

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

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**Case No. CGRF(NUZ)/262/2014**

Applicant : M/s. Bhagirath Textiles Ltd.,  
Sarvodaya Cloth Market,  
Gandhibagh,  
Nagpur.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
Nagpur Rural 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 11.12.2014.**

1. The applicant filed present grievance application before this Forum on 17.10.2014 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 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. 19,53,425.25 (Nineteen Lacs Fifty Three Thousand Four Hundred Twenty Five & Ps. Twenty Five) only,

illegally. As per Commission's order in case No. 95 of 2013, AEC 1 & AEC 2 to be charged from 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 the 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 5 for financial year 2012-13 was to be recovered in six equal monthly installments starting from the month of October 2013 & Hon'ble MERC allowed it to collect from the consumers as fixed charges component fixed by MSPGCL vide order in Case No. 44/13.

3. M.S.E.D.C.L. issued Circular No. 209 Dt. 7.9.2013 based on Commission's referred order and specified additional charges & FAC without mentioning month of applicability of these charges. M.S.E.D.C.L. issued energy bill for September 2013 by adding AEC amount i.e. AEC 1, AEC 2, AEC 3 & AEC 4, totaling to Rs. 19,26,349.84 (Nineteen Lacs Twenty Six Thousand Three Hundred Forty Nine & Ps. Eighty Four) only, in violation of Commission's order. Applicant approached to I.G.R.C. Learned I.G.R.C. rejected grievance application on 22.9.2014. Being aggrieved by the said order applicant approached to this Forum.

4. It is further submitted that Hon'ble APTEL (Appellate Tribunal for Electricity) in Appeal No. 295/13 Dt. 22.8.2014 set aside order issued by MERC in Case No. 95/13 and remanded back the matter to State Commission to pass consequential order as per

directions given in the Judgement. Hon'ble APTEL in Appeal No. 23/14 passed order Dt. 11.9.2014 and ordered that it is open to appellants to approach Distribution Licensee for refund of the amount which has been collected earlier. Therefore applicant claimed to issue directions to M.S.E.D.C.L. to issue corrected energy bill from August 2013 by removing AEC 1 & 2 charges & September 2013 by removing AEC 3 & AEC 4 charges and to refund the amount with interest.

5. Non applicant denied applicant's case by filing reply dated 17.11.2014. It is submitted that during the billing month of August 2013 bill was generated and issued to consumer considering AEC Charges. AEC Charges are applied to H.T. Consumers in Nagpur Rural Circle as per Commercial Circular No. 209 Dt. 7.9.2013 based on the orders of Hon'ble MERC's orders in Case No. 95/13, 28/13 & 44/13. AEC is charged in the month of August 2013 as per the software provided by Corporate Office Mumbai to respective I.T. Centers. Hon'ble APTEL passed order Dt. 22.8.2014 in Appeal No. 295/14 & set aside order passed by Hon'ble MERC and matter is remanded back to State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of Electricity Act 2003 and here the matter in transparent manner and pass the final order. Consumer filed grievance application on the basis of previous order passed by Hon'ble MERC but now said order has been set aside by APTEL and the matter is remanded back to Hon'ble MERC. Naturally, after passing fresh order by Hon'ble MERC, Commercial Circular will be issued in that light and position will be changed in that scenario. In such case when the very basis of grievance of the

consumer does not survive, therefore grievance has become in fruituous and grievance application deserves to be dismissed.

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

7. 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.

8. 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.

9. However, it is pertinent to note that 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”.***

10. 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.

11. 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.

12. 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.

13. Therefore though in the authority cited supra, appellant was 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.

14. 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.

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

“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 it is specifically observed in above said authority that it is up to appellant to approach Distribution Licensee for refund of amount which has been collected earlier. This is order Dt. 11.9.2014. Therefore applicant is at liberty to file specific application to M.S.E.D.C.L. for refund of the amount on the basis of authority cited supra. There is nothing on record to show that after passing of the order by Hon'ble APTEL in Appeal No. 23/14 & 65/14 Dt. 11.9.2014, applicant filed any application for refund of the amount to M.S.E.D.C.L. Therefore after passing of the said order by APTEL the applicant did not approach to M.S.E.D.C.L. for refund of the amount nor filed any grievance application before I.G.R.C. and in such circumstances applicant can not approach to this Forum directly



for refund of the amount. Therefore now applicant has to approach first to Distribution Licensee for refund of the amount which has been collected earlier and if the said refund is not given by 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 approach directly to C.G.R.F. for refund of the amount. For these reasons, in our opinion grievance application is untenable at law and deserves to be dismissed. 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