



Consumer Grievance Redressal Forum, Kalyan Zone

Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301

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No. K/E/1312/1556 of 2017-18

Date of Grievance : 07/04/2018

Date of order : 03/05/2018

Total days : 26

IN THE MATTER CASE OF GRIEVANCE NO. K/E/1312/1556 of 2017-18 IN RESPECT OF SHREE VAISHNAV ALLOYS PVT.LTD., GUT NO.8 & 78 OFF BHARAT FERTILIZER RD., VILLAGE KHAREWALI, WADA, DIST – PALGHAR, PIN CODE-421 303. REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING FAC.

Shree Vaishnav Alloys Pvt.Ltd.,
Gut No.8 & 78 Off Bharat Fertilizer Rd.,
Village Kharewali, Wada, Dist – Palghar,
Pin Code-421 303

(Consumer No. 010519025390) (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited

Through its Nodal Officer,

MSEDCL, Vasai Circle, (Hereinafter referred as Licensee)

Appearance: - For Licensee : Smt.R.S.Desai, Dy.Manager (F & A), Vasai circle

For Consumer : Shri. Vasant Vaze (C.R))

[Coram- Shri. A.M.Garde-Chirperson, Shri. A.P. Deshmukh-Member Secretary]

1) Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressed Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005]. Hereinafter referred as 'Supply Code' for the sake of brevity.

Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.

2) After receipt of this grievance, entire case papers were forwarded to Nodal Officer vide letter no.EE/CGRF/Kalyan/135 dt.09/04/2018. Hearing was schedule on 18/04/2018 at 14:00 hrs.

3) Short issue involved in this case is whether the Licensee –
MSEDCL has not charged and recovered FAC strictly as per the post facto approval of Commission for period of Dec-2013, Feb-2014, Mar-2014, May-2014, Jun-2014, Sept-2014, Nov-2014 & Dec-2014.

4) Hence we would like to elaborate Observations as under:

a) The Hon'ble Commission has issued post facto approvals for FAC to be charged by the MSEDCL as per letters below.

Letter No.	Dated	Billing Months of :
01540	18 th Dec 2014	Oct 2013 to December 2013
01469	11 th Feb 2016	Jan 2014 to June 2014
01481	16 th Feb 2016	July 2014 to December 2014

b) According to these letters the FAC approved by the Hon'ble Commission for HT industrial consumers is as under:

Billing Month		FAC approved by the MERC HT I C	FAC approved by the MERC HT I N
December	2013	-28.06	-22.46
January	2014	0	0
February	2014	0	0
March	2014	4.74	4.28
April	2014	17.11	16.41
May	2014	3.64	3.36
June	2014	14.77	13.62
July	2014	38.98	34.92
August	2014	13.01	11.18
September	2014	36.64	32.93
October	2014	60.43	55.05
November	2014	21.22	20.19
December	2014	51.92	42.59

It is prayed that the said bills for the said period be revised accordingly.

4] IGRC has rejected the claim on limitation point. As far as limitation is concerned the MERC has given post facto approval for FAC in month of Feb'16 for the period of Jan'14 to Dec'14 and for the period of Dec'2013 the approval had come on 18.12.2014. Hence the point of limitation has to be considered. As the Consumer has filed his grievance application before CGRF on 07/04/2018 i.e. beyond 2 years.

On behalf of the Consumer it was submitted that bar of limitation does not apply to CGRF proceeding. Also some judgments of the Hon'ble High Court and ombudsman were relied on. Licensee also relied on the judgment of ombudsman. In the case of M/s Hindustan Petroleum Corp. Ltd. Vs. MSEDCL (W.P.no.9455 of 2011) it has been held by the Hon'ble Bombay High Court, that the period of limitation of 2 years as given in 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 starts running from the date of decision of the IGRC. This judgment of the Hon'ble High Court would entitle a Consumer to file a grievance before the IGRC any time whatever be the date when his right under the law was in fringed. He would move the IGRC even after 10 years, 20 years and then after IGRC's decision he would file grievance before the Forum within two years there from. In the above background of the decision one has to see the provision of 6.6 of MERC (CGRF & ombudsman) Regulation 2006. which may be reproduced for advantage as below.

"6.6 The forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."

Nowhere the provision even whispers about IGRC and its decision. No doubt there in a provision in the MERC Regulation to move to the IGRC which is an internal grievance mechanism of the MSEDCL itself. There is no limitation period prescribed for moving IGRC. It is however expected that a Consumer moves IGRC immediately or at the earliest.

The Hon'ble Bombay High Court in the case of M/s Sarolkar (W.P. 1650 of 2012) has dealt with the above question. The case of M/s Hindustan Petroleum (W.P.9455 of 2011) was also cited and referred. It was held that period of limitation of two years has to start from the date when cause of action arose and not after the IGRC decision. Consumer has to move IGRC immediately or within a reasonable time. It is for IGRC to give its decision within two months. Consumer may wait for two months for the IGRC decision but has to file grievance before the forum within two years from the date of cause of action.

There is also an order of the electrical ombudsman Mumbai in case no. 125 of 2016 in which a similar claim of the consumer on identical facts there in was rejected.

The issue limitation was very differently viewed by Ombudsman in Representation no.65 of 2006. Therein there was excess recovery in contravention of MERC Tariff order. The relevant paras may be reproduced herein below.

. (18) As is observed above, it is mandatory for the Respondent to implement the Commission's Order and the tariff order and to do whatever is required to be done in terms of the above. In no case, Respondent is expected to wait for any consumer to approach it, before it acts in terms of these orders. There may be several consumers who may be entitled for such refund. It is the Respondent's liability/responsibility to work out and refund the excess amount so collected without waiting for any consumer to raise the grievance. By the same logic, the present consumer was not at all required to approach the Respondent and raise a grievance seeking refund of excess collected amount when there exist the tariff order as well as the Commission's Order in this behalf. He cannot be, therefore, be penalized by way of losing his refund amount to which he is fully entitled under the Tariff Order and the Commission's Order for approaching either the IGR Cell or the Forum.

. (23) Let us look at the issue from another angle. What would have been the fate of the refund which the Appellant is lawfully entitled, had he not approached the Cell or the Forum at all? This has to be answered in affirmative in view of the provisions of the tariff order and the Commission's order. Nothing can disentitle the consumer of his claim for refund with the interest, including the Appellant's action of approaching the Cell or the Forum for redress. It would be not only unfair but also ridiculous, as all other consumers who do not approach the Forum for redress, are still entitled for refund. Moreover, the action of the Respondent in not refunding the excess amount may amount to non-compliance of directions of the Appropriate Commission under Section 142 of the Electricity Act, 2003 and with the consequences stipulated therein. Further, application of Regulation 6.6 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, holding the cause of occurrence of grievance as 1st December, 2003, would adversely affect implementation of the tariff order as well as the Commission's order, apart from the fact that such an interpretation would neither be logical nor in the interest of the consumer. To sum up, the Appellant is entitled to get refund of excess amounts recovered with interest with effect from 1st December, 2003. The Forum's order to this extent is therefore liable to be and is hereby modified.

There are two opposite views on the point of limitation given by the Hon'ble Ombudsman in the above cases. However case no. 125 of 2016 is on facts identical to the present case in which the consumers claim was denied being beyond the period of two years in view of Regulation 6.6. This judgment of the Hon'ble Ombudsman in case no. 125 of 2016

concur with the judgment of the Bombay High Court in M/s Sarolkar's case. We are of the view that the principle laid down in M/s Sarolkar's case & the Ombudsman in case no. 125 of 2016 will bind this forum with greater force.

As such the claim of the Consumer is barred by limitation as per Regulation 6.6 mentioned above.

5) The grievance was kept reserved for order, during the pendency additional rejoinder received from Consumer by mail on 23/04/2016. The points raised in the rejoinder were already discussed in the order hence the rejoinder is not taken on records.

Hence the order.

ORDER

Grievance application of consumer is hereby rejected.

Date: 03/05/2018

(A.P.Deshmukh)
Member Secretary
CGRF, Kalyan.

(A.M.Garde)
Chairperson
CGRF, Kalyan.

NOTE :-

a) *The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.*

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

b) *Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or*

c) *delay in compliance of this decision issued under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003" at the following address:-*

"Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05"

d) *It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.*

