

CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE

(Established under the section 42 (5) of the Electricity Act, 2003)

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No. / CGRF /Nashik/Nagar circle/Nagat UCR Dn./627/17-17/
(BY R.P.A.D.)

Date:

Date of Submission of the case : 18/07/2017
Date of Decision : 14/11/2017

To.

1. M/s. Ambica Waste Management Pvt. Ltd.
L-154 MIDC
Ahmwdnagar 4141111
(Con.No. 162019001482)

Complainant

2. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar

Distribution Company
(Respondent)

3. Executive Engineer (UCR)
Maharashtra State Electricity Distribution Com. Ltd.
Ahmednagar

DECISION

M/s. Ambica Waste Management Pvt. Ltd . (hereafter referred as the Complainant). Ahmednagar is the H.T. industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for refund of excess charged FAC . The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But IGRC did not take any decision for more than 2 months . Hence , the consumer has submitted representations to the Consumer Grievance Redressal Forum in Schedule "A". The representations are registered at serial No.117 Of 2017 on 18 /07/2017.

As:"But as the hearing could not be scheduled in this case, as the Forum was not functional due to posts of both the Chairperson and the Member (CPO) being vacant since June 2017. Later as per order no SE/TRC/CGRF/C-7/22650,Dt. 18.09.2017 the Member(CPO) ,CGRF, Jalgaon has been given additional charge of the Member(CPO) ,CGRF, Nashik who resumed the charge with effect from 20/09/2017."

The Forum in its meeting on 20/09/2015, decided to admit this case for hearing on 25/10/2017 at 1.30 pm in the office of the forum . A notice dated 22/09/2017 to that effect was sent to the appelland and the concerned officers of the Distribution Company. A copy of the grievance was also

forwarded with this notice to the Nodal Officer, MSEDCL, Ahmednagar Circle Office, for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. S.S. Muly, Addl.Executive Engineer, Shri. G. R. Argonda, U.D.C. represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

Our Grievance is for violation and non-implementation of Commission's directions issued in its order in case no.95 of 2013 dated 05/09/2013; 44 of 2013 dated 04/09/2013; 28 of 2013 dated 03/09/2013 and finally order in case no.95 of 2013 and M.A. 187 of 2014 dated 26/06/2015 in the matter of excess recovery due to wrongful premature billing.

Our Grievance is limited to wrongful premature billing and as per Commission's order dated 26/06/2015 and not for recovery calculation or its recovery mechanism approved by Commission for instalments.

Hon'ble Commission has issued the instruction vide order dated 26/06/2015 to refund the excess collected AEC due to premature billing. After the Commission's order, MSEDCL has duty to refund the excess collected amount due to premature billing to us. But MSEDCL has violated the Hon'ble Commission's order and not refunded the amount to us. So we have applied to MSEDCL on the basis of Commission's order dated 26/06/2015.

MSEDCL has violated the Commission's order dated 26/06/2015 and not refunded the amount. The implementation of Commission's direction is prime responsibility of MSEDCL.

The Brief facts pertaining to our representation:

1) Main Base points of Representation:

Commission has approved the levy of AEC 1 +AEC 2 from the month of Sept.2013, AEC 3 + AEC 4 from the month of Oct.2013 and Addl. FAC from Sept.2013 by order issued in the month of Sept.2013. But MSEDCL has interpreted the order and started to levy from the month of Aug.2013.

Commission has instructed vide order dated 26/06/2015 to refund amount erroneously charged to remaining consumers during August, 2013, as MSEDCL has submitted to Commission that "it had rectified the error in levy of AEC, and refunded the amount Rs.2461.22 Lakh in the billing month of Feb.2014 erroneously charged to 1198 consumers during August, 2013.

Also in this order Commission has clarified that "(18) under-recovery of the cost by MSEDCL will be dealt with in its MYT Petition in Case No.121 of 2014."

2) Regarding AEC -1 and AEC-2 charges:(Case No.95 of 2013 dated 05/09/2013)

The Commission issued suo-moto Order in Case No. 95 of 2013 on 5 September, 2013 and allowed MSEDCL to recover accumulated under recovery of Rs. 2037.78 crore occurred till the month of August, 2013 for the period of 6 months with effect from September, 2013 till the month of February, 2014 as Additional Energy Charge (AEC-1).

The Commission further allowed MSEDCL to recover monthly fix expenses of Rs. 235.39 crore from its Consumers starting from the month of September, 2013 till the further Tariff determination for MSEDCL as Additional Energy Charge (AEC-2).

(Above Commission Ruling on Page No.5 of 6 Para 22 (a)& (b)

3) Regarding AEC-3 and AEC-4 charges:(Case No.28 of 2013 dated 03/09/2013)

The Commission issued the Order in Case No. 28 of 2013 on 3 September, 2013 and allowed MSPGCL to recover the amount of Rs. 628.9 crore. (Including carrying cost) from the MSEDCL in six equal monthly instalments starting from October, 2013. The Commission further allowed the Respondent MSEDCL to recover the variation in fixed cost component of the Consumers. The Commission further said that the variation in the cost of generation is to be passed through FAC mechanism as additional energy charge (AEC-3).

The Commission in its Order dated 4 September, 2013 allowed fix charges of Rs. 596.12 crore, to be paid by Respondent MSEDCL to MSPGCL for FY 2012-13 in six equal monthly instalments from October, 2013 onwards as additional energy charge (AEC-4).

(Above Commission Ruling on Page No. 48-49 of 50 Summary of Findings (v) & (x))

4) Regarding Addl. FAC charges:(Case no.44 of 2013 dated 04/09/2013)

The Commission vide its order in case no.44 of 2013 dated 04/09/2013, observed that MSPGCL has capitalised the amount of fuel cost less revenue, on account of infirm generation of power. However, as fuel cost is a revenue expense, whether incurred during infirm generation or firm generation, the same needs to be recovered directly for the power supplied during the period instead of capitalising it as a part of Capital Cost. Accordingly, MERC has allowed MSPGCL to recover the under recovered fuel cost, i.e. Rs. 28.05 Crore for infirm power supplied to MSEDCL in three monthly instalments after issue of this order and MSEDCL can recover this cost through FAC mechanism.

(Above Commission Ruling on page No.110 of 114 Summary of Findings (iv))

We have raised following relief in our earlier case No.71 of 2017:

“Verify the claim of consumer as per Commission’s order dated 26/06/2015 and refund the excess charged –

AEC 1+AEC 2 Wrongly collected for the billing month of August, 2013.

AEC3 + AEC4 Wrongly collected for the billing month of August & September, 2013

Addl. FAC Wrongly collected for the billing month of August & December, 2013

with interest as per EA 2003 Section 62 (6), if not refunded earlier.”

All points have discussed and but Forum has not given order for AEC 3 + AEC 4 and addl. FAC point. So, we are submitted the fresh grievance to give the order for the balance point. The same matter is dealt with the Case No.19 of 2017 in the matter of Ceat Ltd and given the order for refund the same.

You are kindly requested allow the following with interest as per Section 62(6) of EA 2003 as MSEDCL has fully responsible for excess collection of amount as interpreted the tariff orders and excess charged to consumer and after Commission’s order date 26/06/2015 not refunded the premature recovery of amount:

AEC3 + AEC4 Wrongly collected for the billing month of August & September, 2013

Addl. FAC Wrongly collected for the billing month of August & December, 2013

Hon'ble Supreme Court in Civil Appeal No.2451 of 2007 in the matter of M/S. NTPC Ltd vs M.P. State Electricity Board & ... decided on 29 September, 2011 in the matter of Section 62(6) held that:

"62 (6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

The words 'tariff determined under this section' indicate that the prohibition from charging excess price is dependent on the determination of the price under the preceding five sub-sections. It is only when a licensee or generating company deliberately recovers or extracts from a person a price or charge in excess of the price determined under section 62 (6), that such person can claim the excess price or charge paid by him along with interest. **The tariff charged exceeds the tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall pay interest at the Bank Rate, computed on monthly basis, on the excess amount so charged, from the date of payment of such excess amount and up to the date of adjustment.**

MERC has decided the tariff for transmission, wheeling and retail sale of electricity as per section 62(1). If MSEDCL has recovered excess amount of the tariff decided by MERC what so any reason, MSEDCL has duty to refund the excess collected amount from the date of deposit to till date of refund with interest as per Bank rate as mandate by the EA 2003 Section 62(6).

MERC has decided the tariff for transmission, wheeling and retail sale of electricity as per section 62(1). If MSEDCL has recovered excess amount of the tariff decided by MERC, MSEDCL has duty to refund the excess collected amount from the date of deposit to till date of refund with interest as per Bank rate as mandate by the EA 2003 Section 62(6).

In this section there is no limitation has given that after application interest to be allowed.

For this Section 62(6), we are submitting the recent High Court order in WP No.3997 of 2016 in the matter of MSEDCL v/s Shilpa Steel decided on 18/07/2017

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 24/10/2017 from the Nodal Officer, MSEDCL, Ahmednagar Circle Office and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

- 1) Present grievance filed by the consumer is in respect of the same subject matter which is already decided by Hon'ble CGRF vide its Order No 609/84-17/115 dt. 16.05.2017 of Hon'ble CGRF, Nahik in the matter of Refund of AEC (AEC-1 to AEC-4) & Addl. FAC of Ambika Waste Mgt. Pvt. Ltd.
- 2) Original intimation of the grievance to the Circle Office was given on 21.01.2017 & also complaint in Form 'X' was submitted to IGRC, wherein consumer was seeking to claim Refund of AEC-1, AEC-2, AEC-3 & AEC-4. Thereafter grievance was carried to Hon'ble CGRF on 21.03.2017 & consumer filed grievance in Form Schedule 'A' with elaborate details &

specifically claimed refund of AEC-1, AEC-2, AEC-3 & AEC-4 alleging that said charges were prematurely recovered by MSEDCL.

- 3) Respondent office filed its detailed reply to the grievance on 18.04.2017 specifically pointing out that, only five out of six installments on account of AEC are recovered from consumer & there is absolutely no over recovery of AEC-1, AEC-2, AEC-3 & AEC-4. Hon'ble CGRF after hearing both the sides decided the issue of AEC-1, AEC-2, AEC-3 & AEC-4 & even granted relief to the consumer & has Ordered to refund AEC & Addl. FAC levied for the bill month of August 2013. Kind attention of Hon'ble Forum is invited to the detailed Order No 609/84-17/115 dt. 16.05.2017 of Hon'ble CGRF, under heading "Observation of Forum" at Para 14 in table Hon'ble Forum has observed that for Bill Month Aug 2013 AEC Recovered (AEC-1, AEC-2, AEC-3 & AEC-4) is of Rs. 4403835.97 & in remarks it is observed that said recovery is extra. Further in same table against Bill Month September 2013 AEC Recovered (AEC-1, AEC-2, AEC-3 & AEC-4) is of Rs 4139058.00 observation of Hon'ble Forum in Remarks is " Recovery as per rule". In light of this observations Hon'ble Forum has concluded that, AEC for Bill month August 2013 needs to be refunded.
- 4) Although issue of refund of AEC-1, AEC-2, AEC-3 & AEC-4 is decided by Hon'ble Forum. It appears that, consumer has again filed the grievance on 14.07.2017 to the Hon'ble CGRF. Schedule A of present grievance at clause No 5 shows that, consumer is seeking refund of AEC-3 & AEC-4 alleging that charges are prematurely recovered by MSEDCL. In this context kind attention is invited to detailed grievance submitted on 21.03.2017 wherein consumer has claimed same relief i.e. refund of AEC-3 & AEC-4. Needless to state that, consumer is not claiming any new relief; Hon'ble CGRF has decided issue of AEC (AEC-1, AEC-2, AEC-3 & AEC-4), particularly for bill month September 2013 Hon'ble CGRF has categorically observed that recovery of AEC-1, AEC-2, AEC-3 & AEC-4 is as per rule. Thus, no more relief 'if any' could be granted in the present matter.
- 5) It would not be out of place to bring to the kind notice of Hon'ble Forum that, MSEDCL has challenged the Order No 609/84-17/115 dt. 16.05.2017 of Hon'ble CGRF before Hon'ble High Court by filing WPST No 2352 of 2017. Order of CGRF directing refund of AEC for bill month August 2013 was nothing but 'unjust enrichment' to the consumer at the cost of the other consumer, since only five out of six installments of AEC were only recovered from the consumer & Order was directing refund of again one installment. Either early/premature OR at last month it is fact that five installments on account of AEC are to be recovered from the all consumer. In that view of the matter impugned Order directing refund of again one installment is challenged by the Respondent Office & matter is within consideration of Hon'ble High Court.
- 6) Present grievance is filed substantially & squarely on same lines as that of earlier grievance & claiming same relief, which is in all respect including AEC-3 & AEC-4 is decided by Hon'ble Forum in previous proceedings. Present grievance is filed with an ulterior motive of creating multiplicity of litigation. In view of the express bar created by Regulation 6.7 (C) of CGRF & EO Regulations 2006 grievance of the consumer is not maintainable & deserves to be dismissed with heavy costs.

Action by IGRC :

- 1 The complainant has submitted grievance to the Internal Grievance Redressal Cell Ahmednagar Circle on 21/01/2017 .
- 2 But the IGRC has not taken any action for more than 2 months.

Observations by the Forum:

Regarding Refund of AEC and Additional FAC

1. After the issuance of tariff order for MSEDCL on 16th August 2012, the MERC has passed orders in relation to the matters of tariff of MSPGCL and intra-state transmission system. The MERC directed vide Order Dt. 05/09/2013 in case No. 95 of 2013, MSEDCL to recover Additional Charges -a) AEC-I Rs. 2037.78 Crs. in 6 equal instalments & b) AEC -2 Rs. 235.39 Crs. On monthly basis till issue of MYT Tariff Order from the consumers, in the form of Additional Energy Charges.
2. MERC had approved the Capital Cost and determined the tariff for Paras Unit# 4 and Parli Unit# 7 for FY 2010-11 .MERC vide order dated 03/09/2013 in Case No. 28 of 2013, has also allowed MSPGCL to recover the total amount of Rs. 628.90 Crs (including carrying cost) on account of impact of Hon'ble ATE Judgment in Appeal No. 47 of 2012 from MSEDCL in 6 equal monthly instalments. The Fixed Charges is to be recovered through AEC 3. MERC has determined the Capital Cost and Tariff of Khaperkheda Unit # 5 for FY 2012-13 vide its order dated 4th September 2013 in Case no. 44 of 2013. The Fixed Charges are to be recovered through AEC 4.
3. All the above Additional Energy Charges (Le AEC 1 to 4) were included and combined under the single head i.e. AEC which is indicated on the energy bill.
4. MERC in the order dated 04/09/2013 in Case No 44 of 2013 has also allowed MSEDCL to recover the Additional Fuel Adjustment Cost (FAC) . The relevant paras are as under:

4.4.34 The Commission observes that MSPGCL has capitalised the amount of fuel costs less revenue, on account of infirm generation of power. However, as fuel cost is a revenue expense, whether incurred during infirm generation or firm generation, the Commission is of the view that the same needs to be recovered directly for the power supplied during the period instead of capitalising it as a part of Capital Cost. As these expenses have been incurred prior to the COD, the Commission has considered the same as a part of capital cost for the purpose of computation of IDC. However, the Commission has not considered fuel expenses as part of Capital Cost for computing the tariff and the Commission hereby allows MSPGCL to recover the under-recovered fuel cost, i.e., Rs. 28.05 Crore for infirm power supplied to MSEDCL in three monthly instalments after the issue of this Order and MSEDCL can recover this amount through Fuel Adjustment Cost (FAC) mechanism.

.....
Summary of Findings:

.....
xix) As the variation in cost of generation is ultimately to be passed on to consumers, the Commission hereby allows MSEDCL to recover the variation in energy charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers through the FAC mechanism. Similarly, the Commission allows MSEDCL to recover the variation in fixed charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers in proportion to Average Billing Rate of respective consumer categories, under intimation to the Commission.

5. Accordingly the Distribution Company issued Commercial Circular No.209 dated 07/9/2013 and raised demand for the **AEC** and **Additional FAC** from the Electricity Bill of month of August, 2013.
6. However, the MERC order dated 05/09/2013 in case No. 95 of 2013 was challenged with the Appellate Tribunal of Electricity (ATE) . The ATE by order dated 22.8.2014 directed as under:
"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."

7 The matter was remanded to MERC for decision once again. Accordingly the MERC has followed the procedure as laid down in Section 64 of the Electricity Act and recorded following observations as per order dated 26th June 2015 :

".....the issue of over-recovery in terms of difference in time period of recovery considered by MSEDCL and that approved by the Commission had come up before the Commission in 19 identical Petitions filed by various consumers. In these Petitions, it was submitted that, on the basis of the Order in Case No. 95 of 2013, MSEDCL should have started levying AEC only from the month of September, 2013. However, MSEDCL started recovery from August, 2013 itself, thereby violating the Commission's directives under that Order. During the proceedings of those Cases, MSEDCL submitted that it had rectified the error in levy of AEC, and refunded the amount erroneously charged to consumers during August, 2013 in the billing month of February, 2014. That has been reflected in the Commission's Orders dated 27 March, 2014 on those Petitions. However, during the present proceedings, Shri Sanjay Gupta, Ashok Hotel, Nagpur has raised the matter of refund of the excess amount recovered by MSEDCL due to early billing. Therefore, the Commission directs MSEDCL to review the refunds made by it so far on account of wrongful premature billing, and to make any remaining refunds due to consumers in the next billing cycle."

The Hon'ble Commission has finally directed the Distribution Company as under:

17. 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.

8 The Commission has allowed AEC recovery from the month of September, 2013 but as represented by the complainant the recovery was made from the month of August, 2013. Similarly Commission has allowed recovery of Additional FAC from the month of September, 2013 for the period of three months. But MSEDCL has billed Additional FAC to the complainant for five months from August, 2013 up to December, 2013 instead of three months from September, 2013 up to November, 2013.

9 M/s Paul Strips and Tubes Pvt. Ltd has filed a petition for non-compliance of Commission's Order dated 26 June, 2015 regarding levy of Additional Energy Charge (AEC). In the Daily order dated 15/11/2016, the Hon'ble Commission has directed MSEDCL to take a review of the refunds made by it on account of premature billing of AEC and to make any remaining refund to consumers in the next billing cycle. In the said order, the Commission directed MSEDCL to submit details as follows:

- i. Total number of consumers from whom AEC is recovered for August, 2013 and the relevant period in September, 2013.
- ii. Out of (i) above how many of them have been refunded the amount that was prematurely recovered.
- iii. Reasons for not refunding to balance consumers, if any.

10. As per recent decision passed by Hon'ble Commission on the petition filed by M/S Paul Strips and Tubes (P) Ltd (case no 78 of 2016) as mentioned in observation by the Forum which states that If MSEDCL has recovered AEC in 6 installments on the electricity consumption of August 2013 to January 2014, it needs to refund the AEC collected on the August 2013 consumption and recover the AEC for the consumption of February 2014.

11 The MERC orders are clear and the complainant is entitled to the refund of the amount of AEC recovered in August 2013 (***which was a wrongful premature billing***) along with the interest on the said amount as per the provisions of Section 62 (6) of the Electricity Act, 2003. Similarly the Additional FAC should be billed for September, 2013 up to November, 2013 and excess recovered for August, 2013 up to December, 2013 should be refunded with the interest on the said amount as per the provisions of Section 62 (6) of the Electricity Act, 2003.

After considering the representation submitted by the consumer alongwith previous judgments of this forum in the same line in r/o M/S CEAT LTD. V/S MSEDCL, the facts and issues which resembles with present case hence with the consideration of said judgments , comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should refund whatever, excess AEC-3 + AEC-4 for the billing month Aug. 13 & Sept.13 excluding the refund if already given as per CGRF's decision given previously on 16.05.2017. .
2. The Distribution Company should also refund the additional FAC charged in the billing month Aug 2013 and Dec 2013 excluding the refund if already given as per CGRF's decision given previously on 16.05.2017. .
3. All these refunds should be adjusted in the ensuing bill after the date of this order , and the amounts should be refunded along with the interest till the date of refund as per the provisions of Section 62 (6) of the Electricity Act, 2003.
4. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
5. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
6. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Chandrakant M. Yeshirao)

Member

(Prasad P. Bicchal)

Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex. Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Circle office,Ahmednagar .

