

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

Case No. CGRF(NUZ)/129/2015

Applicant : M/s. Mangrul Mills Ltd.,
Behind Saraf Chambers,
Mount Road,
Nagpur.

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

Applicant :- Shri Sumit Goenka

Respondent by 1) Shri Setty, Dy. E.E.,(HT),NRC, MSEDCL,
Nagpur.

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

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 13.10.2015.

1. The applicant filed present grievance application before this Forum on 14.8.2015 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 on 33 kV. Applicant has a Contract Demand of 1300 kVA and open access Contract Demand of 2000 kVA. Hon'ble MERC issued order in case No. 95/13 Dt. 5.9.2013 in suo-moto manner and allowed M.S.E.D.C.L. to recover from its consumers AEC (Additional Electricity Charges) by amending the tariff that was determined in order dated 16.8.2012 in case No. 19/12. M.S.E.D.C.L. issued circular No. 209 Dt. 7.9.2013 based on Commission's above referred order and indicated AEC 1 to AEC 4 charges to be collected from different category of consumers and started collecting these charges with retrospective effect from August 2013. After implementation of AEC 1 & AEC 2 charges cross subsidy in tariff has increased and MSEDCL filed petition with Commission to increase cross subsidy charges for open access consumers. MERC issued order No. 107 Dt. 29.10.2013 and increased cross subsidy surcharge for open access consumers applicable from September 2013 to February 2014 holding that AEC 1 & AEC 2 are additional tariff items which have led to increase in ABR thus impacting the CSS. By the above order the CSS in open access has been increased to very high level effective from first September. This order was implemented with retrospective effect and the consumers who have availed open access in the month of September had to pay heavy differential amount.

3. Applicant further submitted that M.S.E.D.C.L. issued energy bills to the applicant from September 2013 to February 2014, charging CSS Rs. 1,89,51,392.80 (One Crore Eighty Nine Lacs Fifty One Thousand Eight Hundred Ninety Two & Ps. Eighty) only, which was based on Commission's order in case No. 109/13. Vidarbha Industries Association & M/s. Tata Motors Ltd. challenged the order of Commission in Case No. 95/13 with Hon'ble Appellate Tribunal for Electricity (APTEL). Hon'ble APTEL issued order vide appeal No. 295/13 against the bill of M/s. Tata Motors Ltd. and set aside the order of Hon'ble MERC in case No.95/13. Vidarbha Industries Association appeal u/s 111 of Electricity Act 2003 with Hon'ble APTEL challenging the legality, validity and propriety of the order in case No. 107/13 Dt. 29.10.2013 passed by Hon'ble Commission increasing cross subsidy charges. Hon'ble APTEL issued order in appeal No. 295 of 2013 setting aside Commission's order in case No. 107/13 and passed order that –

“It is noticed that order passed on 5.9.2013 has already been set aside in appeal No. 295/13 & matter has been remanded back for redetermination. Consequently, the impugned order Dt. 29.10.2013 challenged in this appeal has also been set aside and remanded back for redetermination. Accordingly ordered. In view of the above order, it is open to appellants to approach Distribution Licensee for refund of the amount which has been collected earlier”.

4. Applicant further submitted that appellant Vidarbha Industries Association is association of Industries and the applicant is a member of this association. Hence order of Hon'ble APTEL is applicable to the applicant. Applicant paid total cross subsidy amount of Rs. 1,89,51,392.80 (Rs. One Crore Eighty Nine Lacs Fifty One Thousand Three Hundred Ninety Two & Ps. Eighty) only, as per order in case No. 107/13 from September 2013 to February 2014. Applicant requested Superintending Engineer, Nagpur Rural Circle M.S.E.D.C.L. as per letter Dated 3.11.2014 for refund of cross subsidy charges amounting to Rs. 1,89,51,392.80 (Rs. One Crore Eighty Nine Lacs Fifty One Thousand Three Hundred Ninety Two & Ps. Eighty) only, collected by M.S.E.D.C.L. in September 2013 to February 2014 against open access consumption. M.S.E.D.C.L. did not submit any reply nor refused to pay till filing of this grievance application. Therefore applicant is filing this grievance application. I.G.R.C. did not hear the matter and did not pass any order even after a lapse of more than 3 months. Therefore applicant filed present grievance application for issuance of directions to M.S.E.D.C.L. to refund the amount of cross subsidy surcharge amounting to 1,89,51,392.80 (Rs. One Crore Eighty Nine Lacs Fifty One Thousand Three Hundred Ninety Two & Ps. Eighty) only, from September 2013 to February 2014 charged by M.S.E.D.C.L. along with interest.

5. Non applicant denied applicant's case by filing reply dt. 2.9.2015. It is submitted that M/s. Mangrul Mills Ltd. is HT consumer of M.S.E.D.C.L. having Contract Demand of 3300 kVA

and connected load of 2500 kW on 33 kV level. During the billing month of September 2013 to February 2014 bill was generated and issued to the consumer considering CSS based on the orders of MERC in case No. 107/13. Additional Electricity Charges charged in the month of October 2013 as per software provided by Corporate Office Mumbai to respective I.T. Centers. Applicant has submitted order passed by Hon'ble APTEL Dt. 11.9.2014 in Appeal No. 23/14. In the said impugned order of Hon'ble MERC regarding CSC has been set aside and matter has been remanded back to State Commission for redetermination. This fact shows that Hon'ble APTEL wants the matter to be decided afresh. Hon'ble MERC has passed an order in miscellaneous application No. 187/14 Dt. 26.6.2015, in which Hon'ble MERC has clearly stated that amount of AEC which is recovered from the consumers is justified and there is no over recovery. The matter of CSC is also related to energy charges. Copy of the order is annexed at Annexure '1'. Moreover applicant is not a party to the appeal filed before Hon'ble APTEL. The said matter i.e. redetermination of CSC is filed before Hon'ble Commission vide case No. 17/15. The matter is subjudice before the Commission. Copy is at Annexure '2'. It is likely to maintain CSC as done in M.A. No. 187/14. Hence if refund is ordered at this stage, there is possibility of complications. Therefore grievance application is untenable at law as the same matter is pending before the Commission and therefore refund order may not be passed in the interest of justice and grievance application may be rejected.

6. Forum heard arguments of representative of the applicant Mr. Goenka and Shri Bhadikar, Superintending Engineer, for M.S.E.D.C.L. and perused record.

7. As per order of Hon'ble APTEL Dt. 11.9.2014 in Appeal No. 23/14, the impugned order passed by Hon'ble MERC regarding CSC has been set aside and the matter is remanded back to the Commission for redetermination. This fact shows Hon'ble APTEL wants the matter to be decided afresh.

8. It is pertinent to note that after passing of the order by Hon'ble APTEL in appeal No. 13/14 on Dt. 11.9.2014, Hon'ble MERC has passed order in miscellaneous application No. 187/14 in which MERC has clearly stated that amount of AEC which is recovered from the consumer is justified and there is no over recovery. The matter of CSC is also related to energy charges. Copy of the order is annexed at Annexure 'A' with reply.

9. We have carefully perused order passed by Hon'ble MERC in Misc. Application No. 187/14 Dt. 26.6.2015. It is note worthy that it is latest order of Hon'ble MERC even after passing of the order by Hon'ble APTEL i.e. 19.9.2014. Therefore Hon'ble MERC passed order dated 26.6.2015 in misc. application No. 187/14 after 9 months after passing of the order by Hon'ble APTEL Dt. 11.9.2014. Therefore this order passed by Hon'ble MERC Dt. 26.6.2015 in misc. application No. 187/14 is binding force on the parties. It is pertinent to note that this order passed by Hon'ble MERC in misc. application No. 187/14 Dt. 26.6.2015 is

not set aside either by Hon'ble APTEL or by any other authority up till now and there is no such documentary evidence on record to that effect. Applicant also did not produce any documentary evidence on record to show that he filed any appeal against the order of Hon'ble Commission Dt. 26.6.2015 in misc. application No. 187/14 and therefore at this moment order of MERC in misc. application No. 187/14 Dt. 26.6.2015 has a binding force on both the parties.

10. We have carefully perused order passed by Hon'ble MERC in misc. application No. 187/14 Dt. 26.6.2015. In order of MERC in misc. application No. 187/14 Dt. 26.6.2015 in para No. 13.12 it is held as under :-

13.12. "The cost component classified under AEC-1 and AEC-2 have been approved by the Commission in the respective orders referred to above. However such costs have not been approved by MSEDCL as on August, 2013. Thus all the components considered by Commission as part of AEC-1 & AEC-2 were pending recovery as on August, 2013. Hence it was found prudent to allow the same through the order dated 5 September 2013. The Commission notes that, in the present proceedings, only Tata Motors Ltd. has raised an objection on the validity of these costs, which has been dealt with above. Hence the Commission is of the view that allowing the recovery of these costs to MSEDCL is justifiable.

11. In the same authority cited supra i.e. in order passed by Hon'ble MERC in miscellaneous application No. 187/14 Dt. 26.6.2015, in para No. 13.26 of the order, it is held as under :-

“13.26. As regards the second point of scrutiny, it is observed that MSEDCL has computed and levied a lower level of AEC to its consumers, as will be seen from Table 6 above and Annexure II and III. Thus there is no over-recovery on account of AEC. On the contrary, MSEDCL has recovered a lower amount. Thus question of refund with carrying costs does not arise”.

12. In the authority cited supra i.e. in the order passed by Hon'ble MERC in case No. 187/14 Dt. 26.6.2015, Summary of Ruling, Para 13.27 of the order), it is held as under :-

Summary of Rulings :-

13. The cost component of AEC-1 & AEC-2 were approved by the Commission in the respective orders following due regulatory process. However, these cost components were not allowed to be recovered by MSEDCL from its consumers in those orders. The Commission is of the view that allowing the recovery of these costs to MSEDCL is justifiable and necessary.

14. The Commission has scrutinized the rates at which AEC-1 and AEC-2 were applied to MSEDCL in terms of the principles adopted by the Commission. The total category-wise AEC charged by MSEDCL is less than the amount of costs

allowed to be recovered, and the category-wise rates levied are also lower than if the principles had been correctly applied. Hence, the question of allowing carrying cost for over-recovery does not arise.

15. However, MSEDCL shall review the refunds made by it so far on account of wrongful premature billing, and make any remaining refunds due to consumers in the next billing cycle.

16. Relying on the authority cited supra i.e. order passed by Hon'ble MERC Dt. 26.6.2015 in misc. application No. 187/14, this Forum is of considered opinion that the applicant has absolutely no case and grievance application deserves to be dismissed. This matter is already decided by Hon'ble MERC in misc. application No. 187/14 Dt. 26.6.2015 and therefore according to regulation 6.7(d) of the said regulations, this Forum has no jurisdiction to entertain the grievance application. The remedy open to the applicant is only to challenge the order passed by Hon'ble MERC Dt. 26.6.2015 in misc. application No. 187/14 before Hon'ble APTEL. We have absolutely no right to pass any order contrary to the order passed by Hon'ble Commission in misc. application No. 187/14 Dt. 26.6.2015, otherwise it will amount to contempt.

17. Furthermore, applicant is not a party to the appeal before Hon'ble APTEL and on this ground also grievance application deserves to be dismissed.

18. Before reaching to the final order, we must make it clear that on the date of filing of the grievance application and even on the date of hearing of the grievance application, Shri A.S. Shrivastava, Executive Engineer, then Member/Secretary of the Forum was present. Hearing was concluded on 11.9.2015. But on 30.9.2015, Shri A.S. Shrivastava, then Member/Secretary of the Forum is retired from service. Till retirement of Shri A.S. Shrivastava, matter was not discussed for voting under regulation 8.1 of the said regulations. Today, on Dt. 7.10.2015, there was discussion about voting between Chairman and Shri Jichkar, Member of the Forum, and at the time of this voting Shri A.S. Shrivastava can not remain present because he is already retired on 30.9.2015. Therefore at the time of deciding the matter, Forum was only 1) Chairman and 2) Shri Jichkar, Member. Hence the order is signed by both of them.

19. For these reasons, grievance application for recovery of Rs. 1,89,51,392.80 deserves to be dismissed. Hence following order:-

ORDER

- 1) Grievance application dismissed.

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN