



CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE

Case No. 03/2019

Date of Grievance: 21.02.2019

Date of hearing : 19.03.2019

Date of Order : 04.05.2019

In the matter of refund of AEC (AEC I to AEC IV) & additional FAC & Government subsidy.

The Director/The General Manager,

---- APPELLANT

M/s. Reliable Auto Tech Pvt.Ltd.,

(Hereinafter referred to as “Consumer”)

No.C-2, MIDC Chakan,

At Post- Chakan, Dist.Pune.

(Consumer No. 176029037760)

Versus

The Supdt. Engineer,

---- Respondent

M.S.E.D.C.L.

(Hereinafter referred to as “Licensee”)

Pune Rural Circle,

Pune.

A] - On behalf of CGRF, Pune Zone, Pune.

- 1) Shri. A.P. Bhavathankar, Chairman, CGRF,PZ, Pune
- 2) Mrs. B.S. Savant, Member Secretary, CGRF, PZ, Pune
- 3) Mr. Anil Joshi, Member, CGRF, PZ. Pune.

B] - On behalf of Appellant

- 1) Mr. Vilas Gaikhe, Representative
- 2) Mr. Vilas Deole, Representative

C] - On behalf of Respondent

- 1) Mr. Kiran S.Sarode, Ex. Engr., Admin., Pune Rural Circle
- 2) Mr. Rohan C. Dhamne, Jr. Manager (F&A) PRC, Pune.

Connecting load - 2360 KW, Sanctioned Demand - 885 KVA, Category HT I N
Date of connection - 26.4.2006

The Consumer complained for refund of excess recovery by the Licensee towards FAC, AEC & GOM subsidy for the period May, Aug, 2012 & Jan.2013 to Dec. 2015. The above named consumer had initially filed the dispute / grievance before IGRC, on 28.11.2018 and had prayed for refund of the excess recovery towards AEC and additional FAC / excess FAC recovered from it over and above the rates approved by MERC, primarily due to incorrect interpretation of the order/s issued by the Commission. The IGRC had given an opportunity of personal hearing to both, the Consumer and the Licensee, on 15.01.2019 and passed orders on 28.1.2019 with directions to the Finance & Accounts Dn. Rural Circle to forward the proposal to Head Office within seven (7) working days from the date of the order for clear guidelines with regard to the grievance of the Consumer. Random perusal of the order passed by the IGRC demonstrates that the IGRC had not passed speaking orders on the grievance of the Consumer but preferred to pass administrative orders not expected of it, the IGRC being the Quasi-Judicial forum set up under the provisions of Section 42 of the Electricity Act, 2003 (36 of 2003) and in tune with the powers conferred on MERC by Regulation 22 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003.

2. Aggrieved by the passive order passed by the IGRC, the Consumer preferred to file the present Appeal and, accordingly, approached this Forum and filed the Appeal 21.2.2019 with the prayer on the same lines as had been made to the IGRC – i.e. refund of excess FAC & AEC and GOM subsidy together with interest as per Reserve Bank rate as applicable from time to time and as applicable to the rate of interest paid by the Licensee on Security Deposits of the consumers as provided in Section 62 (6) of the Act, which reads as under –

“62. Determination of Tariff – If any licensee or a generating company recovers price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the Bank rate without prejudice to any other liability incurred by the licensee.”

In support of its claim, the Consumer also attached following papers / documents along with his Appeal –

- (i) A copy of relevant pages of MERC order in case No. 95 of 2013 regarding F.A.C. / A.E.C. and subsidy refund rules framed by the Govt. Of Maharashtra,
- (ii) Copy of Commercial Circular No. 209 dt. 07.09.2013,
- (iii) A copy of judgement dt. 11th March, 2011 delivered by APTEL in Appeal No. 197 of 2009 in respect of MSEDCL Vs. MERC and Vinod Sadashiv Bhagwat,
- (iv) Copy of Circular 2352 dtd. 10.8.2006 issued by the Executive Director-I, (ED) Office of the Executive Director, MSEDCL, Mumbai with specific reference to MERC order dt. 14.06.2006 wherein the ED has expressed concerns that due importance was not being given by the Field Staff to implement the orders / directions issued by the Consumer Grievance Redressal Forum (CGRF) from time to time for which the Office of the ED had to face embarrassing situation in responding to MERC,
- (v) Other correspondence between the Consumer and the Licensee over the period,
- (vi) Copy of the Electricity Bill for the month of Oct. 2013 for Rs. 17,84,260.00.

The Consumer also relied upon the judgement delivered by the Consumer Redressal Forum Nashik Zone.

3. The Appeal filed by the Consumer was registered at the Office of the CGRF on 21.02.2013 with distinctive number – 03/2019 and notice bearing No. 41 of was issued to the Respondent Utility on the same day – i.e. 21.2.2019 calling upon it to file its reply to the grievances made by the consumer making point-wise submissions, providing issue-wise comments on the areas of grievance together with status reports and documents in support thereof within the period of 15 days – i.e. on or before 08.03.2019 with an advance copy of it being delivered to the Consumer. Accordingly, the submissions dt. 07.03.2019 vide their letter bearing No. 1366 made by the Respondent Licensee were received at the Office of the CGRF on 08.03.2019, without full compliances of the notice served on it – i.e. the Respondent Licensee failed to provide an advance copy of their submissions made to the CGRF in response to the Appeal filed by the Consumer / Notice served by the CGRF despite specific instructions to do vide its notice bearing No. 41 dt. 21.02.2019. Needless to mention, such an act on the prt of

the Respondent Licensee, as in the past, led to denial of opportunity to the Consumer to make his submission on the submission by the Licensee coupled with avoidable delay for disposal of the Appeal. Resultantly, a copy of the submission made by the Licensee to the CGRF was delivered to the Consumer on 19.03.2019 during the course of hearing in the matter. Thereafter Respondent Utility appeared and filed reply on dated 26.03.2019.

4. In its submission, the Respondent Utility admitted that the grievance filed by the consumer before IGRC had been decided in favour of consumer, which version of the Licensee not in tune with the orders is passed by the IGRC as has been observed in the opening Para hereinabove. The Licensee pleaded that the Consumer, though entitled to receive the refund of A.E.C. and F.A.C. did not file its claim for refund of the excess recovery on these fronts almost for the period of five years after the MERC passed its Orders in Case No. 95 of 2013, dated 05.09.2013 for the action is taken regarding recovery of Rs.2037.78 Crores and Govt. Resolution No. 278 dated 29.01.2014.

5. The levy of AEC restricted for 5 months from August- 2013 to December- 2013 on account of received G.R. from Government of Maharashtra 29.1.2014. The Licensee vide its communication No. 17010 of the 26th March further submitted that as per directions contained in *suo-motu* order of the MERC dt. 5th September, 2013 in Case No. 95 of 2013 allowed the Licensee to recover accumulated under recovery of Rs.2037.78 Crores occurred till the month of August 2013 for the period for the consumer was paid refund of A.E.C. for the period of six months (six monthly instalments) with effect from September, 2013 till the end of February, 2014. The Licensee had levied AEC as per the Commission's Orders dated 3rd, 4th and 5th September, 2013 in Case No. 28, 44 and 05 of 2013 respectively. According to the Licensee, it had charged AEC to the Consumer only for the period of five (5) months – i.e. from August, 2013 to December, 2013 on account of subsidy received from the Government of Maharashtra vide GR No. 278 dt. 29th January, 2014. The Licensee, therefore, contended that the consumers who had paid sixth instalment of the AEC would get refund for it. However, the Licensee had not confirmed that the said six instalment of AEC paid by the Consumer had in fact been refunded by it to the consumer and/or if adjusted, the details of the Electricity Bill in which the

adjustment had taken place vis-a-vis exact amount payable there under by the Licensee to the Consumer. It is further submitted by the Utility that AEC had not been levied on the Consumer in the month of Jan. 2014 and, therefore, issue as regards to refund of the same to the Consumer does not arise.

6. The Licensee further submitted that as per order of MERC dtd. 26.06.2015 in Case No.95/2013, the Licensee had scrutinized the rates at which AEC - I & AEC-II were applied in terms of the principles adopted by the Commission. During the course of scrutiny, it was found that the total category-wise AEC charged by the Licensee was less than the amount of costs allowed to be recovered by the Commission and that the category-wise rates levied were also lower than the prescribed if the principles had been correctly applied. Under the circumstances, the Licensee pleaded that the issue of carrying over cost for over-recovery of AEC did not arise. Further, the Commission vide its order dt. 13.07.2017 in Case No. 78 of 2016 had directed the Licensee to take a review of the AEC levied on its consumers and to take corrective steps – i.e. if the Licensee had recovered AEC in six (6) instalment on the electricity consumption of August, 2013 to January, 2014, then it was directed to refund the AEC collected on the electricity consumption for the month of August, 2013 and recover the AEC for the consumption of February, 2014. Under the given circumstances, therefore, no carrying or holding cost had been applicable, claimed the Licensee. On this backdrop, the AEC wrongly charged during August, 2013 and subjected to recovery in February, 2014 as per MERC order dt. 13.07.2017 in Case No. 78 of 2016, as also on the basis of instructions issued by the competent authority of the Licensee vide its Commercial Circular No. 23510 dt. 13.10.2017 admissible benefits were passed on to the Consumer in the electricity bill for the month of October, 2007. To sum up, the consolidated responses of the Licensee to the grievances of the Consumer, the Respondent Utility has provided the details of refund and/or recovery of charges to and from the consumer, together with the amount of refund to the consumer, if any, in terms of the instructions contained in their Commercial Circular No.209 dated 07.09.2013. The Respondent Utility, however, submitted that since January, 2014, the benefit of subsidy is being passed on to the consumer directly as per Government of Maharashtra G.R. No. 278 dt. 29.01.2014. As regards refund of FAC charges, the IGRC as per order No.

506 dt. 28.01.2019 did observe that FAC rates applied by the Licensee grossly differ when compared with the same approved by the Commission leading to aggregate refund of FAC to the Consumer. In response to these observations of the IGRC, the Licensee submitted that it had already preferred a proposal to the competent authority for necessary approval regarding refund to the consumer for guidelines if any in the above matter.

7. During the course of hearing on 19.03.2013, as also vide its additional submission to the Forum vide letter No.1710 dt. 26.03.2019, as also to the additional submissions made by the Consumer in person on 19.03.2019 during the course of hearing, the Licensee has pleaded that the dispute escalated by the Consumer to the Forum is barred by limitation. In support of its claim, the Licensee has relied upon the provisions contained in clause No.6.6 of the “Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations, 2006” and accordingly, claimed that the Appeal filed by the Consumer is liable to be dismissed with costs. It, however, needs to be noted that no such claim / identical claims had been made by the Licensee to the IGRRC, either in its written submission and/or during the course of personal hearing before IGRC since the orders passed by the IGRC are silent on this. On this backdrop, it would be in the interests of all to verify the provisions contained in Regulation No. 6.6 of “Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations, 2006” which read as under –

“Regulation No. 6 – Procedure for Grievance Redressal –

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.”

8. In response to the claim of the Licensee to dismiss the grievance / appeal of the Consumer with costs on the grounds of limitations, the Consumer had filed following documents / judgments to counter the claim of the Licensee. A brief review of the documents / judgments placed by the Licensee on record is placed below for ready reference of all the concerned –

APTEL – APPEAL NO. 197 OF 2009 – ORDER DT. 11.03.2011 –

MSEDCL Vs. (i) MERC & (II) Vinod Sadashiv Bhagwat

In the said Appeal the MSEDCL, Head Office, Mumbai had pleaded before the Hon'ble APTEL that the claim of the Consumer – Respondent No. 2 was barred by limitation.

In its order, the APTEL had examined the contention of the Licensee against Para No. 10 of the Order as under –

“It cannot be debated that the Electricity Act is a 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 the Limitation Act. Admittedly, there is no provision in this Act prescribing the bar relating to limitation. That apart, this question has already been decided by the Hon'ble Supreme Court that the Limitation Act would not apply to the quasi-judicial authorities like State Commission. This has been laid down in AIR 1976 SCC 177, AIR 1985 SCC 1279, AIR 2000 SCC 2023, 2004 (VOL. 2) SCC, 456 and 1985 (VOL 2) SCC 590. Further, it has been held by the Hon'ble Supreme Court in Madras Port Trust V/s. Himunshu International reported in (1979) 4 SCC 176 that public authorities ought not to take technical plea of limitation to defeat the legitimate claims of citizens. “

The APTEL also quoted the relevant part of Hon'ble Supreme Court Judgment under reference in its order and concluded that the contention that the proceedings initiated by the Respondent No. 2 Consumer (i.e. Vinod Sadashiv Bhagwat) were barred by Limitation would fail.

9. After perusing rival contentions on the dispute, following points did arise for my consideration to which following reasoning is subscribed:

- a) Whether the consumer is entitled for refund of AEC-I to AEC-II, AEC-III and AEC-IV and additional FAC and Govt. subsidy applicable from time to time?
- b) Whether dispute of the consumer is within the limitations?
- c) Whether the consumer entitled any relief?

d) What order?

Reasoning:-

The consumer, Representative of the Consumer as also the Representatives of the Licensee were given an opportunity of personal hearing, in addition to their written submission, in the scheduled hearing on 19.03.2019 before this Forum to facilitate the contenders to make their submissions in person. It is a case of the consumer for refund of AEC, FAC additional FAC and Government subsidy by the Licensee. So far as the issue of Govt. Subsidy is concerned, the IGRC in its orders No. 506 dt. 28th January, 2019 had already issued directions to the Utility as referred to hereinabove against Para No. 6. As a step towards compliance of the IGRC orders, the Respondent Utility filed the relevant correspondence with the Forum – i.e. letter sent to Chief Engineer, Commercial for further guidelines if any. It is submitted by the utility that the admissible refunds under AEC-I & AEC-II had already been refunded by it to the Consumer and the said had also reflected in the bill/s verified by this Forum during the course of hearing on 19.03.2019. The copy of the said bills for the relevant period placed on the record by the Licensee had also been perused by the Technical Member of this Forum – i.e. Electricity Bill for the months of Oct.2017, Sept.2017, Feb.14, Aug. 2013, Sept.2013, May-2013 together with instructions conveyed by the Licensee vide of Commercial Circular No.209 dtd.7.9.2013. It appears from the dispute that till the hearing before this Forum, the Consumer was not aware that the Licensee had already refunded the admissible difference under AEC I & AEC-II & III, & IV which had also reflected in the electricity bills issued to the Consumer. The Forum, therefore, had given directions to consumer and the Respondent Utility to verify these bills once again where the adjustments towards refund had reflected indicating that the refunds had already been passed on to the Consumer. At the prima facie of this order, no specific reasons have been made by the consumer for non-refund of excess recovery from it by the Licensee towards FAC and AEC. The submission/s made by the Utility clearly indicates that the refund / relief has already been passed on to the aggrieved consumer.

I have come across with the judgements of MERC in the case No. 131 of 2017 {B.R. Mantri Vs. MSEDCL} dtd.01.02.2018. In view of the directions on the Judgment of MERC in the Case No. 17 of 2016 (M/s. Pus Tools Pvt, Ltd. Vs. MSEDCL), the higher authorities of the Respondents have already given requisite instructions and had directed the Utility to take corrective steps in respect of the Consumer M/s. Reliable Auto Tech Pvt.Ltd. Accordingly compliance of this order from the higher authorities of the Licensee is under process. In the same judgement it is also observed by MSEDCL that refund of Government before MSEDCL and State Government and therefore necessary action made to be taken.(?) In this case the proposal has already been forwarded by the Respondents to their Highest Authorities and therefore subject to decision of the same required. The consumer required to wait for the relief of Government Subsidy payable, if any, as the consumer has already received the adjustment in the bills. At this stage, therefore, there doesn't appear to be any admissible refundable amount from the Licensee to the consumer. Under the circumstances I am not inclined to grant give any relief or directions to the Respondent Utility in this regard as refund of AEC and FAC (Additional) already given to the consumer as per MERC Orders issued from time to time and the Respondent Utility was taken the action accordingly as per the orders of MERC and it is verified by Forum that, action taken is appropriate. However the Licensee is directed to ensure that the status of refund already given to the consumer is verified minutely by this Forum. Thereafter the Licensee has submitted the additional reply on 26.03.2019 as per the directives given in the CGRF hearings on dated 19.3.2019. In response to this letter, there is no any refund pending to grant to the consumer regarding AEC (AEC I to AEC IV) and FAC (Additional FAC) etc. In continuation to this, it is seen that, from Jan.2014, the direct subsidy has been given from Government of Maharashtra vide its G.R.No.278 dated 29.1.2014. Considering all the issues it is concluded that, there is no any question of refund pending to the consumer at this stage regarding AEC, FAC and Government subsidy. No order as to the cost.

The time limit of 60 days prescribed for disposal of the grievance could not be adhered to due to CPO was on leave. Hence I am inclined to allow the consumer complaint and proceed to pass the following order:

ORDER

- i) The Consumer is not considered entitled for reliefs, if any, at this stage.
- ii) Hence Consumer Complaint No. 03/2019 stands disposed of accordingly.
- iii) No order as to cost.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 2nd March - 2019.

Note:-

- 1) If Consumer is not satisfied with the decision, he may file representative within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051.

- 2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I agree / Disagree

I agree / Disagree

Sd/-
ANIL JOSHI
MEMBER
CGRF:PZ:PUNE

Sd/-
A.P.BHAVTHANKAR
CHAIRPERSON
CGRF: PZ:PUNE

Sd/-
BEENA SAVANT
MEMBER- SECRETARY
CGRF:PZ:PUNE