

CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE
(Established under the section 42 (5) of the Electricity Act, 2003)

Phone: 0253-2591031

E.Mail: cgrfnsk@rediffmail.com

**Office of the
Consumer Grievance Redressal Forum
Kharbanda Park, 1st Floor,
Room N. 115-118
Dwarka, NASHIK 422011**

No. / CGRF /Nashik/Nagar Circle/UCR Nagar Dn./657/47-17/18/

Date:

(BY R.P.A.D.)

Date of Submission of the case : 08/03/2018

Date of Decision :

To.

1. M/s.Radhee Food Pvt Ltd
Plot No. 13/2, Nagapur MIDC,
Ahmednagar
(Con.No. 162019006300)

Complainant

2 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar
3 Executive Engineer (UCR)
Maharashtra State Electricity Distribution Com. Ltd.
Division Office, Ahmednagar .

Distribution Company
(Respondent)

DECISION

M/s.Radhee Food Pvt Ltd. (hereafter referred as the Complainant). Ahmednagar is the industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Respondent). The Complainant has submitted grievance against MSEDCL for refund of excess collected FAC from the billing month Dec. 2013 to December 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.25 of 2018 on 08 /03/2015.

The Forum in its meeting on 03/04/2018, decided to admit this case for hearing on 20/04/2018 at 3.00 pm in the office of the forum . A notice dated 03/04/2018, 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. G. R. Argonda , UDC represented the Distribution Company during the hearing. Shri Vilas Kulkarni appeared on behalf of the consumer.

Consumers Representation in brief :

1. We are MSEDCL consumer by name of M/s. Radhee Food Pvt Ltd. (162019006300) for industrial purpose at Nagapur MIDC Ahmednagar, MSEDCL has charged the FAC as per their circular and submitted the detail calculation for approval. We have noticed that the FAC charged by MSEDCL from billing month of Dec. 2013 to Dec. 2014, is not according to post facto approval issued by Hon'ble Commission for charging of FAC for the respective 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 by the commission in the tariff order. Without a 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 a gap of three months to two months from the billing month of Dec. 2013. FAC has wrongly charged due to the 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 vide order dated 18/12/2014; 11/02/2016; 16/02/2016. 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 FAC amount over and above with interest as EA 2003 Section 62(6) from the date of deposit to till the date of refund.
4. FAC to revise as per MERC following orders.
 - a. MERC/FAC/FY 13-14/1350 dtd. 18/12/2014.
 - b. MERC/FAC/FY 2015-2016/01469 dtd. 11/02/2016.
 - c. MERC/FAC/FY 2015-2016/01481 dtd. 16/02/2016.

Reconciliation of FAC charged to M/s. Radhee Food Pvt. Ltd. From Dec. 2013 to Dec. 2014 is as below .

Billing month	FAC levied by MSEDCL	FAC Approved by MERC	Diff	Units.	Amount (Refund)
Dec.2013	-6.24	-22.46	16.22	271050	43964.31
Feb.2014	4.28	0	4.28	231365	9902.422
March 2014	16.41	4.28	12.13	322720	39145.936
June 2014	34.92	13.62	21.3	284335	60563
Aug. 2014	55.05	32.93	22.12	282945	62587.434
Nov. 2014	42.59	20.19	22.4	279095	62517.28
Dec.2014	81.38	42.59	38.79	301835	117081.7965
					395762.5335

5. Therefore MSEDCL shall refund the excess charged FAC of Rs. 3,95,762.53 (for period of Dec. 2013 to Dec. 2014) alongwith interest at Bank rate as per S.62(6) of Electricity Act. 2003.
6. We referred and relied on the CGRF Nashik order in similar matter of M/s. Paris Ispat Pvt. Ltd. (Case No. 29 of 2016 decision dtd. 02/11/2016) & M/s. Nashik Strip Pvt. Ltd. (Case No. 07/2017 decision dtd. 15/04/2017)(Copy attached.)

Consumer's Demand :

Whatever 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 approved by MERC the same should be refunded to the complainant with interest at Bank rate as per S.62(6) of E.A.2003.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 19/04/2018 from the Nodal Officer, MSEDCL, Ahmednagar Circle Office and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. At the outset it is submitted that the grievance filed by the consumer is beyond two years from the date of cause of action & is not within limitation. Regulation 6.6 of CGRF & EO

- Regulations 2006, creates express bar for admitting the grievance filed beyond two years from the date of cause of action, as such grievance of the consumer is not maintainable .
2. It is specifically pointed out that, consumer is raising dispute in respect FAC recovered for the month of Dec. 13, Feb.2014, March 2014, June 2014, Aug. 2014, Nov 2014 & Dec.2014. Even if for sake of argument, it is considered that first cause of action to the grievance arose in Dec.2013 & it c continued till Dec.2014, still present matter is absolutely not within limitation, since first intimation to MSEDCL is made on 10/10/17 and to IGRC is made on 06/12/2017 i.e. Beyond two years.
 3. Recovery of FAC, in case, if it is not as per approved methodology enumerated by the Hon'ble Commission would be the real date of cause of action of the matter. The subsequent post facto approvals accorded by Hon'ble MERC for already charged FAC to allconsumers throughout state, cannot be construed as cause of action for purpose of limitation.
 4. Hon'ble Bombay High Court, Nagpur Bench in WP No. 1650 of 2012 in case of MSEDCL Vs M.R. Salodkar has held that complaint must be filed to the CGRF within two years from the date of cause of action. Judgment of Hon'ble High Court in the aforesaid case is delivered on 10th of July 2013 & it has even considered the judgment of HPCL Vs MSEDCL in WP 9455 of 2011 which was delivered on 19th of January 2012. It is the settled law that, latter judgment of equal bench on same issue has to be relied upon. Hon'ble Electricity Ombudsman on the issue of limitation in series of its judgment has ruled that, complaint to the Forum should be made within two years from the date to cause of action.
 5. Fuel Adjustment Cost (FAC) is variable cost. In addition to base Tariff approved for the particular year, FAC is charged taking into account variation of cost for power purchase. MSEDCL levies FAC to is consumers on monthly basis in accordance with the methodology & formula for calculation approved by MERC. After recovering FAC from all consumers as per their tariff category consumption slab, entire calculations are submitted to the Hon'ble MERC for vetting & Hon'ble MERC approves it post facto after detailed scrutiny.
 6. It is worthwhile to mention here that, Hon'ble MERC vide its letter No's MERC/FAC/2015-16/1469 dtd. 11/02/2016 & MERC/FAC/2015-16/1481 dtd. 16/02/2016 has post facto approved all submissions, methodology & calculations by which FAC was recovered for period Oct. 2013 to Dec. 2014, without any variation. No any adjustment either positive or negative is required to be done after post facto approvals from Hon'ble MERC since FAC calculations so done by MSEDCL & charges so recovered from the consumers are approved without any variation. Therefore, it is humbly submitted the, demand of the consumer to re-work the FAC calculations for selective months is not justifiable .
 7. Regulations 3 of CGRF & EO Regulations 2006 enumerates the basic principles that, Forums shall follow the principles of natural justice & it impliedly casts obligation on consumer that, he should come to the Forum with clean hands.

In present case consumer is relying on three post facto approval orders of MERC wherein Hon'ble MERC has accorded approval of FAC for the months from July 2013 to Sept.2014 to be charged in the billing month from ct. 2013 to Dec. 2014 i.e. Total 15 billing months. However before Hon'ble Forum , out these total 15 months consumer opportunely & selectively citing only six months & excluding rest of 9 months. This exclusion is deliberate so as to hide clear Picture . In its total misrepresentation only those six months which appears to be at lower side are selected in exclusion of corresponding months which indeed clarifies the entire scenario.

8. MSEDCL levies FAC to its consumers on monthly basis in accordance with the methodology & formula for calculation approved by MERC & thereafter Hon'ble MERC vets it. Once the calculation of FAC rates for the particular billing month are finalized as per the methodology prescribed by the MERC. Circular to that effect is issued by the Head Office for charging FAC for particular billing month. Rates specified in that particular circular are reflected in subsequent energy bills generated from the date of that particular Circular. As matter of course, these Rates are not reflected in Energy bills generated before finalization of calculation & issuance of the

Circular . This being the continues process , procedural variation in date of finalization of FAC calculation & issuance of circular & date of generation of energy bill are bound to happen.

In present case consumer is seeking to represent distorted version of facts by picking six months from total fifteen months i.e. Dec.13, Feb.2014, March 2014, June 2014, Aug. 2014, Nov 2014 & Dec.2014 wherein higher side rates appears to have reflected in energy bills of respective billing months. Even by going with the logic of the consumer, in following months i.e. Oct.2014, Jan.2015, Feb.2015 and May 2015 rates at much lower side appears to have been reflected in energy bills respective billing months. To put it differently even logic of consumer for few Sets of months amount is to be refunded & for another few sets of months amount is to be recovered. To have better & clear picture respondent office is herewith annexing the chart of entire period, this chart would amply demonstrate that consumer is putting distorted version of facts. If entire period is considered it would become clear that , there is no any over recovery of FAC, per contra there is under recovery of Rs. 1,70,011/-

In this view of the matter , it is humbly submitted that, no any interference is called upon to selective reworking of the FAC calculations which in principle are approved by Hon'ble MERC. Both on the ground of limitation & no merits grievance of the consumer is not sustainable & deserves to be dismissed with cost.

Action by IGRC:

vrxt rdkj fuokj.k d{k vgenuxj eMy dk; kly; ; Fks fn- 06@12@2017
jkt h iklr >kyY; k rdkjhph luko.kh fn-17@01@2018 jkt h luko.kh gkpu fn-
02@02@2018 jkt h i qhyi ek.ks fu.kz ns ; kr vkyk-
^ xtgdkph rdkj enrhr ul Y; keGs fopkkr ?krk ; r ukgh o fudkyh
dk.<. ; kr ; r vkgs**

Observations by the Forum:

On heard both Parties it is noticed that distribution Co. representative argued that the consumer representative is pointing or claiming the excess recovered FAC for the selected months only. Where the consumer is being charged FAC at lower rate than the approved. Where as the consumer representative prayed that refund of excess recovered FAC them MERC approved rate be funded for specific month.

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 Co. should rework the charging/ calculation of FAC levied from Dec. 2013 to Dec.2014 as approved by MERC & refund if any amount due to be refunded with interest at Bank Rate of the RBI till the date of payment.
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 one month and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum .
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.

(Smt. Vaishali V.Deole)

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, Ahemdnagar .