

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.29/2016

Date of Grievance : 25.07.2016

Date of Order : 19.09.2016

In the matter of refund of Additional Energy Charges (AEC-1 to AEC-4) & Additional FAC.

M/s. Shriniwas Engg.
Auto Comp.Pvt.Ltd.,
Village Navalakh Umbre,
Tal.Maval, Pune-410507
(HT Consumer No.181029042400)

Complainant

(Hereinafter referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L.,
Pune Rural Circle,
Pune.

Respondent

(Hereinafter referred to as Licensee)

Quorum

Chairperson	Mr. S.N.Shelke
Member Secretary	Smt.B.S.Savant
Member	Mr. S.S.Pathak

Appearance

For Consumer	Mr.B.R.Mantri (Representatives)
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For Respondent	Mr.D.N.Bhole,E.E., PRC, Pune Mr.S.J.Patil, Dy.Manager, (F&A) PRC
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1. The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.

2. Being aggrieved and dissatisfied by the order dated 19th May - 2016 passed by IGRC Pune Rural Circle, thereby rejecting the grievance, the consumer above named prefers present grievance application on the following amongst other grounds.
3. The papers containing the above grievance were sent by the Forum to the Superintending Engineer, M.S.E.D.C.L., PRC, Pune vide letter no. EE/CGRF/PZ/Notice/29 of 2016/169 dtd.28.07.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 16.08.2016.
4. We heard both sides at length and gone through the contentions of the consumer and reply of the licensee and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) M/s. Shriniwas Engg. Auto Components Pvt.Ltd.is an HT consumer having consumer no. 181029042400 at Navlakh Umbre, Tal. Maval & its sanctioned load is 14.625 MW /24 MVA on 22KV Line.
 - ii) The consumer applied to the Superintending Engineer, PRC, Pune for refund of Additional Energy Charges (AEC) and additional FAC charges on 28.3.16 i.e. refund of AEC-1 & AEC-2 for the month of Aug.2013 , refund of AEC-3 & AEC-4 for the month of Aug.2013 & Sept.2013 & refund of Additional FAC charges for the month of Aug.2013 & Dec.2013.
 - iii) The Maharashtra Electricity Regulatory Commission (*the Commission*) in order dated 5th September, 2013 in Case No. 95 of 2013 has allowed the Respondent MSEDCL to recover the accumulated recovery of Rs. 2037.78 Crores within the period of six months from September 2013 as Additional Energy Charge (AEC-1).
 - iv) The Commission also allowed recovery of Rs. 235.39 Crores from September 2013 (AEC-2).
 - v) In the order dated 3rd September, 2013 in Case No. 28 of 2013, the Commission allowed MSEDCL to recover Rs. 628.09 Crores in six equal monthly installments from October 2013 (AEC-3).

- vi) The Commission, by order dated 4th September, 2013 allowed to recover Rs. 596.12 Crores in six monthly installments from October 2013 (AEC- 4).
- vii) The Commission vide its order dated 4.9.2013 in Case No.44 of 2013 allowed MSEDCL to recover cost of additional FAC through FAC mechanism.
- viii) The Commission in its order dated 26th June 2015 in Case No.95 of 2013 & M.A.No.187 of 2014 had directed MSEDCL to review the refund made by it on account of wrongful premature billing & refund the amount due to the consumers in the next billing cycle.
- ix) The MSEDCL has charged AEC-1 to AEC-2 from the billing period 31st July 2013 however Commission allowed the recovery from the month of Sept.2013.
- x) The MSEDCL has charged AEC-3 to AEC-4 from the billing period 31st July 2013 however Commission allowed the recovery from the month of Oct.2013.
- xi) The MSEDCL has rectified the levy of AEC & Additional FAC & its refunded in back the amount which was erroneously charged to the consumer in the billing month of Feb.14 & also the commission has approved the recovery mechanism of AEC.
- xii) The Licensee issued Commercial Circular No.209 dated 7.9.2013 & raised demand for the AEC & Additional FAC from the Electricity bill of Aug.2013. The order passed by MERC dated 5.9.2013 in Case No.95 of 2013 was challenged before the applet tribunal of Electricity (APTEL). The APTEL vide its order dated 22.8.2014 remanded the matter to MERC for decision afresh. Accordingly the MERC followed the procedure as laid down in Section 64 of the Electricity Act, 2003 & passed order dated 26th June 2015 directing the Licensee to review the refunds made by it so far on account of wrongful premature billing, & to make any remaining refunds due to consumers in the next billing cycle.

5. The consumer representative Mr. Mantri submitted that the consumer has grievance in respect of AEC & Additional FAC. He submits that 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. Similarly the Commission has approved Addl.FAC from Sept.2013 vide order issued in the month of Sept.2013. He further submits that the Licensee wrongly interpreted the said order and started to levy from the month of Aug.2013. The Commission has instructed vide its order dated 26.6.2015 to refund amount erroneously charged to remaining consumers during Aug.2013 since the MSEDCL has submitted to Commission that," It had rectified the error of levy of AEC & refunded the amount of Rs.2461.22 Lakhs in the billing month of Feb.2014, erroneously charged 1198 consumers during Aug.2013. The MSEDCL also clarified that,"under-recovery of the cost bty MSEDCL will be dealt with in its MYT Petition in Case No.121 of 2014."
6. Mr.Mantri, further submitted that AEC is the part of Tariff and Tariff is being determined by the MERC. The methodology of AEC calculation and recovery thereof has to be approved from the Commission in the order. Without change in Order or without approval/sanction of MERC, the AEC methodology could not be changed or altered. MSEDCL has changed levy of AEC recovery methodology for charging for earlier period consumption i.e. from the month of Aug.2013 instead of Sept.2013 thereby violating the principles of Commission's directions. AEC has wrongly charged due to interpretation of work "From the month" and this has clarified by the Commission vide order dated 26.06.2014 and instructed to make any remaining refunds on account of wrongful premature billing in next billing cycle.
7. He further submitted that, Electricity Ombudsman, Nagpur has given orders for refund in more than 50 orders on the account of premature recovery of AEC 3 +AEC 4. The same principle has to be followed for AEC 1+ AEC 2 and Addl.FAC also. Mr.Mantri submits that they have not received the amount of refund as mentioned above. Moreover the Licensee has denied to refund the

said amount to the consumer. As per Electricity Act, while fixing charges, a distribution Licensee shall not show undue preference to any person or class of persons for discrimination against any person or class of persons. He further submits that as per Supreme Court's order in the case of Badri Kedar Paper Pvt. Ltd. (Civil Appeal No.7433 of 2008 decided on 19.12.2008, nobody has power to change the Commission's orders for methodology of AEC calculation & recovery schedule approved. If not agreed, consumer and Licensee can apply for review or file appeal against the order to APTEL.

8. Mr.Mantri further submits that the Licensee (MSEDCL) has not taken any permission from Commission for charging of AEC 1,2,3 & 4 under one head and recovery from the month of Aug.2013 instead of Sept.2013. Moreover the Commission has never approved the request of the Licensee in the same matter or not revised its original orders.
9. Mr.Mantri makes it clear that consumer's representation is only for premature billing & as per Commission's order dated 26.6.2015 & not in respect of recovery calculation or its recovery mechanism as approved by the Commission. He submits that the Licensee has not raised any contentions on the said grievance of the consumer, has not submitted para wise reply on the grievance but only made submission to reject the grievance as per Regulation No.6.6 of MERC CGRF Regulations. However the said grievance is submitted within limitations & Hon'ble Electricity Ombudsman (M) in Representation No.23 of 2016 vide order dated 13th May 2016 has held that the cause of action for submitting the grievance to the Forum arises when IGRC does not redress the grievance.
10. Mr.Mantri submits that the consumer raised present grievance as per MERC order dated 26.6.2015 in Case No.95 of 2013 & claims refund of AEC & additional FAC. Therefore the said grievance is within limitation. Mr.Mantri lastly submits the Licensee to be directed to refund wrongly collected AEC & Additional FAC with interest.
11. On the other hand Mr.D.N.Bhole, E.E., PRC submitted on behalf of the Licensee as per Regulation No.6.6 of MERC CGRF Regulations, 2006, the

Forum shall not admit any grievance unless it is filed within two years from the date on which the cause of action arisen. He pointed out that the IGRC has rejected the grievance of the consumer on the said point & the order passed by IGRC dated 19.5.2016 is proper & correct.

12. It is pertinent to mention that the Forum had called upon the Licensee to file parawise submissions, providing issue wise comments submitting status/reports & documents in support of its defenses vide notice dated 28.7.2016 sending to Superintending Engineer, MSEDCL, PRC. However the Licensee in its reply dated 12th Aug.2016 submitted a short reply contending that the consumer has applied for refund of AEC vide letter dated 1.4.2015 & the said claim is for the period of Aug.2013 to Jan.2014. Therefore IGRC rejected the grievance of the consumer vide order dated 19.5.2016 & the order passed by IGRC is proper & correct. Therefore it is clear that the Licensee did not give detail reply to the grievance of the consumer. The Licensee is silent as to refund of AEC & Additional FAC charges as demanded by the consumer.
13. The MERC vide order dated 5.9.2013 in Case No.95 of 2013 directed the Licensee to recover additional charges i.e. AEC - 1 Rs.2037.78 Crores in six installments & AEC-2 Rs.235.39 Crores on monthly basis till issue of MYT tariff order from the consumers in the form of additional energy charges. The MERC further allowed the Licensee to recover the monthly fixed expenses of Rs.235.39 Crores from its consumer starting from the month of Sept.2013 till the further tariff determination for MSEDCL as AEC-2. The Commission issued the order dated 3rd Sept.2013 in Case No.28 of 2013 & allowed MSPGCL to recover the amount of Rs.628.09 Crores (including carrying cost) from the MSEDCL in six installments starting from Oct.2013. The Commission further allowed the MSEDCL to recover the variation in fixed cost component of the consumer's. 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 4th Sept.2013 allowed fixed charges of Rs.596.12 Crores to be paid by

MSEDCL to MSPGCL for FY 2012-13 in six monthly installments from Oct.-2013 onwards as AEC-4. Similarly the Commission vide order dated 4.9.2013 in case no.44 of 2013 allowed MSEDCL to recover fuel cost i.e. Rs 28.05 Crores for infirm power supplied to MSEDCL by MSPGCL in three monthly installments through FAC mechanism. The MERC vide order dated 26.6.2015 in case no.95 of 2013 & MA No.197 of 2014 directed MSEDCL to review the refunds made by it so far on account of wrongful premature billing, and to make any remaining refunds due to consumer's in the next billing cycle.

14. Therefore it is seen from the representation of the consumer that though the Commission has allowed AEC recovery from the month of Sept.2013, the Licensee made recovery from the month of Aug.2013. Similarly, the Commission has allowed recovery of additional FAC from the month Sept.2013 for the period of three months but the MSEDCL has billed additional FAC to the consumer for five month i.e. from Aug.2013 to Dec.2013 instead of three months from Sept.2013 upto Nov.-2013. Therefore it is clear that the Licensee has wrongly collected the AEC & additional FAC before the usual or proper time. Therefore the consumer is entitled to get amount premature recover & excess collected along with interest as per the provisions of Section 62 (6) of Electricity Act, 2003.
15. The IGRC rejected the grievance of the consumer under Regulation No.6.6 of MERC CGRF Regulations 2006 since it is not filed within the period of 2 years from the date of cause of action. However in the present case the cause of action has arisen on 26.6.2015 as MERC directed the Licensee to review the refunds so far made on account of wrongful premature billing and to make any remaining refunds due to the consumers in the next billing cycle. Therefore we found that the grievance of the consumer is well within limitation.
16. For the reasons stated above grievance of the consumer is liable to be allowed. Hence we pass following order.

ORDER

1. Grievance of the consumer is allowed with cost.
2. The Licensee to refund the amount of AEC recovered in the month of Aug.2013 & amount of additional FAC should have been billed for Sept.2013 to Nov.2013 but recovered it for Aug.2013 to Dec.2013. Hence the excess amount be refunded to the consumer along with interest as per provisions of Section 62(6) of the Electricity Act, 2003.
3. The Licensee to report compliance within one month from the receipt of this order.

Delivered on: - 19.09.2016

Sd/-

S.S.Pathak
Member
CGRF:PZ:PUNE

Sd/-

B.S.Savant
Member/Secretary
CGRF:PZ:PUNE

Sd/-

S.N.Shelke
Chairperson
CGRF:PZ:PUNE

Note :- The consumer if not satisfied may filed representation against this order before the Hon.' ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg.,
Bandra Kurla Complex,
Bandra (E), Mumbai-51.