

CONSUMER GRIEVANCE REDRESSAL FORUM
AMRAVATI ZONE, AMRAVATI
'Vidyut Bhavan', Shivaji Nagar, Amravati: 444603, Tel. No. 0721 2551158

Dt. 29.06.18

ORDER

Case No. 19/2018

In the matter of grievance pertaining to refund of infrastructure cost.

Quorum

Dr. Vishram Nilkanth Bapat, Chairman
Miss. M.H. Ade, Member Secretary
Sau. Sushama Joshi, Member (CPO)

Complainant

Shri Manish R Malani
Vg Bori Arab, Teh. Darwaha,
Dist Yavatmal

Versus

Respondent

The Executive Engineer/Nodal Officer
MSEDCL, Pusad Division,
Pusad.

Appearances:-

Complainant Representative:- Shri. Ashish Subhash Chandarana

Respondent Representative:- Shri S.Y. Bhotkar, Executive Engineer, Pusad Division

Being aggrieved by the decision of IGRC Yavatmal, Complainant Shri Manish Ramvilas Malani (Consumer number:-381790004616) approached the Forum on date 02.05.2018.

The complainant submits his grievance as under:

1. LT connection to the complainant was released on date 04.03.2013 and the cost of infrastructure to avail this connection was borne by him. The estimate for the said infrastructure was prepared under Non DDF CC & RF scheme.
2. There was a mistake while calculating overhead charges in the estimate. After considering the overheads the actual estimate cost should have been Rs 5,09,048/- instead of Rs 4,69,058.76/- (Details of calculations given in table below).

Particulars	Actually framed	Correct calculation
Erection of 11KV Line	94328.32/-	94328.32/-
Erection of 200KVA TF	326166.46/-	326616.46/-
Sub Total	420944.78/-	420944.78/-
Transportation - 5% ,Contingencies 3% & Plant and Tool 1.5%		39989.74/-
Labour @10%	42094.47/-	42094.47/-
Supervision charges 1.3%	6019.51/-	6019.51/-
	469058.76/-	509048.50/-

3. Supply to the complainant was disconnected in Feb-14 for arrears. The major portion of the arrears was adjusted by swapping security deposit (without interest).

4. Electricity duty is charged to the consumer.

5. The complainant invited the attention of the Forum towards:

a. The provisions of regulation 6.5 of supply code 2005 which reads as

“The agreement shall be deemed to be terminated upon disconnection of the consumer or where the consumer remains disconnected for a period of more than six(6) months:

Provided that the termination of agreement is without prejudice to the rights of the Distribution Licensee or of the consumer under the Act for recovery of any amounts due under the agreement”.

b) The cost of the infrastructure has to be borne by MSEDCL and the refund of such expenses is to be done through tariff per KWH. In case no 70 of 2005 dt 08.09.2006, MERC has laid the provisions that developing infrastructure is the responsibility of the Distribution Licensee.

Prayer of the Complainant:

- 1) Direct MSEDCL to refund infrastructure cost Rs 5,09,049/- along with interest at the PLR of SBI as per APTEL order in Appeal No. 47 of 2011 from the date of release of connection till date of refund after adjustment of due arrears.
- 2) Direct MSEDCL to waive DPC and interest charged to applicant CPL in view of credit balance but not reflected due to non posting of WCR in consumer's CPL.
- 3) Impose cost Rs 10000/- upon MSEDCL for hardship caused and expense incurred to applicant consumer.

Reply filed by the Non Applicant MSEDCL before the Forum:

1)The NA MSEDCL has asserted that as per clause 6.6 of MERC(CGRF & EO) Regulations 2006 which reads as under :

“ The Forum shall not admit any Grievance unless it is filed within two years from the date of which the cause of action has arisen”.

The consumer was permanently disconnected on date 22.02.2014 and the grievance was registered under IGRC Yavatmal on date 02.02.2018 i.e after a lapse of 46 months. By not making the grievance in time, the complainant consumer has extinguished his legal rights to recover any amount from MSEDCL on whatsoever account the same may be.

2) The complainant has not filed a single document regarding the works carried for releasing his IP connection, agreement with the contractor, bills related to purchase of material which is essential for preparing of Work Completion Report and creating asset.

3) The complainant has not submitted any proof regarding the amount expended towards development of infrastructure and hence its wish to seek refund as per estimate is vague.

4) The Energy bill outstanding as on date is Rs 44680/-

Submission during the hearing

By Applicant

1) CGRF Akola Order dated 09.05.2018 in complaint no 12/2018 regarding refund of infrastructure cost under Non DDF CCRF Scheme, refund of SD and closing of A/c

By Non-Applicant

NIL

Having heard both the parties and examining record placed before this forum, the Forum holds the following opinion.

1. It is admitted position by both the parties that the NA MSEDCL released the supply to the complainant on 04-03-2013 and expenses for infrastructure were borne by the complainant under Non DDF CC & RF scheme.
2. Both the parties also agreed that the supply to this complainant was permanently disconnected on 22-02-2014.
3. This Forum is of the opinion that the issue of time limitation raised by the N.A. MSEDCL does not sustain in the light of the Hon. Supreme court verdict in case No. 3699/2006 where it says in the context of cause of action that, 'The cause of action arises when the real dispute arises that is when one party asserts and the other party denies any right'. Hence in the present case the cause of action arose on 02-02-2018 when the complainant filed his grievance before IGRC.
4. Regarding the claim made by complainant for refund of the infrastructure cost of Rs. 5,09,049/-, the Forum is of the view that the N.A. MSEDCL has shown utter ignorance about the fact that the infrastructure in the present complainant's case is the asset in possession of MSEDCL. As such, all the documents related to material procurements, erection, installation, supervision, inspection and agreement between complainant and contractor are ought to be in possession of the N.A. Hence asking for proof or papers related to expenses on infrastructure from the complainant appears unfounded and merely an act of denying justice on part of the N.A. MSEDCL. Further in view of the order passed by Hon. MERC in case 70 of 2005 dated Sept. 8, 2006, it is clear that the cost of the infrastructure including the associated recurring component therein is to be wholly borne by the distribution licensee. The expenses incurred by the complainant on infrastructure and claimed as Rs. 509049/- appears correct with reference to the Estimate Report prepared by N.A. MSEDCL which is placed before the Forum. That is because the said estimate is exactly same as the calculations submitted by the complainant except the admissible expenses of Transportation 5%, Contingencies 3% and Plant & Tool 1.5% (Total 9.5%) amounting to Rs. 39989.74 are not included by the N.A. in their estimate. The Forum is thus inclined to agree to claim of the complainant for the refund of Rs. 509049/-. As the connection is in PD, interest is

payable on Rs. 509049/- from date of release of the connection i.e. 04-03-2013 at PLR of SBI.

5. As per the MERC SOP Regulations 2014 section 6.9, N.A.MSEDCL is mandated to close a consumer account within 45 days in rural area from the date on which the consumer assumes PD status. The relevant of the section reads *“In case of closure of account (Permanent disconnection), refund of credit amount (if any), advance consumption deposit/consumption security and meter security along with “No Dues Certificate” should be made by the distribution licensee within 30 days in class I cities and urban areas, and within 45 days in rural areas from the date of application for closure of account”*.

6. From the above facts, the Forum is of the opinion that

a. N.A. MSEDCL should work out the refund amount as infrastructure cost of Rs. 509049/- along with interest at PLR of SBI from date of connection 04-03-2013 till 06-04-2014 when the N.A. should have closed the account of the complainant.

b. N.A. MSEDCL should close the account of the complainant and work out credit balance of the account 45 days after the PD i.e. on 06-04-2014 after adjustment of bill arrears of the complainant against his credits on account of pending refund of infrastructure cost along with accrued interest thereon till 06-04-2014.

c. The balance so worked out shall be payable to the complainant along with interest at PLR of SBI from 06-04-2014 till the date of issue of cheque.

7. As the consumer had a credit balance on the date of PD owing to his refundable expenses on infrastructure, DPC and interest charged to applicant are invalid.

With these observations, the Forum proceeds to pass the following unanimous order.

ORDER

1. The complaint is partly allowed.

2. The N.A. MSEDCL is directed to refund infrastructure cost of Rs. 509049/- along with interest at PLR of SBI from date of connection 04-03-2013 till the date of issue of the cheque after adjusting the outstanding arrears as on 06-04-2014 (without charging DPC and interest).

3. No order as to cost.
4. The N.A. MSEDCL is directed to send compliance report within one month of receipt of this order.

Sd/-
(M.H.Ade)
Member Secretary

Sd/-
(Smt. S.P.Joshi)
Member (CPO)

Sd/-
(Dr.V.N.Bapat)
Chairman

Contact details of Electricity Ombudsman appointed under regulation 10 of MERC(CGRF & EO) REGULATIONS 2006:

THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
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