

1) On being aggrieved by the fact of not providing any remedy by IGRC Akola on complaint dated 11/10/2018 the complainant, M/s Sureka processors of MIDC Akola approached this Forum through their authorised representative Shri Bhavesh H. Somaiya, under clause 6.4 of MERC CGRF OMBUDSMAN Regulation 2006 for resolving the grievance.

2) Complainant's case in brief is that complainant is Industrial consumer of N.A M.S.E.D.C.L at MIDC Akola having provided with electric supply on 22/11/2007. According to complainant N.A M.S.E.D.C.L while releasing the connection burdened complainant to bear the cost of infrastructure under ORC scheme by sanctioning estimate vide SE/Akl/R/ORC/15%/AKL/149 dated 25/09/2007. According to complainant N.A M.S.E.D.C.L recovered Rs. 3000/- towards transformer testing charges, Rs. 1100/- towards capacitor testing charges, and Rs. 3312/- towards ORC supervision charge unlawfully by violating MERC directives issued in case No. 70 of 2005. According to complainant overheads and centages towards 5% transportation, 5% VAT, 3% contingencies and 1.5% T and P total 14.5% are not loaded while sanctioning estimate for Rs. 2,68,615/- and final amount of estimate should be 307565.00/-. According to complainant directives issued by MERC in case No. 93 of 2008 and Case No. 70 dated 08/09/2006, to refund infrastructure cost with interest under ORC to consumers of MERC was subjudice before Apex Court and Hon'ble Supreme Court vide its order dated 10/11/2016 dismissed the Appeal filed by MSEDCL. According to complainant N.A M.S.E.D.C.L have not disputed the refund of ORC cost but dispute is regarding payment of interest at 12% instead of 6% allowed by IGRC Akola and considering centages of 24.5% instead of 10% considered by N.A M.S.E.D.C.L and refund of unlawful recovery. According to complainant N.A M.S.E.D.C.L is liable to pay 12% interest from 31/11/2007 till date of refund 18/12/2018 as per principle adopted by MERC in Case No. 23 of 2004 and by APTEL in Appeal No. 47 of 2011 based on section 62 (6) of E.A. 2003. Complainant prays for difference of interest payable on refund amount between 12% to 6% already paid after revising the estimated cost considering 24.5% centages. Complainant Annexed copy of sanctioned estimate for Rs. 2,68,615/- , demand note dated 03/10/2007, M.R. copy No. 031128 dated 06/10/2007 for Rs. 1,16,612/-, firm quotation for Rs. 3000/-, M.R. No. 030933 dated 27/10/2007 for Rs. 3000/-, copy of energy bill for Dec. 2017, N.A M.S.E.D.C.L. reply dated

20/11/2018 with B-80 bill revision before IGRC Akola and IGRC letter No. 3969 dated 16/10/2018.

3) Reply came to be filed by N.A M.S.E.D.C.L. on 25/01/2019. According to N.A M.S.E.D.C.L. on receipt of application for new connection of 107 H.P. at MIDC phase 4 from M/S Sureka processors, estimate was sanctioned under ORC 15% supervision scheme vide SE/AKL/ ORC/15%/179 dt. 25/03/2007. According to N.A M.S.E.D.C.L. complainant has paid Rs. 1,16,612/- as per demand note and executed the infrastructure work and connection was released on 21/11/2007. According to N.A M.S.E.D.C.L. after complaint to IGRC Akola on 22/10/2018, N.A M.S.E.D.C.L. approved for refund Rs. 2,42,897.42/- towards infrastructure along with meter cost Rs. 22,400/-, capacitor testing fee Rs. 1100.00/-, transformer testing charges Rs. 3000/- and ORC supervision charges Rs. 3312.35/- to be adjusted in the energy bill of complainant for JAN 2019. According to N.A M.S.E.D.C.L. approval for allowing 6% interest as per corporate office circular on refund amount of Rs. 2,72,709.67/- amounting to Rs. 1,80,436.65/- to be adjusted in the energy bill. According to N.A M.S.E.D.C.L. the demand of complainant towards payment of transportation charges, contingencies, T&P and other charges are not refunded as not included in the estimate. According to N.A M.S.E.D.C.L. the demand of complainant for 12% interest should not be allowed. N.A M.S.E.D.C.L. annexed copy of distribution cell circular dated 07/03/2018, bill revision B-80 dated 11/01/2019, letter No. EE/U/3758 dated 19/11/2018 and W.C.R. dated 29/10/2018 alongwith the reply.

4) Shri Bhavesh Harendrabhai Somaiya learned representative for complainant and Shri Ganesh Mahajan, Additional Executive Engineer for respondent were present for the hearing held on 01/02/2019. Shri Bhavesh H. Somaiya learned representative for complainant filed on record written note of argument and urged that N.A .M.S.E.D.C.L refunded towards cost of ORC amount and other charges Rs. 2,72,709.67/- which is not acceptable to complainant as amount refunded is lesser by 35019.00 than actual expenditure. Shri Somaiya learned representative brought to the notice of Forum that N.A .M.S.E.D.C.L considered towards overhead/centages charge of only 10% labour and expenditure towards VAT 5%, transportation 5%, contingencies 3%, and 1.5% T&P are ignored and requested Forum to allow the same as per relevant cost data of MSEDCL. Shri Bhavesh H. Somaiya learned representative for

complainant brought to the notice of Forum that amount towards interest Rs. 1,80,436.65/- approved by MSEDCL for refund at 6% rate of interest is not acceptable and referred section 62(6) of E.A. 2003, PLR rate of SBI and case no. 23 of 2004 and claimed 12% on refund amount from date of connection.

5) Shri Ganesh Mahajan, Additional Executive Engineer MSEDCL urged that Rs. 2,72,709.67/- towards ORC refund charges and other charges are approved for adjustment in the forthcoming bill of complainant and also interest on refund amount Rs. 1,87,848.90/- at 6% interest rate is approved for refund and will be adjusted in the ensuing bill. Shri Mahajan however brought on record that estimate under "ORC" which includes only 10% labour charges was prepared as per the circular of corporate office and other overhead such as VAT 5%, transportation 5%, contingencies 3%, and 1.5% T&P were not considered and hence not included in refund amount. Shri Ganesh Mahajan, Additional Executive Engineer MSEDCL urged that the demand of 12% interest on refund amount can not be accepted as N.A .M.S.E.D.C.L is bound by circular issued by corporate office and filed on record "copy of circular" issued vide CE/Dist/D-IV/MERC/5039 dated 07/03/2018 according to which only 6% interest is allowed.

6) On concluding the hearing on 01/02/2019 Forum directed N.A .M.S.E.D.C.L to file on record the relevant cost data for the period on or before 04/02/2019 to assess the centages/overheads charged to asset when work is executed by MSEDCL.

7) N. A. M.S.E.D.C.L in response to the directives of Forum filed on record circular issued by Technical Director (Dist) of MSEDCL vide CE/Dist/43933 dated 23/11/2001 mentioning subject as Out Right contribution (ORC) works.

8) Having heard the parties and considering material placed on record Forum is of the view that principle grievance of refund of infrastructure cost spent by complainant under ORC scheme is not disputed by N.A .M.S.E.D.C.L and the point of dispute is, consideration of all the overheads/centages as per the cost data of MSEDCL and interest chargeable. Forum finds substance in the plea of complainant that the amount against VAT,

transportation, T&P etc. is actually spent by complainant and should be refunded. Forum have noted the fact that recovery under ORC is set aside by Apex court and N.A .M.S.E.D.C.L did not deny the fact and under the circumstances the works executed under ORC, amounts to works executed by N.A .M.S.E.D.C.L and Forum is of the view that all centages/overheads chargeable to estimate when work is executed by MSEDCL should be allowed. Forum in order to assess centages/overheads to be allowed against 24.5% claimed by complainant directed N.A .M.S.E.D.C.L to file cost data on record, against which N.A .M.S.E.D.C.L filed circular issued by MSEDCL under ORC dated 23/11/2001, which in view of Forum is not a legal document as effect of 'ORC' scheme is set aside by Apex court. Forum is of the view that N.A .M.S.E.D.C.L should revise refund amount under 'ORC' by considering 24.5% centages/overheads as claimed by complainant or actual overheads as per relevant cost data for the year 2007-2008 whichever is less. N.A .M.S.E.D.C.L representative could not bring on record the logic of allowing 6% interest on refund amount, when N.A .M.S.E.D.C.L is charging 12% interest on energy bill arrears of consumers. As per the principle adopted by MERC in case No 23 of 2004, the Forum is of the view that 12% interest should be allowed and N.A .M.S.E.D.C.L should revise the amount of interest to be refunded in forthcoming bill payable by complainant.

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

ORDER

1. That the Complaint No. 66 of 2018 dated 31/12/2018 is hereby partly allowed.
2. That N.A .M.S.E.D.C.L is directed to revise estimate under 'ORC' by adding centages/overheads as per cost data of 2007-2008 to actual material cost and revise refund amount along with other charges should be refunded with 12% interest applicable from date of connection till adjusted in the forthcoming bill payable by the complainant.
3. That N.A .M.S.E.D.C.L is directed to submit compliance report to this Forum within one month of this order.

S/d/-
Member Secretary

S/d/-
Member (CPO)

S/d/-
Chairman

Contact details of Electricity Ombudsman appointed by
MERC (CGRF&EO) Regulations 2006 under Regulation 10:

THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikrupa, Vijaynagar,
Chhaoni, Nagpur-440 013. Phone:- 0712-2596670

No. CGRF/AKZ/Akola/46

Dt: 20.02.2019

To,
The Nodal Officers
Executive Engineer
MSEDCL O&M,
Akola Urban Division.

The order passed on **20.02.2019** in the Complaint No.
66/2018 is enclosed herewith for further compliance and necessary
action.

Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Akola Zone, Akola.

Copy s.w.r. To:-

- 1) Chief Engineer, MSEDCL, Akola Zone, Akola.
- 2) Superintending Engineer MSEDCL, O&M Circle, Akola.

Copy to :-

- 1) M/s Sureka Processors At N-1/1 Phase-IV MIDC Akola, C/o Shri. Ashish
S. Chandarana Flat No-302, Satguru villa Apartment, Agrasen Nagar Gorakshan
Road Akola-444004.