

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
Fax: 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/NUC/N.U.Dn.1/726/57/2018-19/

Date:

(BY R.P.A.D.)

In the matter of Refund of Excess collected AEC, FAC & GOM Subsidy.

Date of Submission of the case : 16/11/2018

Date of Decision : 15/02/2019

To.

General Manager/Director
M/s. Okay Fern Precision Casting Pvt.Ltd,
Gat No. 126/1, MIDC , Sinnar,
Malegaon Sinnar Dist. Nashik 422113
(Consumer No.075949019970)

Complainant

1. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Urban Circle office, Vidyut Bhavan ,
Nashik Road.
2. Executive Engineer (R)
Maharashtra State Electricity Distribution Com. Ltd.
Vidyut Bhavan , Nashik Road

Distribution Company

DECISION

M/s. Okay Fern Precision Casting Pvt.Ltd,(hereafter referred as the Complainant). Nashik is the HT consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for Refund of excess collected FAC, AEC and GOM Subsidy. The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. Ltd. But as the IGRC did not provide any remedy for more than 2 months, the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.112 of 2019 on 16 /11/2018.

The Forum in its meeting on 16/11/2018, decided to admit this case for hearing on 21/12/2018 at 1.30 pm in the office of the forum . A notice dated 20/11/2018 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, Urban I Circle Office Nashik for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Smt. Nital S.Varpe, Jr. Law Officer, Shri. D.R. Mandlik, Sr.Manager (F&A) represented the Distribution Company during the hearing. Shri. Vilas Deole appeared on behalf of the consumer.

Consumers Representation in brief :

Our Industries are paying Electricity Bills issued by MSEDCL regularly. However, this is to bring to your kind notice that we have been charged excess FAC/AEC and non refund of GOM subsidy for the period May & August 2012 and Jan. 2013 to Dec. 2015.

MSEDCL has incorrectly recovered over and above the MERC's stipulated charges which can be broadly divided into two main parts.

1. Refund of AEC & Additional F.A.C.

1) AEC1+AEC2 : Wrongly recovered in the billing month of May 2013 and August 2013.

2) AEC3+AEC4 : Wrongly recovered in the billing month of August & September 2013.

3) Addl.FAC : Wrongly recovered in the billing month of August & Dec. 2013 & other months.

2. **Excess collected FAC over and above the rates approved by MERC**

MSEDCL has collected excess FAC incorrectly over and above the MERC post Facto approval particularly in the billing months of December 2013, Feb. 2014, March 2014, ay 2014 , June 14, Sept. 14, Nov. 14, Dec. 14, March 2015 and June 2015 and other months.

3. Further MSEDCL has applied MERC orders of FAC/AEC by way of wrong interpretation of orders and effecting recoveries for earlier/next excess month.

We had gone to Sub-Division/Division regarding this grievance vide application dt. 01/09/2018, Further the hearing in the matter was not done and however after repeated follow up by e-mail and call we did not receive any letter/ order/redressed complaint till this date.

Therefore we appeal the Hon. Chairman C.G.R.F. for directing MSEDCL to provide corrected bill for the relevant mentioned period and refund the excess collected bill for the relevant mentioned period and refund the excess collected amount along with interest as per Reserve Bank rate or as per Terms and Conditions for consumer 2005 or at the rate of interest provided by MSEDCL on SD on the said amount.

Prayers :

1. Therefore, I request to provide refund of excess collected charges by MSEDCL from the consumer for the year 2013 to December 2015.

2. To provide interest on the amount wrongly collected by MSEDCL at the rate of interest provided by MSEDCL on S.D. from the date of deposit to the date of refund or at the rate of Reserve Bank of India whichever is applicable as per rule.

We are submitting herewith necessary bills received by MSEDCL for the January 2013 to December 2015 for ready reference.

Follow up letter written to Sub-Division, Division and Circle office for refund of above excess recovered charge.

Therefore, you are requested to kindly take consumer friendly approach and redress the grievance of our industry and refund the excess amount collected through bills.

According to our computations we have paid the excess amount as indicated in the Table below-

Billing month	FAC levied by MSEDCL (PS/KWH)	rate by	FAC rate as per MERC's approval (PS/KWH)	Difference (PS/KWH)	Units (KWH)	Excess amount paid by us (Rs.)
Dec. 2013		-6.24	-22.46	16.22		
Jan.2014		0.0	0.0	0.0		
Feb.2014		4.28	0.0	4.28		
Mar. 2014		16.41	4.28	12.13		
April 2014		3.36	16.41	-13.05		
May 2014		13.62	3.36	10.26		
June 2014		13.62	13.62	0.0		
July 2014		34.92	34.92	0.0		
Aug. 2014		11.18	11.18	0.0		

Sept.2014	55.05	32.93	22.12		
Oct.2014	20.19	55.05	-34.96		
Nov. 2014	42.59	20.19	22.4		
Dec. 2014	81.38	42.59	38.79		
Total					

Aggrieved by the actions of MSEDCL, we approached Internal Grievance Redressal Cell, Nashik Urban Circle, Nasik and filed a complaint on 14/09/2018 requesting for giving justice to us, in the matter of MSEDCL's unlawful FAC charging and refunding the excess amount charged to us along with 9% interest with above months and other months also.

However, the IGRC Nashik urban Circle has not taken decision after two months after compliant/ the decision is not satisfactory, hence appeal.

While as in similar cases IGRC Nashik has given decision in favour of Consumer Supreme Auto Shell India Pvt. Ltd. to refund the additional amounts recovered from consumer vide letter no. 2673 dt. 11/05/2017.

We have following additional points for the consideration of Hon. Consumer Grievance Redressal Forum Nashik. We sincerely request Hon. CGRF Nashik to kindly refer to the orders issued by them. Vide their letters

1. No. 170 dt. 18/10/2016 (copy enclosed as Annexure 3) in the matter of Representation by M/s. Lastra Niraj Pvt. Ltd. Ambad Nashik. In the said order, Hon CGRF Nashik has held as under :
 " The Distribution Company should refund in the ensuing bill after the date of this order, whatever excess FAC charged over & above the MERC approved rates, in the Bills of the months from December 2013, with interest at Bank rate of Reserve Bank of India till the date of refund.
2. No. 61 of 14/03/2017 in the representation in the matter of M/s. CEAT Ltd. Satpur Nashik in the said order Hon.CGRF Nashik has held as under
 " 1. The Distribution Company should refund whatever excess FAC charged over & above the MERC approved rates in the bills of the months from December 2013 to December 2014 .
 2. All these refunds should be adjusted in the ensuing Bill, after the dated of this order, and the amount 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."
 Further requested to give us compensation for harassment & cost for Rs. 5000/- and Rs. 2000/- to co.pl.

I have lodged this complaint orally/written with concerned offices and with IGRC Nashik Urban Circle, but no action taken by concerned offices, so you are requested to expedite the matter as early as possible for justice.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 17/12/2018 from the Nodal Officer, MSEDCL, Urban Circle Office Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

- A) AEC + AEC2 was not recovered in May 2013 (Bill is attached)
 AEC + AEC2 will be refunded to consumer in Oct. 17 (sheet is attached)

For refund of AEC for the Month of Feb.14

- MSEDCL hereby submits as below :
 1. MSEDCL quote the order of MERC in case no. 19/2012.
 By this order thereby MSEDCL was permitted to recover AEC from all category consumers from Sept 13 for further period of 6 months on account of validated increased expenditure on various projects MSPGCL & MSETCL circulated as per Commercial circular No. 209 dtd. 07/09/2013.
 2. Commercial Circular No. 209 is hereby enclosed for your kind perusal under subject recovery of additional energy charges & additional FAC that implementation of MERC orders thereof.

3. Therefore anour receipt of GOM subsidy or not & whether it is passed on the consumer or not; in MERC case no. 78/2016 Pauls strip order the commission held-
" 14- The issue of period & quantum of subsidy under section 65 mentioned by MSEDCL is matter between state Govt. & MSEDCL.
4. The Chief Engineer in the letter dtd. 13/10/17 also clearly mentioned the GOM declared subsidy & concession thereof as per resolution no. 278 dtd. 29/01/14 has ended. Therefore our office has not received any subsidy & hence there is nothing in case for refund for the month of Feb.2014.
 - For refund of AEC 1 and 2 : The MERC orders wer MERC order dated 05/09/13 in case of 95 of 13, MERC order dtd. 03/09/13 in case of 28/13, MERC order dtd 04/09/13 in case No. 44/13)All under ref MERC orders attached herewith).
MERC audit therefore MERC order di 03/09/13 in case no. 28/13 (Circular no. 209, para no.1 read as
... ' MERC vide its order in appeal no. 34 of 2012 has allowed MSOGCL to recover the total mat. Rs. 106.44 Cr. including carrying Cost), on account of impact of Hon. ATE Judgment in appeal No. 34/2012 from MSEDCL in 6 equal monthly installments.
5. Commercial Circular No. 209 Para 3....
'MERC order dtd 05/09/13 in case no. 95/13, read with the MERC has directed vide no. 05/09/13 in case 95/3, MSEDCL to recover the Addl. Charges –(a(AEC-1 Rs. 2037.78 Cr. In 6 equal installments & (b) AEC-2 Rs.235.39 Crs. On monthly basis till issue of MYT tariff order from the consumer in the form of Addl energy charges' (Circular No. 209 & all referred MERC order in details are enclosed herewith).

B) AEC3+AEC4 of Aug. 13 and Sept.13

AEC3+AEC4 of Aug. 13 will be refunded to consumer in next billing cycle.

As per MERC case order No. 95/2013, 28/2013 & 44/2013 and commercial Circular No. 209 date 07/09/2013 that MSEDCL should pay to MSPGCL in 6 instalments & allowed to MSEDCL to recovered from consumer but no of instalments to be recovered are not mentioned. So the amount of AEC3+AEC4 of Sept.13 are correct.

Refund of AEC3 & AEC 4

Circular No. PR-3/Tariff/AEC/No./25310 dtd. 13/10/2017 under subject.

MERC order in r/o the petition filed by M/s. Paul strips & Tubes Pvt. Ltd (Case No. 78 of 2016) circulated by CE Commercial to all O&M Circles. It's para No. 2,3,4 & 5 runs as....

The competent authority was apprised about MERC order and accordingly it has been directed to implement the MERC order dated 13/07/2017 in case No. 78 of 2016.

The refund/recovery mechanism as mandated by MERC is to be implemented i.e. to refund the AEC collected on August 2013 consumption & recover the AEC for the consumption of February,2014.

Please note that the GOM declared subsidy and the concession thereof as per G.R. No. sanction/2013/Pra.kra.278(bhag-1)/Urja-5 dated 29/01/2014 has ended.

All circle offices are hereby directed to refer the MERC order & in co-ordination with respective IT sections to ensure the implementation of MERC order. They should also ascertain that this letter is circulated till sub division level.

Reference : MERC case No. 78/2016 (Order dt. 13/07.2917) in the light of said letter cum circular No. 25310 & by MERC case No. 78 of 2016 M/s. Paul strips & tubes Pvt Ltd. V/s MSEDCL, MERC order dtd 13/07/2017 Order Para Clause No. 11, 12, 13 & 14 runs as

Clause II....

Considering the above discussion and the conjoint reading of the provisions of the Order quoted at paras 7 and 8 above, it will be clear that the AEC was applicable for the electricity consumption from 1 September, 2013 to 28 February, 2014. The levy of AEC on the Electricity consumed prior to (in the present case, on the consumption in August billed in September, 2013) or after that period is

not mandated by the Commission's Orders. The Commission directs MSEDCL to take a review of the AEC levied on its consumers and to take corrective steps accordingly.

Thus for instance, if MSEDCL has recovered AEC in 6 instalments on the electricity consumption of August 2013 to January, 2014, it needs to refund the AEC collected on the August, 2013 consumption and recover the AEC for the consumption of February, 2014. In the circumstances of this matter, no carrying or holding cost shall be applicable.

Clause 12....

'Any correction required in the levy of AEC should be effected in all cases by the second billing cycle following this order. Any billing dispute in this regard would be a matter for the concerned, Consumer Grievance Redressal Forum.'

Clause 13...

'Considering the circumstances, no action is warranted against MSEDCL under Section 142 or 149 of the EA, 2003.'

Clause 14..

The issue of the period and quantum of any subsidy under section 65, mentioned by MSEDCL is a matter between the State Government and MSEDCL. & thereon, said letter No. 25310 dtd. 13/10/2017 circulated.

* Reference : MERC case No. 55/2017, order dated 02/05/2018 in r/o M/s. Balbir Alloys Pvt Ltd. V/s. MSEDCL, in concern of AEC (for non compliance of the Commission's order in case no. 95 of 2013 & M.A. 187 of 2014 dtd. 26/06/2015 regarding refund of excess collected amount due to premature billing)

MERC order para Clause no. 22 clarify the facts & order Para Clause No. 23 runs as...

Clause No. 23. The commission is not concerned with the question of whether or not GOM subsidy was received by MSEDCL and , if so, not passed on to BAPL and other such consumers. As the Commission has held in the Paul Strips Order ,

"14. The issue of the period and quantum of any subsidy under Section 65, mentioned by MSEDCL, is a matter between the State Government and MSEDCL"

BAPL also has recourse to GOM in this regard.

* Also by Reference No- MERC case No. 127 of 127, order dated 04/05/2018 in Shri. B.R. Mantri V/s. M/s. Paul Strips & Tubes Pvt. Ltd. & MSEDCL, Review petition filed for order dated 13/07/2017 in case No. 78 of 2016 for violation of order no. 95/2018 MA. 187 of 2014 regarding refund of AEC MERC in his order para clause No. 13 as... considering the forgoing, there is no merit in Shri. Mantri's claim for review of the impugned order dtd. 13/07/2017 & disposed of the petition accordingly.

Also....

1. By Virtue of Impact of APTEL order in 47/2012 MERC case of 34/2012 has allowed MSPGCL to recover under recovered fuel cost of Rs. 28.90 Crs. For infirm power supplied to MSEDCL in 6 equal installment from Oct. 2013 onwards. In Comm. Circular No. 209/2013 it has specifically mentioned the same.
2. In MERC Case No. 132/2017 by order dtd 01/02/2018, the commission further clarified if MSEDCL has recovered AEC in 6 installments on electricity consumption of Aug 13 to Jan. 14, it needs to refund AEC collected on Aug. 2013 consumption & recover AEC for the consumption of Feb.14.
3. The Commission directed MSEDCL to take review of the AEC levied on its consumer & take corrective steps accordingly.

4. The CE Commercial by letter dtd. 13/10/2017 directed to refund AEC collected on Aug. 13 consumption & recover on consumption of Feb. 2014. Also for AEC 3 & 4 MERC order 28/2013 dtd. 03/09/14 it was held that---
" as the variation in cost of Generation is ultimately to be passed on to the consumer, the commission hereby rules that from this order onwards MSEDCL will recover the variation in energy charge components of the amt. billed by MSPGCL to MSEDCL as approved by the commission from the consumers through the FAC mechanism."
 5. Also in r/o AEC-4, the MERC commission has passed order in case 44/13 dtd. 04/09/13 as under....
" As FY 2012-13, is already completed, MERC has allowed to recover the diff in revenue recoverable in accordance with tariff approved in this order vis-avis, the provisional tariff charged by MSPGCL in 6 equal monthly installments from Oct. 13 onwards."
 (Commercial circular No. 209 Para no. 2.. MERC order dtd 04/09/13, in caseno. 44/13, enclosed herewith)
 6. Therefore, MERC has allowed MSPGCL to recover the under recovered the fuel cost i.e. Rs. 28.05 Crs. For infirm power supplied to MSEDCL, in 3 monthly installments after the issue of this order MSEDCL can recover this cost through FAC mechanism.
 7. Msedcl also hereby submits the order of Electricity Ombudsman in case no 122of 2014 which observed as follows.
" in fact, the said order of commission also allowed the respondent MSEDCL to recover the charges (AEC-3 & 4) from the cons from the dt of order s of the commission which were passed on 3rd & 4th Sept. 2013 respectively. The contention of appellant that the commission has directed the respondent to recover these AEC-3 & 4 from the cons from Oct. 13 is therefore not correct. The respondent has also pointed out that as per orders of the commission, recovery of AEC was to be made in 6 monthly installments however in view of the subsidy granted by the State Govt. only 5 installments are recovered from the consumers. From these point of view also contention of appellant for refund of AEC charges as claimed can not be accepted & no direction can be issued in this regards. "
- C) Addition FAC of Aug.13 and Dec.13.**
 MERC allowed to recover Additional FAC was MSPGCL in three installments and MSEDCL can recover same through FAC mechanism. Same is recovered from all MSEDCL consumers from Aug-13 till Dec.13. So Additional FAC recovered is correct.
 As per MSEDCL circular no 190 dtd. 10/03/2014 which is pertaining to adjustment of FAC. As per circular no 190 dtd 10/03/14 the competent authority has accorded the approval for levy of category wise & slab wise FAC from the month of Sept.2013 to Dec. 2013 to be billed in the month of Mar 2014. Hence as per this circular the addl FAC to the said consumer, has to be billed fromm Sept. 2013 to Dec. 2013 only. However ME allowed the Addl FAC from Sept. 2013 for the period of 3 months from MSPGCL & therefore MSEDCL has billed the consumer for 5 months from Aug. 13 to Dec. 13. In view of order in MERC case no 78/2016, the recovery of Addl FAC for the month of 2013 is held to be premature. (MERC case no. 78/2016 & circular no. 190 is enclosed h/w.)
- D) Excess Collect FAC over and above he rates approved by MERC (Dec-13, Feb-14, Mar-14, May-14, June-14,Sept-14, Nov-14, Dec-14, Mar-15 & June-15)**
 FAC charges allowed by MERC are recovered from all consumer from Dec. 13, Feb-14, Mar-14, May-14, June-14, Sept-14, Nov-14, Dec-14, Mar-15 & June-15
 MERC allowed to recover FAC and MSEDCL recovered FAC from time to time is recovered are as per MERC directive. So FAC is correct.

Also case regarding AEC was filed by Pauls strips & tubes Pvt. Ltd. Case 78/2016, regarding AEC to be recovered in 6 installments Actually MSEDCL recovered from Aug 13 to Jan14. MERC gave order in the same to refund Aug. 13 & recover Feb 14 same was implemented in billing month Oct. 17 through Cr.B-80 & effect was given to overall cons. Case having same manners like Jindal Polyfilms, MIT rolling Mills, CGRF has given decision in favour of consumer. MSEDCL going to challenged to Hon. Bombay High Court. Hence AEC & FAC levied by MSEDCL is correct.

- **Excess FAC from Dec. 13 to Dec.14, Mar. 15 & June 15 & other months :**

1. MSEDCL hereby submits that....

As per Section 62(6) of EA act 2003 envisage that-

"(6) if any licensed or generating company recovers the price or charge exceeding the tariff determined under this section, the excess amt shall be recoverable by the person who has paid such price or charge along with interest without prejudice to any other liability incurred by the Licensee".

Therefore the MERC has accorded post facto approval to MSEDCL for charging FAC from consumers for respective billing months. Therefore MERC accorded post factor approval for the said period i.e. Dec. 13 to March 16 as per MERC/FAC letters dtd. 11/02/16, 16/02/16, 03/06/16 & 29/07/2016.

2. The MSEDCL cannot change the amt of FAC without approval of MERC as FAC is part of tariff. Therefore the W.P. no. 6859/2017 with WP 6860/2017 order passed by Hon. High Court bench 'A' Bad, I the matter is n regard of FAC. The High Court focuses on regulation 6.6 & 6.7 after 2 years from the dt of cons grievance. Therefore ... (45), as such, all these representation to the cell were the beyond the period of 2 years. The Impugned orders, therefore are unsustainable as the forum could not have entertained the said grievance under section 6.6 & 6.7 after the 2 years from the dt of consumer grievance.

- MSEDCL most respectfully submits that the consumers application/representation is hereby rejected on time limit that consumer approach after the period is over as per MERC Regulation 2006 ruling clause of 6.6. MSEDCL referred the cases in regard of time limitation and bar of time limitation which are as follows.

- **MERC Regulation 2006-**

1. **Regulation 2(2.1) © of the 2006 Regulations defines a "Grievance" as under:-**

"Grievance" means any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a license, contract, agreement or under the Electricity Supply code or in relation to standards of performance of Distribution Licensees as specified by the commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance there of which are within the jurisdiction of the forum or Ombudsman, as the case may be " .

2. **Regulation 2 (2.1)(d) defines the "Cell" as under**

"Internal Grievance Redressal Cell" or IGR Cell" Means such first authority to be contacted by the consumer for Redressal of his/her Grievance as notified by the Distribution Licensee"

3. **Regulation 2 (2.1)(e) defines the "Forum" as under:**

“Forum” means the forum for Redressal of Grievances of consumers required to be established by Distribution Licensees pursuant to sub-section(5) of section 42 of the Act and these Regulations.”

Regulation 6.6. The forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.

4. In view of this Regulation especially as per 6.6 clauses consumer is mandated by Law to approach the Forum within 2 years from the date of cause of action. That is on or before July 2018

--- Therefore the date 29/07/2016 is the date on which the cause of action for filling the complaint or grievance before the forum as defined under Regulation 2 (C) arose. Hereby, consumer has a two year periods for reaching the forum . Hence in view of above Regulation 6.6, it is clearly not within the limitation of 2 years from the date of cause of action and hence consumer’s pray shall be rejected in to.

5. **Writ Petition No. 6859 of 2017 in MSEDCL V/s. JawaharShetkari Soot Girani Ltd. Dhule. The H’ble High Court of Judicature of Bombay Bench at Aurangabad, Para no. 15, 42. 43. 54 & 46 read as...**

Para no.15---

Once such bills are paid, may be under protest or not, the limitation for the cause of action would begin only from the date of the said bills.

Para No. 42---

‘ and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply the consumer cannot pretend that he was not aware of the cause of action . As such and in order to ensure that Section 42 (5) r/w regulation 6.2,6.4,6.6 & 6.7 co-exist harmoniously , I am of the view that the consumer has to approach the cell with promptitude and with the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action’.

Para No. 43.... ‘ If I accept the contention of the consumer that the cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) in effective. By holding that the litigation journey must reach stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore co-exist harmoniously.’

Para no. 45—‘As such all these representations to the cell were beyond of two years. The impugned orders, therefore are unsustainable as the forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer’s grievance.’

46... ‘ As such all these petitions are allowed the impugned orders of the forum are quashed and set aside. The grievance cases filed by the consumer are rejected for being beyond the limitation period’.

6. **Also writ Petition no. 1650/2012 (MSEDCL v/s. Electricity Ombudsman Nagpur and MukundRaghunathSalodkar, Amravati, In the court of judicature at Bombay, Nagpur Bench, Nagpur.**

- **Para no 10 read as-----**

‘and in my view, the consumer ought to have approached the Forum within two years from the date of cause of action. Since this period is of two years he has to make representation to the cell within these two years. The cell is in internal arrangement

and cannot be said to be a judicial forum. The first judicial forum available to the respondent No. 2 is thus the forum. Therefore within two years from the cause of action, a complaint must come to the Forum'.

Para No.12 (detailed copy is attached herewith)

' The limitation does not start every day or it is not a case of continuous case of action. Thus is clear from the Articles 72 to 91 of the Limitation Act. 1963.

In all the case referred in these articles, it is provided that the period of limitation starts on the date breach occurs. This was a case of breach of contract. Admittedly, the electricity supply got disconnected in 2003, longer prior to the regulations came into force.'

In view of the above discussion, the writ petition succeeds. The impugned order dated 27th February 2012 passed by the Electricity Ombudsman, Nagpur in Representation No. 22/2011 is set aside. The complaint (Representation no. 22/2011) of the respondent no.2 stands rejected No orders as to costs.'

7. Further, before the Electricity Ombudsman (Mumbai) in representation no.126 of 2016 in M/s. Technova Imaging System Pvt. Ltd.

In Para no 10 read as....

The Appellant has pointed out that limitation Act is not applicable to the proceedings before the Tribunal or the Forum and therefore the grievance cannot be rejected on the ground of limitations. The CGRF Regulations, 2006 are Statutory and made in exercise of power under section 181 and 42 of the Electricity Act.2003, Regulations 6.6 of the CGRF Regulations clearly provides bar for admitting the grievance unless the grievance unless it is filed within a period of two years from the date on which cause of action has arisen. The grievance was admittedly not filed within a period of two years and hence, the forum has rejected the grievance on the ground of delay. There is no reason to interfere with the order of the Forum. Since the grievance is rejected on the ground of delay, it is not necessary to examine the merits of the case. The Bombay High Court has held in the case of Madhav Saroder v/s. Jyotiba Dnyan Upasak Shikshan Mandal (2004 (3) Mh. L.J. 1078) that the LD Tribunal erred in entering into merits of the matter while rejecting the appeal of the petitioner on the ground that it was beyond the period of limitation.' (Para 12 in the result, this representation is rejected.)

Hence MSEDCL requested and submitted that the grievance cases filed by the consumer are rejected for being beyond the limitation period & hence citation referred by consumer/ applicant is not considerable reliable & applicable hence liable to reject please.

Action by IGRC :

1. The complainant has submitted grievance to the Internal Grievance Redressal Cell Nashik Urban Circle on 14/09/2018 .
2. But the IGRC has not taken any action for more than 2 months.

Observations by the Forum:

Regarding Refund of AEC and Additional FAC

- 1 After the issue of tariff order for MSEDCL on 16.08.2012, the MERC has passed orders in relation to the matters of tariff of MSPCGL and intra state transmission system. The MERC directed vide Order dated 05.09.2013 in case No. 95 of 2013, MSEDCL to recover Additional Charges (a) AEC-1 Rs.2037.78crores in 6 equal installments and (b) AEC-2 Rs.235.39crores on monthly basis till issue of MYT Tariff Order from the consumers, in the form of Additional Energy Charges.
- 2 MERC had approved the Capital Cost and determined the tariff for Paras Unit 4 and Parli Unit 7 for FY 2010-11. MERC vide order dated 03.09.2013 in Case No.28 Of 2013,has allowed MSPCL to recover the total amount of Rs.628.90crores (including carrying cost) on account of impact of Hon. ATE Judgment in Appeal No. 47/2012 from MSEDCL in 6 equal monthly installments. **The Fixed Charges is to be recovered**

through AEC-3. MERC has determined the Capital Cost and Tariff of Khaperkheda Unit 5 for FY 2012-13 vide its order dated 04.09.2013 in Case No.44/2013. **The Fixed Charges is to be recovered through AEC-4.**

3 All the above Additional Energy Charges (AEC 1 to 4) were included and combined under the single head AEC and is indicated on energy bill.

4 MERC in the order dated 04/09/2013 in Case No.44/2013 has also allowed MSEDCL to recover the **Additional Fuel Adjustment Cost (FAC).** The relevant abstract are follows:-

4.4.34 The Commission observes that MSPCGL has capitalized the amount of fuel cost less revenue expense, whether incurred during infirm generation of power. However, as fuel cost is revenue expense whether incurred during infirm generation or firm generation, the commission is of the view that same needs to be recovered directly for the power supplied during the period instead of capitalising it as part of Capital Cost. As these expenses have been incurred prior to COD, the Commission has considered the same as a part of capital cost for the purpose of computation of IDC. However, the Commission has not considered fuel expenses as part of Capital Cost for computing the tariff and **the Commission hereby allows MSPCGL to recover the under-recovered fuel cost, i.e.Rs.28.05crore for infirm power supplied to MSEDCL in three monthly installments after the issue of this order and MSEDCL can recover the amount through Fuel Adjustment Cost (FAC) mechanism.**

Summary of Findings

xix) As the variation in cost of generation is ultimately to be passed on to consumers, the Commission hereby allows MSEDCL to recover the variation in energy charge component of the amount billed by MSPCGL to MSEDCL as approved by the Commission from the consumers through the FAC mechanism. Similarly, **the Commission allows MSEDCL to recover the variation in fixed charge component of the amount billed by MSEPCL to MSEDCL as approved by Commission from the consumers in proportion to Average Billing Rate of respective consumer categories, under intimation to the Commission.**

5 Accordingly the Distribution Company issued Commercial Circular No. 209 dated 07.09.2013 and raised demand of **AEC and Additional FAC** from the Electricity Bill of month of August 2013.

6 However, the MERC order 05.09.2013 dated in Case No. 95 of 2013 was challenged with the Appellate Tribunal of Electricity (ATE). The ATE by order dated 22.08.2014 directed as follows:-

“We therefore, set aside Impugned Order and remand the matter to the State Commission to give opportunity to the parties concerned as per the provisions of Section 64 of Electricity Act and hear the matter in transparent manner and pass the final order uninfluenced by its earlier findings, as expeditiously as possible. We want to make it clear that we are not giving any opinion on merits.....”

7 The matter was remanded to MERC for decision once again. Accordingly the MERC has followed the procedure as laid down in Section 64 of Electricity Act and recorded following observations as per order dated 26 .06. 2015:

“...the issue of over- recovery in terms of difference in time period of recovery considered by MSEDCL that approved by the Commission had come up before the Commission in 19 identical Petitions filed by various consumers. In these Petitions, it was submitted that, on the basis of the Order in Case No. 95 of 2013, MSEDCL should have started levying of AEC only the month of September, 2013. **However, MSEDCL started recovery from August 2013 itself thereby violating the Commission’s directives under that Order.** During the proceedings of those Cases, **MSEDCL submitted that it had rectified the error in levy of AEC, and refunded the amount erroneously charged to consumers during August 2013 in the billing month of Feb, 2014.** That has been reflected in the Commission’s Orders dated 27th March, 2014 on those Petitions. However, during the present proceedings, Shri Sanjay Gupta, Ashok Hotel, Nagpur has raised the matter of refund of the excess amount recovered by MSEDCL due to early billing.

Therefore, the Commission directs MSEDCL to review the refunds made by it so far on account of wrongful premature billing, and to make any remaining due to consumers in the next billing cycle....”

7. In the present case MSEDCL refunded wrongful premature recovery for the month of Aug.2013, but recovered the same for the month of Feb. 2014, so forum is of the opinion that subsidy on A/C of

- AEC for the month Feb .2014 received from GOM which has to be confirmed from H.O. and if so whatever AEC charged Feb 14 is to be refunded with interest.
- 8 The Commission has allowed AEC recovery from the month of September, 2013 but as represented by complainant the recovery was made from the month of August, 2013. Similarly Commission has allowed recovery of Additional FAC from month of September, 2013 for the period of three months. But MSEDCL has billed Additional FAC from August, 2013 to December, 2013 instead of three months from September 2013 to November 2013.
- 9 M/S. Paul Strips and Tubes Pvt. Ltd. had filed a petition for non-compliance of Commissions Order dated 26 June, 2015 regarding levy of Additional Energy Charge (AEC). In the Daily order dated 15/11/2016, the Hon. Commission has directed MSEDCL **to take a review of refunds made by it on account of premature billing of AEC and to make any remaining refund to consumers in the next billing cycle.** In the said order, the Commission directed MSEDCL to submit the details as follows:-
- i) Total number of consumers from whom AEC is recovered for August 2013 and the relevant period in September, 2013.
 - ii) Out of (i) above how many of them have been refunded the amount that was prematurely recovered.
 - iii) Reasons for not refunding to balance consumers if any.
- 10 As per recent decision passed by Hon. Commission on the petition filed by M/S Paul Strips and Tubes Pvt. Ltd. (Case 78 of 2016) as mentioned in observations by forum which states that if, MSEDCL has recovered the AEC in 6 installments on the electricity consumption of Aug 2013 to January 2014, it needs to refund the AEC collected on the August 2013 consumption and recover the AEC for the consumption of Feb 2014.
- 11 The MERC orders are clear and the Complainant is entitled to refund the amount of AEC recovered in August 2013 (**which was a wrongful premature billing**) along with the interest on said amount as per provisions of Section 62 (6) of Electricity Act, 2003. Similarly the Additional FAC should be billed in September, 2013 up to November, 2013 and excess recovered for August, 2013 up to December, 2013 should be refunded with interest on the said amount as per provisions of Section 62 (6) of Electricity Act, 2003.
- 12 Similarly the Commission allowed to recover AEC III and AEC IV in six equal installments starting from Oct 2013 (Case No. 19 of 2017 ,Case No. 187 dated 14/11/2017) and ordered to refund AEC III and IV recovered in the month of September,2013. So the forum orders to confirm whether AEC III and AEC IV is recovered in six equal monthly instalments starting from October, 2013 and if so refunded the AEC III and AEC IV recovered in the month of September,2013 with interest which was made earlier to Commission order.
- 13 In respect to Additional FAC, it was to be recovered in three month from September 2013 to November, 2013, but it is observed that MSEDCL has recovered in five month starting from August, 2013 to December, 2013 is to be refunded with interest (Case No.19/2017 and Case No.175 dated 14/11/2017).
- 14 In regard to recovery of FAC (shortfall of Fuel Adjustment Cost) the Commission passed to refund excess FAC recovered from Dec 2013 to Dec 2014 with interest.

During hearing the Distribution Company explained that in Jawahar Sut Girani decision Hon. High Court Aurangabad set aside the explanation of Ombudsman Rule No.6.6 given by Hon. Justice Shree Godbole in the case of M/S H.P. V/S MSEDCL and opined that there is two years barring for complaints. However this is to point out that as per APTEL Order under ref.(10) above, it is ordered that there is no TIME LIMIT exists in I.E. Act 2003 and consumer can lodge complaint without TIME LIMIT bar.

It cannot be debated that the Electricity Act is complete code. Any legal bar or remedy under the act must exist in the Act .If no such bar to the remedy is prescribed under the code, it would be improper to infer such a bar under Limitation Act. Admittedly there is no provision in this Act prescribing the bar relating to LIMITATION. Hon. Supreme Court (Madras Port Trust V/S Himanshu International) has directed that public authorities ought not to take technical plea of Limitation to defeat the legitimate claims of the citizens.

Opinion of Member Secretary :

On heard both parties during hearing it is noticed that consumer applied for refund of excess recovery of AEC , FAC & GOM Subsidy for the period Jan 2013 to Dec. 2015

During hearing Dist. Co. Representative submitted various citation such as copies of cases of MERC's decision in appeal No. 100 of 2011, 143 of 2011, 28 of 2013, 44 of 2013, 95 of 2013, Dist. Companies circular No. 209 of 2013 appeal No. 78 of 2016 , Dist. Companies circular No. 190 of 2014, and appeals of consumers with case No. 182,188 and 189 of 2017 & 1 to 26, 30 to 44, 54 to 58 of 2018 decided combinely from which it is seen that AEC recovered in Aug. 2013 prematurely has to be refunded and the same is if not charged in Feb. 2014, same is to be charged in Feb. 2014, accordingly refund of such 1198 consumers all over the State is worked out & refunded in Oct. 17 energy bills for HT consumers & for LT consumers same will be given in ensuing bills for the month of Feb.19 .(As per the say of Dist. Co. Representative)

As far as refund of FAC and Addl.FAC is concerned it is brought to the notice that it is a matter between MSEDCL and GOM , so no way it is concerned with refund to consumer.

Also Dist. Co. representative submitted citation of Aurangabad Bench of Bombay High Court decision in W.P. No. 6859 of 2017 , in r/o Jawahar Soot Girni Ltd., which pertain to matter in question only and in which the Hon'ble High Court clearly ordered that as per Regulation 6.6 and 6.7 of CGRF Regulation on 2003,formed as per Elect. Act. 2003 , all such cases are time barred and rejected appeals by setting aside the orders of CGRF.

In above order it is clearly stated that journey of appeal period starts from the cause of action first arisen & that in present case the extra amount recovered against AEC & FAC i.e. 19 Aug. 2013& not from the date of refusal of such cases in cell or in any court.

Hench such cases stands to be rejected on limitation act.

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 MSEDCL is directed to refund after confirmation whether the subsidy on account AEC is in receipt for the month Feb 14 if yes the MSEDCL should refund the same if charged for the month Feb 14 with interest as applicable.
- 2 MSEDCL is directed to refund AEC III and IV if recovered for the month September, 2013 with interest as applicable. If MSEDCL had refunded the excess collected AEC I TO IV then statement should be given to consumer with reconciliation of that amount in the concerned electricity bill.
- 3 The MSEDCL is directed to refund Additional FAC for the month Aug 13 and December 2013 with interest as applicable.
- 4 The MSEDCL is directed to refund excess FAC recovered from November 2012 to December 2015 after recalculation/reconciliation of FAC with MERC post facto approval.
- 5 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.
- 6 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 *suomotuor* on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.

7. 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)
Member Secretary

(Dr. Bhaskar G. Palwe)
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. , VidyutBhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , VidyutBhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Urban Circle office, Nashik.