

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

Case No. CGRF(NUZ)/094/2015

Applicant : M/s. Shilpa Steel & Power Ltd.,
1-4, Wanjara Layout,
Kamptee Road,
Nagpur 440 026.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(Distribution Franchisee),
MSEDCL,,
NAGPUR.

Applicant :- Shri Suhas Khandekar.

Respondent by 1) Shri Rody, Nodal Office.
2) Shri Dahasahastra, SNDL Nagpur.

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

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 13.7.2015.

1. The applicant filed present grievance application before this Forum on 16.5.2015 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 as per order in case No. 95/13 Dt. 5.9.2013, MERC has allowed recovery of A.E.C. from consumers of Maharashtra from September 2013. SNDL had billed the applicant for those charges as AEC 1 & AEC 2 and applicant paid the same. As per order in case No. 295/13 Dt. 22.8.2014, APTEL has set aside order of MERC and therefore amount paid by the applicant towards these charges needs to be refunded to the applicant. Similarly, as per order in case No. 28/13 Dt. 3.9.2013 and case No. 44/13 Dt. 4.9.2013, MERC had allowed the recovery of AEC from consumers of Maharashtra since October 2013. However, SNDL started billing the applicant for these charges as AEC 3 and AEC 4 from September 2013 itself. Hence the excess amount recovered from the applicant from the month of September 2013 needs to be refunded to the applicant. Applicant also claimed interest as per Section 62(6) of Electricity Act 2003 on bank rate. The applicant applied to I.G.R.C. for refund of AEC charges which are collected before October 2013. However, for AEC 1 and AEC 2, it is stated that in Circular No. PR-III/Tr./36806 of Chief Engineer Dt. 11.12.2014, it has been stated that no refund can be given and since SNDL is a Franchisee of M.S.E.D.C.L. the same is also applicable to them. Hence no refund can be given.

3. Applicant further submitted that I.G.R.C. has advised SNDL that AEC 3 and AEC 4 charges collected from the applicant before October 2013 should be refunded to the applicant along with interest on bank rates and submit compliance by 8.4.2015. Against this applicant received a refund of Rs. 39,165/-. I.G.R.C. has denied for refund of charges collected under AEC 1 and AEC 2 on the basis of Circular of Chief Engineer Dt. 11.12.2014 which says that no refund can be given as the order of APTEL has not given

any directives for refund. Therefore applicant filed present grievance application.

4. Non applicant denied applicant's case by filing reply Dated 3.6.2015. It is submitted that applicant has submitted his grievance application to Hon'ble I.G.R.C., SNDL Nagpur on 17.3.2015. In view of above grievance application and contents thereof, it is pertinent to note that M.S.E.D.C.L. Chief Engineer (Commercial) has already issued Circular No. PR-III/Tr./36806 Dt. 11.12.2014 to all concerned H.T. Billing units having subject of circular as request for refund of AEC with reference to Hon'ble APTEL order Dt. 22.8.2014, in Appeal No. 295/13. As per Judgement Dt. 22.8.2014, Hon'ble APTEL has set aside the impugned order in case No. 95/13 Dt. 5.9.2013 & remanded the matter to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of Electricity Act 2003 and made it clear that APTEL has not given any opinion on merits. As there is no specific directive of Hon'ble APTEL in Judgement in Appeal No. 295/13 for refund of amount that is recovered from the consumers in the form of AEC. Hence question of refund of AEC amount to consumer does not arise.

5. Non applicant SNDL further submitted that in order to avoid multiple litigations, M.S.E.D.C.L. filed miscellaneous application in case No. 95/13 before the 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 the Commission that it may be taken the matter at the earliest and dispose of the matter expeditiously so as to avoid further litigation. In view of above circular, final verdict

of Hon'ble MERC is still awaited and above circular is also applicable to the Franchisee i.e. SNDL ltd. and therefore request of the applicant for refund of AEC 1 & AEC 2 can not be considered.

6. Non applicant SNDL further submitted that as per order of Hon'ble IGRC, it is directed to refund AEC 3 and AEC 4 charges collected before October 2013 along with interest on bank rates. In view of order of I.G.R.C., regarding refund of AEC 3 and AEC 4, charges collected before October 2013 will be refunded in ensuing bills. Grievance application deserves to be dismissed.

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

8. At the outset we must make it clear that Learned Representative of the applicant Mr. Khandekar made a statement at bar that applicant received back refund of AEC 3 and AEC 4 charges from SNDL and therefore present grievance application is only limited for refund of AEC 1 & AEC 2 charges. Therefore it is the only dispute between the parties.

9. 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”.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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”.

15. 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.

16. 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.

17. 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

Page 9 of 13 Case No.094/15

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.

18. 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”.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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