

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

Case No. CGRF(NUZ)/250/2014

Applicant : M/s. Luk Plastcon Ltd.,
Plot No. G-99, Butibori
Industrial Area, MIDC,
Nagpur.

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

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

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 20.11.2014.

1. The applicant filed present grievance application before this Forum on 26.9.2014 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. The applicant's case in brief is that applicant M/s. Luk Plastcon Ltd. is consumer of M.S.E.D.C.L. connected at 33 kV voltage. The applicant has a contract demand of 700 kVA. M.S.E.D.C.L. issued energy bills for August 2013 by adding AEC 1, AEC 2, AEC 3 & AEC 4 charges amounting to Rs. 385185.23 illegally. As per

Hon'ble Commission's order in Case No. 95/13, AEC 1 & AEC 2 are to be charged from the billing month of September 13 & other amount i.e. Rs. 106.44 crores, Rs. 628.90 crores are to be collected from the consumer in six months from October 2013, as per order of Hon'ble 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 M.S.P.G.C.L. from M.S.E.D.C.L. 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 & M.E.R.C. allowed it to recover from the consumers the fixed charges component billed by M.S.P.G.C.L. vide order in Case No. 44/13. M.S.E.D.C.L. issued Circular No. 209 Dt. 7.9.2013 based on Commission's above referred order specified AEC & FAC without mentioning month of applicability of these charges. Applicant paid energy bill of August 2013 under protest & submitted request letter dated 14.9.2013 to M.S.E.D.C.L. to issue corrected energy bill for August 2013.

3. M.S.E.D.C.L. issued energy bill for September 2013 adding AEC amount i.e. AEC 1, AEC 2, AEC3 & AEC4 totaling to Rs. 405725.58 in violation of Commissions order. M.S.E.D.C.L. did not issue corrected energy bill for August 2013 & September 2013 till filing of this grievance application and again added wrong AEC charges in September 2013 energy bill hence applicant filed his grievance application with IGRC on dt. 14.7.2014. IGRC heard the matter and rejected grievance application vide order Dt. 8.8.2014. Being aggrieved by the order of IGRC applicant filed present grievance application before this Forum with a request to direct M.S.E.D.C.L. to issue corrected bill for August 2013 by removing AEC

1 & AEC 2 charges and September 2013 by removing AEC 3 & AEC 4 charges. Applicant further requested to direct MSEDCL to refund AEC charges collected from the appellant from August 2013 upto December 2013 along with interest under 62(6) of EA 2003. He further requested to direct MSEDCL to refund excess amount paid by applicant along with interest as per section 62 (6) of EA 2003.

4. Non applicant denied applicant's case by filing reply dated 16.10.2014. It is submitted that as per Commission's order in Case No. 95/13, charges of AEC 1 & AEC 2 are to be recovered by M.S.E.D.C.L. for a period of six months from the month of September 2013 onwards. M.S.E.D.C.L. has rightly charged charges in the bill generated. Accordingly M.S.E.D.C.L. started recovering charges from the month of August 2013, for which bill raised in the month of August 2013. Charges of AEC 1, AEC 2, AEC 3 & AEC 4 has to be applied and as per the instructions given by Head Office to respective I.T. centers for generation of bill. It is mentioned in the Commission's order that the amount is to be recovered from the month of September 2013 onwards so bill generated and issued in the month of September 2013 for which due date was in the month of September 2013 and the amount is being recovered in month of September 2013 is correct and just. Commission's order has allowed to recover the charges in six monthly installments whereas M.S.E.D.C.L. has recovered the charges only in 5 months. It is submitted that grievance application deserves to be dismissed.

5. Forum heard arguments of both the sides at length and perused entire record carefully.

6. It is an admitted fact that on the basis of order of MERC Dt. 3.9.2013 in Case No. 28/13, Order of MERC Dt. 4.9.2013 in Case No. 44/13 & Order of MERC Dt. 5.9.2013 in Case No. 95/13, M.S.E.D.C.L. had issued Circular No. 209 Dt. 7.9.2013.

7. In present grievance application it is the contention of the applicant that M.S.E.D.C.L. has to issue corrected energy bill as per Commercial Circular No. 209 Dt. 7.9.2013. Therefore in present case, order passed by MERC in case No. 28/13, 44/13, 95/13 & Commercial Circular No. 209 Dt. 7.9.2013 is the main basis and foundation of the applicant.

8. However, it is pertinent to note that mean while during the pendency of this matter, on Dt. 22.8.2014, Hon'ble APTEL – Appellate Tribunal of Electricity (Appellate Jurisdiction) has passed order in Appeal No. 295/13 in the matter of Tata Motors Ltd. Vs. MERC and MSEDCL decided on 22.8.2014. After careful perusal of this land mark judgement of Hon'ble APTEL it is crystal clear that in this matter order passed by MERC in Case No. 95/13 Dt. 5.9.2013 & Commercial Circular issued by M.S.E.D.C.L. bearing No. 209/13 is challenged. In this landmark judgement in Appeal No. 295/13 Tata Motors Ltd. Vs. MERC & MSEDCL decided on 22.8.2014, Hon'ble APTEL (Appellate Jurisdiction) 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 the authority cited supra order passed by Hon'ble MERC in case No. 95/13 dt. 5.9.2013 and Commercial Circular issued by M.S.E.D.C.L. bearing No. 209/13 is set aside and cancelled and matter is remanded back to State Commission with certain specific directions.

10. Therefore in case in hand present grievance application has become infructuous. Basis and foundation of this case i.e. order passed by MERC in case No. 95/13 and Commercial Circular No. 209/13 is now not in existence and hence present grievance application relying on this order & circular has become infructuous.

11. As the matter is remanded back by Hon'ble Appellate Tribunal of Electricity to State Commission with certain directions and therefore matter is subjudice and pending before Hon'ble MERC for decision in the light of the observations given by APTEL in the authority cited supra.

12. Therefore though in the authority cited supra, appellants were different i.e. Tata Motors Ltd. but same issue and same subject matter is decided by higher authorities and therefore authority cited supra is squarely applicable to this case. Relying on the authority cited supra by APTEL in Appeal No. 295/13 & now the matter is subjudice before State Commission as the matter is remanded back. According to regulation 6.7 (d), Forum shall not entertain the grievance where representation by the consumer in respect of same grievance is pending in any proceedings before any court, tribunal or arbitrator or any other authority or decree or award or final order has already been passed by any such court, tribunal arbitrator or authority. Therefore as same subject matter is decided by Hon'ble Appellate Tribunal for Electricity and in remand matter is pending before MERC and therefore this Forum has no jurisdiction to decide present grievance application.

13. Furthermore, now the commercial circular No. 209 Dt. 7.9.2013 does not remain in existence which was issued on the basis of 3 different orders passed by MERC. Therefore now the applicant has to apply afresh to M.S.E.D.C.L. on the basis of judgement of APTEL Dt. 22.8.2014 in Appeal No. 295/13 and to request for consideration of the matter in the light of authority cited supra. In spite of filing fresh application, if M.S.E.D.C.L. does not comply, then the applicant consumer has to approach afresh to I.G.R.C. on the basis of order passed by APTEL in Appeal No. 295/13 and even then if grievance is not redressed then only applicant may approach to this Forum if the time limit, circumstances and regulations permit. In that eventuality this Forum shall decide such grievance application in accordance with law. At present, present grievance application has become infructuous and therefore deserves to be dismissed.

14. During the course of hearing applicant also produced order passed by Appellate Tribunal for Electricity in Appeal No. 13/14 & I.A. Nos. 30/14, 31/14 & 93/14 & Appeal No. 65/14 Dt. 11.9.2014. In this order, Hon'ble APTEL has passed following order : -

“ORDER :- *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”.

Therefore Hon’ble APTEL had specifically issued directions that in view of above order, it is open to the appellant to approach Distribution Company for refund of the amount which has been collected earlier. Therefore on the basis of authority cited supra, now applicant has to approach first to Distribution Company for refund of the amount which has been collected earlier. If the said refund is not given by the distribution licensee then applicant is at liberty to approach to I.G.R.C. and even then if grievance is not redressed then only applicant can approach to this Forum for refund of the amount. Applicant is not entitled to directly approach to C.G.R.F. for refund of the same. Therefore no relief can be granted to the applicant at present.

15. Hence Forum proceeds to pass following order : -

ORDER

- 1) Grievance application is dismissed.
- 2) Applicant is at liberty to approach to distribution company i.e. M.S.E.D.C.L. for refund of amount which has been collected earlier and incase his grievance is not redressed by M.S.E.D.C.L. applicant is at liberty to approach I.G.R.C. and if his grievance is not redressed by I.G.R.C. thereafter only

applicant is at liberty to approach this Forum for refund of the amount which has been collected earlier. In that eventuality this Forum shall decide such grievance application independently, uninfluenced by reasoning and findings given by this Forum in this order.

Sd/-
(Anil Shrivastava)
MEMBER
SECRETARY

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN