to hear the matter in a transparent manner and pass final order. It is clear that Hon'ble APTEL had not given any opinion on merits, nor given any stay to the present recovery of AEC, neither given any directions to M.S.E.D.C.L. even though it was a party to the appeal. These facts show that Hon'ble APTEL wants the matter to be decided afresh. Therefore the matter is subjudice.

16. Learned representative of the applicant placed his reliance on the Common Order passed by Hon'ble Electricity Ombudsman Nagpur in Case No. 68/14, 88/14, 89/14, 91/14, 92/14, 94/14, 95/14, 117/14, 122/14 & 127/14 Dt. 22.12.2014. On the

contrary, Officers of respondent M.S.E.D.C.L. placed their reliance on the Judgement passed by Hon'ble APTEL in Case No. 295/13 decided on 22.8.2014 and another Judgement passed by Hon'ble APTEL in appeal No. 23/14 and IA No. 30/14, 31/14 & 93/14 and Appeal No. 65/14 Dt. 11.9.2014. We have carefully perused authorities & Judgements passed by Hon'ble Electricity Ombudsman Nagpur so also both the Judgements and orders passed by Hon'ble APTEL and relied by M.S.E.D.C.L. In our considered opinion, being the Higher Authority, Judgements of Hon'ble APTEL has a direct binding force on this Forum. Therefore we place our reliance on cited decisions of Hon'ble APTEL and relying on the decisions of Hon'ble APTEL, we hold that grievance application deserves to be dismissed. It is our duty to read, interpret, explain and understand the judgement of Hon'ble APTEL in its true meaning, sense and language and we can not mis-interpret it at any cost. We must bear in mind that Hon'ble APTEL has not only set aside order passed by Hon'ble MERC but in the same breath remanded the matter back to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of Electricity Act 21003 and hear the matter in transparent manner and pass final order uninfluenced by its earlier findings as expeditiously as possible. Hon'ble APTEL further made it clear that they are not giving any opinion on the merits. Therefore it is clear that up till now Hon'ble APTEL had not given any findings on merits of the matter and matter is subjudice.

17. It is pertinent to note that officers of M.S.E.D.C.L. produced one most important document before this Forum. It is a

letter written by Chief Engineer (Commercial) Dt. 11.12.2014. It is a letter regarding request for refund of AEC with reference to Hon'ble APTEL's order dated 22.8.2014 in appeal No. 295/13 and in this letter there is reference of Hon'ble APTEL's order in appeal No. 295/13 Dt. 22.8.2014 and Hon'ble MERC's order in case No. 95/13 Dt. 5.9.2013. Recitals of this letter are as under :-

“With reference to above, vide judgement dated 22nd August 2014, APTEL has set aside the impugned Order (case No. 95 of 2013 dated 5th September 2013) and remand the matter to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of the Electricity Act and make it clear that APTEL are not giving any opinion on the merits.

It is felt that as there are no specific direction of the APTEL in the judgement in Appeal No. 295 of 2013 for refund of amount that is recovered from consumers in the form of Additional Energy Charges, hence the question of refund of the AEC amount to the consumers does not arise.

In order to avoid the multiple litigations, MSEDCL filed Miscellaneous Application in Case No. 95 of 2013 before Hon'ble Commission for early disposal of matter in view of APTEL's judgement in Appeal No. 295 of 2013 on 3.11.2014. In the application MSEDCL requested the Hon'ble Commission that it may take up the matter at the earliest and dispose of the matter expeditiously so as to avoid the future litigations. This will also provide clarity to the consumers of the State.

In view of Miscellaneous application in Case No. 95 of 2013 filed before Hon'ble Commission, your application regarding refund of Additional Electricity Charges is kept pending till further clarification from Hon'ble Commission”.

18. On close scrutiny of this letter dated 11.12.2014 issued by Chief Engineer (Com.), it is crystal clear that in order to avoid multiple litigations, M.S.E.D.C.L. filed Miscellaneous Application in Case No. 95/13 before Hon'ble Commission for early disposal of the matter, in view of Hon'ble APTEL's judgement in Appeal No.

295/13 on 3.11.2014. In the application, M.S.E.D.C.L. requested Hon'ble Commission that it may take up the matter at the earliest and dispose off the matter expeditiously so as to avoid further litigations. This will also provide clarity to the consumers in the State. In view of misc. application in case No. 95/13, filed before Hon'ble Commission, application for refund of AEC is kept pending till further clarification from Hon'ble Commission.

19. Therefore again it is clear that Misc. Application No. 95/13 filed by M.S.E.D.C.L. is pending before Hon'ble MERC for further clarification and directions. Therefore it is again clear that matter is subjudice and pending before Hon'ble Commission recently, and hence according to regulation 6.7 (d of the said Regulations, this Forum has no jurisdiction to entertain the present grievance application. This Forum is of considered opinion that we have to wait till passing of the order by Hon'ble MERC in Misc. Application in case No. 95/13 regarding refund of AEC.

20. It is pertinent to note that this letter of Chief Engineer (Com.) Dt. 11.12.2014 appears to be received in the office of non applicant at Nagpur on 5.1.2015. (Specific stamp Dt. 5.1.2015 regarding receipt of the letter is appearing on the document). Judgement delivered by Hon'ble Electricity Ombudsman is Dt. 22.12.2014. Therefore it appears that this letter of Chief Engineer (Com.) Dt. 11.12.2014 received in the office of non applicant at Nagpur on 5.1.2015 i.e. after passing of the Judgement by Hon'ble Electricity Ombudsman Nagpur. Furthermore, on careful perusal of the judgement of Hon'ble E.O. Nagpur, it appears that this letter is not referred in the Judgement. Therefore it is subsequent

development that Misc. Application in case No. 95/13 is filed before Hon'ble Commission for early disposal of the matter in view of Hon'ble APTEL's judgement in appeal No. 295/13 on 3.11.2014, requesting the Hon'ble Commission to take up the matter at the earliest and to dispose off the matter expeditiously to provide clarity to the consumers of the State and seek further clarifications from Hon'ble Commission. These are subsequent changes and change in circumstances that the miscellaneous application in Case No. 95/13 is filed by M.S.E.D.C.L. and it is pending before the Hon'ble Commission. Issue and grievance of the applicant is also covered in the same matter along with thousands of consumers in the State of Maharashtra. Therefore matter is subjudice and hence, at this moment no relief can be granted to the applicant as prayed for.

21. Furthermore, while setting aside the impugned order by Hon'ble MERC in case No. 95/13 and remanding the matter to the State Commission for fresh decision in accordance with law, Hon'ble APTEL made it clear that **"APTEL are not giving any opinion on merits"**. Therefore Hon'ble APTEL has not given any findings on the merits of the matter.

22. Furthermore, there are no specific directions of Hon'ble APTEL in judgement in Appeal No. 295/13 for refund of the amount that is recovered in the form of AEC and hence question of refund of AEC amount to the consumers does not arise.

23. Therefore relying on the authority of Hon'ble APTEL in Appeal No. 295/13, Tata Motors Vs. MERC & MSEDCL decided

on 22.8.2014 and relying on order passed by Hon'ble APTEL in appeal No. 13/14 and Appeal No. 65/14 Dt. 11.9.2014, we hold that grievance application deserves to be dismissed. Resultantly we proceed to pass following order :-

ORDER

- 1) Grievance application is dismissed.

Sd/-
(Anil Shrivastava)
MEMBER
SECRETARY

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN