

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

Dt:11.02.2019

ORDER

Case No. 29/2018

In the matter of grievance pertaining to refund of infrastructure cost & transformer testing charges etc

Quorum

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

Complainant

M/s Aspa Bandsons Pvt Ltd
Achalpur
Consumer 355940002136

Versus

Respondent

The Executive Engineer ,
MSEDCL, O&M Division, Achalpur.

Appearances:-

Complainant Representative :- Shri. Ashish Subhash Chandarana.

Respondent Representative :- Smt. N.A. Khan, Deputy Executive Engineer (O) Achalpur Division.

Being aggrieved on account of no remedy provided by IGRC, Amravati against representation filed before it on date 13.08.2018 applicant complainant approached to CGRF, Amravati for redressal of his grievance on Dt 12.12.2018 and filed his complaint as Case No 29/2018.

The complainant submits his grievance as under :-

1. Applicant complainant is consumer of MSEDCL and the LT connection was released on date 04.10.17. The applicant had applied for new connection under LT commercial category and the same was sanctioned under NON DDF CCRF scheme for which estimate was framed amounting Rs.7,54,457/-. The infrastructure cost was supposed to be borne by applicant consumer under NON DDF CC & RF scheme & infrastructure is created by applicant consumer read with the provision of circular for NDDF CCRF, vide estimate sanction No: EE/ACH/T/ARR/NON DF/CC &RF/2017-18/24 DT:11/07/2017 for amount 754457/- & Demand of Rs. 46,100/- is paid vide MR No. 061002 which also includes unlawful recovery of Transformer testing charges Rs. 3000/- & S.C.C charges Rs. 8000/-
2. Applicant submits that applicant is burdened with unlawful recovery in violation of MERC approved schedule of charges vide MERC case No. 19 of 2012 for providing LT connection. Also, as per estimate sanctioned for Rs. 7,54,457/- and it is mentioned there in that the same is approved as per cost data of 2016-17, however the same is not sanctioned as per prevailing cost data. Overheads such as 5% Transportation, 5% VAT, 3% contingencies, 1.5% Tool and plants & 12.36% service tax on labor thereon are not included in the aforesaid sanctioned estimate.
3. N.A. MSEDCL has collected Rs. 3000/- as transformer testing charges in violation of approved schedule of charges and also Rs. 8000/- on account of service connection though in the event of execution of work by consumer, the recoverable amount is Rs. 104.00 (1.3% of 8000/-) resulting excess recovery of Rs. 7,896/-.
4. The Non applicant i.e MSEDCL has recovered the following charges in violation of approved schedule of charges from the applicant while sanctioning and releasing of LT connection to M/s Aspa Bandsons Pvt Ltd

The details of the charges recovered are as below:

Sr. No	Item	Cost(Rs)
1	11 KV line estimate (Basic cost)	3,32,077/-
2	DTC estimate (Basic cost)	2,16,039.66
3	11 KV crossover (basic cost)	1,37,752.56
	Total of 1,2 and 3	6,85,869/-
4	Add Labour 10%, Transportation 5%, VAT 5%, Contingencies 3%, T&P 1.5%	1,68,037/-
	Estimate Total	8,53,907.17
	Transformer testing charges	3,000/-
	Excess SCC Collected	7,896/-
	Total:	Rs 8,64,803.17

5. Thus, MSEDCL is liable for refund of Rs.8,64,803/-. It is submitted that Non DDF CCRF scheme is not approved by MERC but is internal arrangement of MSEDCL by taking advance money from consumer read with regulation 15.6 of supply code 2005 to fulfill its obligation of providing supply as a licensee & subsequently adjust it in energy bill. Thus MSEDCL is liable to refund it along with interest @ 12% p.a. which MSEDCL use to recover in the event of delayed bills as per law laid down by MERC in case No 23 of 2004.
6. Applicant had made it clear that he has opted Non DDF CC& RF read with MSEDCL circular considering fact that there is no alternate option available to applicant to get power supply. Since there is delay in refund for the period of about more than one year, MSEDCL is responsible for penalty & interest arising from this representation and the same may please be recovered from guilty officers read

with Hon'ble Supreme Courts directives in Lucknow development authority Vs. M.K. Gupta.

7. Thus, consumer is entitled for refund of Rs. 8,64,803/- along with interest @ 12% p.a. as per MERC order in case No. 23 of 2004 where in the issue of applicability w. r. to % of interest has been decided by Hon'ble MERC.

Prayer of the complainant before the Forum:

- 1) Direct MSEDCL to refund of Rs. 8,64,803/- along with interest @ 12% from the date of release of connection i.e. 04.10.2017 till the date of refund as per MERC case No 23 of 2004 & recover the same from responsible officers as per the principles laid down by Hon'ble Supreme court in the matter of Lucknow development authority Vs. M.K. Gupta
- 2) Any other relief in favor of applicant consumer including cost Rs. 10,000/-

Reply Filed by N.A.MSEDCL. before the Forum:

The case was admitted to the Forum on date 12.12.18 and a copy of the grievance was forwarded on date 12.12.18 to the Nodal Officer, MSEDCL, Achalpur for submitting para-wise reply to the Forum on the grievance within 15 days under intimation to the complainant. However N.A. MSEDCL filed the reply before the Forum only at the time of the scheduled hearing dated 31.01.19.

The Non Applicant submits the reply as below:

- 1) It is admitted that the applicant consumer M/s Aspa Bandsons Pvt Ltd, Achalpur had applied for new connection under L.T category and the said connection has been sanctioned under Non DDF CC&RF scheme.
- 2)The N.A is ready to refund the transformer testing charges of Rs 3000/- and excess SCC recovered from the complainant.
- 3)It is denied that N.A is liable for refund of Rs 8,64,803/- as claimed by the applicant complainant but is ready to refund Rs 6,60,042/- the expenditure incurred to develop the infrastructure as per the work completion report.
- 4)The delay to refund the infrastructure cost to the complainant is not deliberate since the finalizing of W.C.R is an administrative process which involves working of various officials such as sub division officer, Accounts staff.

- 5) N.A. submits, since the facts of the case Lucknow development authority Vs M.K.Gupta is different from the present case no punitive action to be taken against the official of the non applicant.
- 6) The N.A MSEDCL prayed to the Forum, (a) No interest to be granted on the refundable amount in the interest of justice. (b) Cost demanded by the complainant shall not be granted in the interest of justice.(c) To dismiss the case in the interest of justice.

Submission during the hearing:

By the Applicant:

During the hearing the applicant's representative Shri Ashish Subhash Chanadarana, pointed to N.A MSEDCL's reply to Internal Grievance Redressal Cell Amravati wherein the N.A has admitted of having collected Rs 3000/- as transformer testing charges and Rs 8000/- as service connection charges and they are not in violation of schedule of charges. The reply submitted by NA.MSEDCL to IGRC Amravati is contradictory to the submission of N.A. before the Forum.

The amount Rs 6,60,042/- is as per N.A.MSEDCL's WCR is not disputed by the complainant but the labour and transportation cost have not been considered by MSEDCL while finalizing the WCR. NA submits that the delay to refund the infrastructure cost to the complainant is not deliberate since the finalizing of W.C.R is an administrative process this is not acceptable to the applicant complainant. The complainant further submitted letter of NA dated 03.05.18, where-in permission is granted for execution of the work under the supervision of concerned official of N.A i.e the SDO. The said permission is given to the complainant only after the material inspection, submission of material bills and payment of necessary charges as per the demand note issued by N.A.

The complainant has justified his claim for refund of overhead costs citing MSEDCL's circular No CE(Dist)/Infra-plan/33051 dated 26.08.2008. N.A.MSEDCL admits that the overheads as per cost data submitted by complainant was prevalent at the time of estimation of M/s Aspa Bandsons Pvt Ltd, Achalpur.

However complainant during hearing submitted that he is not interested in the refund of Contractor Supervision charges as the work has been supervised NA MSEDCL.

By the Non -Applicant:

Nil

Having heard both the parties and the material placed on record before the Forum, the Forum is of the view that,

- 1) It is admitted position by the complainant as well as N.A.MSEDCL that L.T commercial supply to the complainant applicant M/S Aspa Bandsons Pvt Ltd, Achalpur was released on date 04.10.17 and the work to avail the connection was carried out by the applicant complainant against which the estimate was framed and sanctioned by N.A. under Non DDF CC&RF scheme. The Forum feels that the complainant is eligible for refund of the cost expended towards development of infrastructure r/w the provisions of MERC order in case no 70 of 2005 dated 08.09.2006.

In the MERC order in case no 70 of 2005, the MERC stated in para 6.4 that “Development of infrastructure is the responsibility of the Licensee. The Commission therefore, directed that the cost of infrastructure from said point of transmission system to distribution main should be borne by the MSEDCL.” In the present circumstances the forum finds that the WCR made is incomplete and does not include the centages as prescribed in the departmental circular No. CE(Dist)/Infra-Plan/No.33051 dated 26 aug 2008. Hence the contention of N.A to refund the amount as per WCR does not hold substance as the WCR prepared does not include the centages as per the said circular.

Hence the Forum finds validity in the claim by the complainant that he is entitled for the refund of the cost of the material and the overheads as per the then prevailing cost data sheet of the NA MSEDCL.

During the hearing, the complainant agreed with the material cost as Rs. 6,60,042/- as per the incomplete WCR referred by the NA. Hence the forum is of the view that the centages as per the cost data prescribed vide departmental circular No. CE(Dist)/Infra-Plan/No.33051 dated 26 Aug 2008 should be added while calculating the total amount to be refunded to the complainant by the NA MSEDCL. Total amount of refund thus is Material cost Rs.6,60,042 + Centages (without contractor supervision charges) 24.5% of material cost works out to Rs. 8,21,752/-.

There is a well established principle laid down by MERC under Case No. 23 of 2004 about interest to be paid on the refund and therefore Forum is inclined to grant the interest at 12% per annum on the total due amount to be refunded.

- 2) The complainant has laid the service connection for the said connection at his own cost. N.A.MSEDCL has recovered the total SCC wherein the complainant

was required to pay only 1.3% of the normative charges applicable towards supervision charges read with provision 6.5.11 (Schedule of charges) of MERC case no 19 of 2012 dated 16.08.12. Hence the N.A. MSEDCL is entitled to recover only 1.3% of Rs 8000/- i.e.Rs.104/- as supervision charges for S.C.C. This Forum is of the opinion that NA MSEDCL needs to refund excess SCC collected from the complainant i.e. Rs. 7896/- (Rs.8000-Rs.104).

- 3) N.A.MSEDCL has agreed to refund the transformer testing charges Rs 3000/- which is consistent with the provisions of MERC Order in case no 70 of 2005 Miscellaneous and general charges - Installation testing fee :- The field officers are directed not to charge any amount for first inspection and testing of consumers installation at the time of giving new connection. Hence Forum feels that NA should refund the transformer testing charges of Rs.3,000/- collected from the complainant.
- 4) The grand total amount that needs to be refunded by NA MSEDCL to the complainant is Rs.8,32,648/- (8,21,752+7,896+3,000)
- 5) Forum is also of the view that N.A. should take appropriate action against the erring officials in the light of the observations of Supreme Court in Lucknow Development Authority Vs. M.K. Gupta reported in 1994 “When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behavior by dividing it proportionately where there are more than one functionaries”. As there has been avoidable delay on the part of N.A. to refund the expenditure incurred by the complainant in development of infrastructure required to avail supply to his establishment, the interest to be paid on the refund amount should be recovered from the erring officials of NA MSEDCL after due process of enquiry.

Thus the Forum passes following unanimous order :

ORDER

1. The complaint in case no 29/2018 is partly allowed.
2. The NA MSEDCL is hereby directed to refund the Rs.8,32,648/- (which includes Material cost Rs.6,60,042/-; Centages 24.5% Rs.1,61,710/- Transformer testing charges Rs 3,000/- and excess service connection charges Rs 7,896/-) to the applicant along with interest at 12% per annum from the date of release of connection till the date of refund through his ensuing bills.
3. NA MSEDCL is hereby directed to recover the interest amount refunded to the complainant from the concerned erring officials after due inquiry in this behalf in the light of the observations of the Supreme Court in Lucknow Development Authority Vs. M.K. Gupta reported in 1994 SCC(i) 243.
4. No order as to cost.
5. N.A.MSEDCL is directed to submit compliance report of this order within 30 days from the date 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 by MERC(CGRF & EO)REGULATIONS 2006 under regulation 10:
THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikripa, Vijay Nagar,Chhaoni,Nagpur.