

**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/Nagat UCR Dn./628/18-17/
(BY R.P.A.D.)**

Date:

Date of Submission of the case : 18/07/2017

Date of Decision : 14/11/2017

To.

1. M/s. Ambica Waste Management Pvt. Ltd.
L-154 MIDC
Ahmwdnagar 4141111
(Con.No. 162019001482)

Complainant

2. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar

Distribution Company
(Respondent)

3. Executive Engineer (UCR)
Maharashtra State Electricity Distribution Com. Ltd.
Ahmednagar

DECISION

M/s. Ambica Waste Management Pvt. Ltd . (hereafter referred as the Complainant) . Ahmednagar is the H.T. industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for excess collected AEC & Add. Fuel Adjustment charges . The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But IGRC did not take any decision for more than 2 months . Hence , the consumer has submitted representations to the Consumer Grievance Redressal Forum in Schedule "A". The representations are registered at serial No. 118 Of 2017 on 18 /07/2017.

As:"But as the hearing could not be scheduled in this case, as the Forum was not functional due to posts of both the Chairperson and the Member (CPO) being vacant since June 2017. Later as per order no SE/TRC/CGRF/C-7/22650,Dt. 18.09.2017 the Member(CPO) ,CGRF, Jalgaon has been given additional charge of the Member(CPO) ,CGRF, Nashik who resumed the charge with effect from 20/09/2017."

The Forum in its meeting on 20/09/2015, decided to admit this case for hearing on 25/10/2017 at 1.30 pm in the office of the forum . A notice dated 22/09/2017 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, Ahmednagar Circle Office, for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. S.S. Muly, Addl.Executive Engineer, Shri. G. R. Argonda, U.D.C. represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

We have noticed that FAC charged by MSEDCL for the billing month of DEC. 13, Feb.14, Jun.14, Aug.14, Nov.14, & Dec.14 is not according to MERC FAC post facto approval issued for charging of FAC for the respective billing month.

As per commission's post facto approval, MSEDCL should rework the calculation of FAC for the billing of DEC. 13, Feb.14, Jun.14, Aug.14, Nov.14, & Dec.14 & refund the excess collected amount with interest as per EA 2003.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 24/10/2017 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 of FAC recovered for the month of Dec-13, Feb- 2014, June 2014, Aug 2014, Nov 2014 & Dec 2014. Even if for sake of argument, it is considered that first cause of action to file grievance arose in Dec-2013 & it continued till Dec-2014, still present matter is absolutely not within limitation, since first intimation to IGRC is made on 24.04.2017 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 all consumers throughout state, cannot be construed as a date of cause of action for purpose of limitation. Consumer herein is misrepresenting the post facto approval of the Hon'ble MERC so as to bring the hopelessly time barred grievance within 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 the 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 its 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/2013-14/1350 dated 18.12.2014, MERC/FAC/2015-16/1469 dated 11.02.2016 & MERC/FAC/2015-16/1481 dated 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 that, demand of the consumer to re-work the FAC calculations for selective months is not justifiable.
- 7) Regulation 3 of CGRF & EO Regulations 2006 enumerates the basic principles that, Forums shall follow the principles of natural justice & it impliedly casts obligation even 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 Oct 2013 to Dec 2014 i.e. total 15 billing months. However, before Hon'ble Forum, out of these total 15 months, consumer opportunely & selectively is citing only six months & excluding rest of 9 months. This exclusion is deliberate so as to hide true picture. In its total misrepresentation only those six months wherein rates of FAC appears to be at higher side in energy bills 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 all subsequent energy bills generated from the date of that particular circular. As a matter of course, these Rates are not reflected in Energy bills generated before finalization of calculations & 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, June 2014, Aug 2014, Nov 2014 & Dec 2014 wherein higher side rates appears to have been reflected in energy bills of respective billing months. Even by going with the logic of the consumer, in following months i.e. April 2014, July 2014, Oct 2014 & Jan 2015 rates at much lower side appears to have been reflected in energy bills of respective billing months. To put it differently as per the 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 his 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 6,92,445/- upto Jan 2015. If calculations are continued further by same logic again it would show under recover of huge amount. Thus it is very clear that, no any over recovery on account of FAC is done from the consumer.

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 & on merits grievance of the consumer is not sustainable & deserves to be dismissed with cost.

Action by IGRC :

- 1 The complainant has submitted grievance to the Internal Grievance Redressal Cell Ahmednagar Circle on 21/01/2017 .
- 2 But the IGRC has not taken any action for more than 2 months.

Observations by the Forum:

Regarding Refund of Excess collected FAC

1. 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 | March 2014 to June 2014 |
| 01481 | 16 th Feb 2016 | July 2014 to December 2014 |

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

| Billing Month | FAC approved by the MERC |
|----------------|--------------------------|
| December 2013 | -28.06 |
| January 2014 | 0 |
| February 2014 | 0 |
| March 2014 | 4.74 |
| April 2014 | 17.11 |
| May 2014 | 3.64 |
| June 2014 | 14.77 |
| July 2014 | 38.98 |
| August 2014 | 13.01 |
| September 2014 | 36.64 |
| October 2014 | 60.43 |
| November 2014 | 21.22 |
| December 2014 | 51.92 |

- 3 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 alongwith previous judgments of this forum in the same line in r/o M/S CEAT LTD. V/S MSEDCL, the facts and issues which resembles with present case hence with the consideration of said judgments , 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 whatever, excess FAC charged over and above the MERC approved rates in the billing months of DEC. 13, Feb.14, Jun.14, Aug.14, Nov.14, & Dec.14.
2. All these refunds should be adjusted in the ensuing bill after the date of this order , and the amounts should be refunded along with the interest till the date of refund as per the provisions of Section 62 (6) of the Electricity Act, 2003.
3. 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.
4. 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.
5. 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.

(Chandrakant M. Yeshirao)
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, Ahmednagar .

