

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

Case No. CGRF(NUZ)/300/2014

Applicant : M/s. Shiva Steel Industries (Nag)Ltd.,
Bhandara Road,
Satranjipura,
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 23.1.2015.

1. The applicant filed present grievance application before this Forum on 25.11.2014 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 is the Industrial H.T. consumer of M.S.E.D.C.L. Non applicant issued energy bill for August 2013 by adding AEC 1, AEC 2, AEC 3 & AEC 4 charges amounting

to Rs. 6,58,446/- (Rs. Six Lacs Fifty Eight Thousand Four Hundred Forty Six only) illegally. As per Commission's order in Case No. 95/13, AEC 1 & AEC 2 are to be charged from 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 December 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 from MSPGCL from MSEDCL 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 and MERC allowed it to collect from the consumers the fixed charges component billed by MSPGCL vide order in case No. 44/13.

3. MSEDCL issued Circular No. 209 Dt. 7.9.2013 based on Commission's above referred order and specified AEC & FAC without mentioning the month of applicability of these charges. Applicant paid energy bill of August 2013 under protest and submitted request letter dated 25.9.2013 to M.S.E.D.C.L. to issue corrected energy bill. M.S.E.D.C.L. issued energy bill for September 2013 adding AEC amount i.e. AEC 1, AEC 2, AEC 3, & AEC 4, total Rs. 6,42,834/- (Rs. Six Lacs Forty Two Thousand Eight Hundred Thirty Four) only, illegally. M.S.E.D.C.L. did not issue corrected energy bill for August 2013 & September 2013 till filing of grievance application and again added wrong AEC in energy bill of September 2013. Hence applicant filed grievance application to I.G.R.C. on 9.4.2014. Learned I.G.R.C. heard the matter and rejected the grievance application on 22.9.2014. Being aggrieved by the order passed by I.G.R.C. applicant approached to this Forum and claimed following reliefs :-

- 1) Direct M.S.E.D.C.L. to issue corrected energy bill for August 2013 by removing AEC 1, AEC 2, AEC 3, & AEC 4 charges & September 2013 by removing AEC 3 & AEC 4 charges.
- 2) Direct M.S.E.D.C.L. to refund AEC charges collected from the applicant from August 2013 to December 2013 along with interest.
- 3) Direct M.S.E.D.C.L. to refund excess amount paid by the applicant along with interest.

4. Non applicant denied applicant's case by filing reply Dt. 10.12.2014. It is submitted that during the billing month of August 2013, bill was generated and issued to the consumer considering AEC charges. AEC 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 MERC in Case No. 95, 28 & 44. AEC is charged in the month of August 2013 as per software provided by the Corporate Office, Mumbai to respective I.T. Centers. Hon'ble APTEL passed the order in Appeal No. 295/13 Dt. 22.8.2014. In the said order, the impugned order passed by MERC regarding AEC has been set aside and the matter is remanded to 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 and pass final order. It is made clear that they have not given any opinion on the merits nor given any stay to the present recovery of AEC neither given directions to M.S.E.D.C.L. even though it was party to the appeal. This fact shows that Hon'ble APTEL wants the matter to be decided afresh.

5. Applicant consumer filed grievance application on the basis of previous order passed by Hon'ble MERC but now the said order has been set aside by APTEL and matter is remanded to State Commission to

decide the same on merits. Naturally, after passing fresh order by Hon'ble MERC, Commercial Circular will also be issued in that light and the position will be changed in that scenario. In such case, when the very base of consumer's grievance does not survive, the grievance application has become infructuous and inoperative and deserves to be dismissed.

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

7. It is an admitted fact that on the basis of order of Hon'ble MERC Dt. 3.9.2013 in case No. 28/13, order of Hon'ble MERC Dt. 4.9.2013 in case No. 44/13 and order of Hon'ble 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. However, 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. 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 Hon'ble MERC. Therefore, now the applicant has to apply afresh to M.S.E.D.C.L. on the basis of the Judgement of Hon'ble APTEL Dt. 22.8.2014 in Appeal No. 295/13 and to request for

consideration of the matter in the light of the 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 the order passed by Hon'ble APTEL in Appeal No. 295/13 and even then if the grievance is not redressed then only applicant may approach this Forum, if the time limit, circumstances and regulations permit. In that eventuality, Forum shall decide such grievance in accordance with law. At present, present Grievance Application deserves to be dismissed.

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 Appellants to approach Distribution Licensee for refund of the amount which has been collected earlier. This order is dated 11.9.2014. It

is pertinent to note that in the case in hand, the applicant filed application to I.G.R.C. on 9.4.2014, i.e. before passing of above discussed order by Hon'ble APTEL Dt. 11.9.2014. Therefore now the 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 and change in circumstances. There is nothing on record to show that after passing of the order by Hon'ble APTEL in case No. 23/14 and 65/14 Dt. 11.9.2014, applicant filed any application for refund of amount to M.S.E.D.C.L. Therefore after passing of the said order by Hon'ble APTEL applicant did not approach M.S.E.D.C.L. for refund of amount nor filed any grievance application before I.G.R.C. as contemplated under Regulation 6.2 of the said Regulations, which is mandatory provision and under these circumstances, the applicant can not approach to this Forum directly for refund of the amount. Therefore, now the applicant has to approach first to Distribution Licensee for refund of the amount which has been collected earlier and if same amount is not refunded 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. For these reasons, grievance application deserves to be dismissed.

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. Further more, 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. In such circumstances, at this moment no relief can be granted to the applicant as prayed for.

21. For these reasons, we hold that grievance application deserves to be dismissed. Hence the following order :-

ORDER

1) Grievance application is dismissed.

Sd/-
(Anil Shrivastava)
MEMBER
SECRETARY

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN