

**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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Consumer Grievance Redressal Forum
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**No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./553/29-2016-17/ Date: : 02/11/2016
(BY R.P.A.D.)**

**In the Matter of
Excess Collected FAC From The Billing Month Of Dec. 2013 To Dec. 2014**

**Date of Submission of the case : 06/09/2016
Date of Decision : 02/11/2016**

To.

- 1 M/s.Paris Ispat Pvt. Ltd.,
S.R.No. 151, Plot No. 1 to 8 ,
At post Velhale Tq. Sangamner ,
Dist. Ahmednagar 422605
(Con.No. 155709005810) Complainant
- 2 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar Distribution Company
- 3 Executive Engineer,
Maharashtra State Electricity Distribution Com. Ltd.
Sangamner Divn. Office
Dist. Ahmednagar.

DECISION

M/s. Paris Ispat Pvt. Ltd. . (hereafter referred as the Complainant). Sangamner is the 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 collected FAC from the billing month of Dec. 2013 to Dec. 2014. The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But not satisfied with the decision of the Respondent , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.151 of 2016 on 06 /09/2016.

The Forum in its meeting on 14/09/2016, decided to admit this case for hearing on 27/09/2016 at 1.00 Pm in the office of the forum . A notice dated 15/09/2016 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. J.S.Chavan , Nodal Officer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

1. It is noticed that MSEDCL has not charged FAC as per MERC post facto approval given as per billing month.
2. FAC is the part of Tariff and Tariff is being determined by the MERC. The methodology of FAC calculation and recovery thereof has to be approved from the Commission in the tariff order. Without change in Tariff Order or without approval /sanction of MERC, the FAC methodology could not be changed or altered. MSEDCL has changed levy of FAC methodology with gap of three months to two months from the billing month of Dec. 2013. FAC has wrongly charged due to interpretation of word "In the billing month and to be billed month".
3. Commission has given post facto approval for charging of FAC for the respective billing month wide order dated 18/12/2014; 11/02/2016 and 16/02/2016.

Demand of the Consumer:

As per Commission post facto approval, MSEDCL should rework the calculation of FAC from the billing month of Dec.13 to Dec.14, and refund the excess collected amount with interest @9% p.a. from the date of deposit to till date of refund.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 26/09/2016 from the Nodal Officer Ahmednagar Circle. MSEDCL, and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

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- 2- dyyh oht vkdkj.kh gh fu; eki ek.ks vkgs
- 3- l njgq oht xkgdkps ek- mPp U; k; ky;] vj&ckckn ; Eks fjV ; kphdk da 6252@2016 nk[ky dyyh vkgs R; k ; kfpde/; s ASC/IASC/AEC bR; knh oht vkdkjke/khy ?kVdkph l nHkkR; s ijrkok feGkok v'kh i kFKLk ek- U; k; ky; kdMs dyyh vkgs l nj ; kfpdk ek- mPpU; k; ky;] vj&ckckn ; Eks iychr vkgs
- 4- ekgs vkk'V 2012 rs es 2013 o vkk'V 2013 rs fMI dj 2014 ; k dkGkr FAC ph vkdkj.kh dyyh vl u R; kpk ijrkok oGkoGh xkgdkl oht fcykrp otkoV d#u oht ns ds ns ; kr vkyyh vkgr- rl p vrfjDr FAC vkk'LV 2013 rs fMI dj 2013 e/; s vkdkj.kh >kyyh vkgs ijr q R; kph otkoV oht ns dkrp dj.; kr vkyyh ukgh-

Action by IGRC :

1. Internal Grievance Redressal Cell , Ahmednagar Circle conducted hearing on 03/08/2016 for the complaint submitted on 15/06/2016
2. After hearing both the parties IGRC gave decision as per letter dated 05/08/16 as under:

^l njhy xkgdkP; k frlgh vtkrhy fok; koj ek- mPp U; k; ky;] vj&ckckn ; Eks fjV ; kphdk da 6252@2016 vlo; s fjV ; kfpdk nk[ky dyyh vkgs o l njhy frlgh idj.kkryh ckch U; k; ifo'B vkgr- rOgk l nj dc vrxr xkgd xk&gk.ks epkP; k d{kr ; r ul Y; keGs ; k epkl fu.kz nrk ; r ukgh.**

Observations by the Forum:

1. The complainant has demanded refund of the amount of Fuel Adjustment Costs (FAC) charged in excess of the rates approved by the MERC. The IGRC has rejected the grievance pointing out that the complainant has filed a Writ Petition in the Aurangabad Bench of Bombay High Court against the Distribution Company which is pending for decision.
2. It is true that the Writ Petition (Stamp No. 5204/2016.) against the MSEDCL was filed in the Aurangabad Bench of Bombay High Court on 16/02/2016 by the complainant. The same was

registered by the Hon'ble Bench under WP No. 2019 of 2016 . In the said petition, the complainant has challenged the recovery of Additional Charges like:

- i. ASC (Additional Supply Charges)
- ii. IASC (Incremental Additional Supply Charges)
- iii. RGPPL(Additional Capacity Charges for Ratnagiri Gas & Power Pvt. Ltd)
- iv. AEC (Additional Energy Charges)

done by the Distribution Company during the period May, 2007 to May, 2008 and requested the Hon'ble Court to direct the authorities of the Distribution Company to refund the same. This petition was disposed off by the court with following order dated 31/03/2016:

Mr. A.S. Bajaj, learned counsel for respondent No. 2, on instructions, submits that Chief Engineer, (Commercial) MSEDCL would take decision upon the claim made by the petitioner within a period of two weeks from today.

2. In the light of that, writ petition stands disposed of. No costs.

3. If any of the party is aggrieved by the decision, they are entitled to take steps in accordance with law. Interim order passed by this court under order dated 22nd February, 2016 shall continue for a period of two weeks from today. Needless to state that after expiry of two weeks period, the same would come to an end.

3. The complainant then filed a Writ Petition (Stamp No. 16131/2016) against the MSEDCL in the Aurangabad Bench of Bombay High Court on 06/05/2016 . The same was registered by the Hon'ble Court under WP No. 6252 of 2016 on 15/06/2016. The following order was passed on 16th June 2016 by the Hon'ble Court

The petitioner claims refund of the amount to the tune of Rs.9,29,00,000/- (Rupees Nine Crores twenty nine lakhs) based on tariff order, which claim has been rejected. The petitioner has been issued a bill for a sum of Rs.5,21,99,863/-. The petitioner assures to deposit 50% of the bill amount within a period of three weeks from today.

However the court was informed by the Distribution Company that the petitioner has not deposited the bill amount as directed by the court. The Hon'ble Court passed following order on 24th August 2016 :

None appears for petitioner.

2. *Mr. Bajaj, learned counsel for respondent informs that pursuant to the order dated 16th June, 2016 of this Court, the petitioner has not deposited current bill amount. The petitioner is directed to deposit the current bill amount. In the event of default, appropriate orders including vacation of interim order would be passed.*
3. *Stand over to 07-09-2016. To be listed in urgent category.*

This petition is still pending with the Hon'ble High Court . The plain reading of the copy of the this petition and the written statement filed by the Distribution Company reveal that the issue raised in the petition pertains to Additional Charges recovered during May, 2007 to May, 2008. The issue raised by the complainant in the present representation to the Forum is :

refund of excess collected FAC from the billing month of Dec. 2013 to Dec. 2014 over and above rates approved by MERC

This issue is not covered in the said petition pending with the High Court. As such the IGRC failed to properly appreciate the issue and hence rejected the grievance on the grounds of matter under litigation. The IGRC has also referred to itself as the Forum. In fact the IGRC is just a cell/committee not the Forum in terms of the MERC CGRF & EO Regulations.

4. Forum disagreeing with the IGRC decision and has examined the demand of the complainant as per foregoing paras.

- 5 The issue is regarding charging of Fuel Adjustment Costs (FAC) in excess of the rates approved by the MERC. 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 :
01469	11 th Feb 2016	October 2013 to March 2014
01481	16 th Feb 2016	April 2014 to September 2014
00265	3 rd June 2016	October 2014 to March 2015

6. According to these letters the FAC approved by the Hon'ble Commission for HT I N is as under :

Billing Month	FAC approved by the MERC
December 2013	-22.46
January 2014	0
February 2014	0
March 2014	4.28
April 2014	16.41
May 2014	3.36
June 2014	13.62
July 2014	34.92
August 2014	11.18
September 2014	32.93
October 2014	55.05
November 2014	20.19
December 2014	42.59

7. Hence wherever, the Distribution Company has charged the FAC in the bills of the months from December 2013 to December 2014 , over and above the rates as above , the same needs to be refunded to the complainant with interest at bank rate of the Reserve Bank of India till the date of refund .

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 in the ensuing bill after the date of this order , whatever, excess FAC charged over and above the MERC approved rates, in the bills of the months from December 2013 to December 2014 , with interest at bank rate of the Reserve Bank of India till the date of refund .
2. 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.
3. 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.

4. 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.

(Rajan S. Kulkarni)
Member

(Hari V. Dhavare)
Member-Secretary

(Suresh P.Wagh)
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 .