

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

Dt:05.03.2019

ORDER

Case No. 01/2019 dated 05.01.2019

**In the matter of grievance pertaining to refund of infrastructure cost,
transformer testing charges etc.**

Quorum

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

Complainant

M/s Raviraj Industries
Yavatmal
Consumer 370019004910

Versus

Respondent

The Superintending Engineer ,
MSEDCL, O&M Circle, Yavatmal.

Appearances:-

Complainant Representative :- Shri. Ashish Subhash Chandarana.

Respondent Representative :- Shri Y.P.Warke, Executive Engineer(Adm)
O&M Circle, Yavatmal.

Being aggrieved by IGRC, Yavatmal's Order Dt.15.12.2018 applicant complainant approached to CGRF, Amravati under clause 6.4 of MERC(CGRF & OMBUDSMAN) Regulations 2006, for redressal of his grievance on dt. Amravati for redressal of his grievance on Dt 05.01.2019 and filed his complaint as Case No 01/2019.

1) Applicant is a H.T consumer of MSEDCL sanctioned load 804KW Contract demand 500KVA. The estimate for the said connection to the applicant's establishment was sanctioned under outright contribution scheme (ORC) vide sanction No. SE/YTL/TECH/ESTT/07-08/15%/21 Dt. 31.10.2007 amounting Rs.17,23,825/- including metering cubicle & supervision charges thereon amounting Rs. 23,538/-

2) The infrastructure cost was to be borne by applicant consumer under ORC & accordingly the required infrastructure as per sanctioned estimate is created by applicant consumer after making payment as per demand note toward various charges including service connection charges Rs. 15,000/- which are paid separately.

3) It is specifically pointed out that on the date of sanction, MERC approved schedule of charges in case No 70 of 2005 was in force & according to it, there was no need to burden infrastructure cost upon consumer.

4) Rs.5,000/- towards cost of testing of metering cubicle & 3,000/- as transformer testing charges recovered by MSEDCL are in violation of approved schedule of charges.

5) As per regulation 18 of supply code, MSEDCL was bound to comply with approved schedule of charges while processing application of new connection. As per the said schedule of charges, MSEDCL was not suppose to burden infra cost, metering cost, transformer testing charges and cubicle testing charges, upon consumer which is actually responsibility of MSEDCL read with EA 2003 and approved schedule of charges by MERC.

6) Hon'ble MERC vide its order dated 17 May 2017 had already directed MSEDCL to refund all the amount collected in violation of approved schedule of charges & further not to collect any amount in violation of approved schedule of charges or which is not defined undersupply code 2005. These directions of MERC were stayed by Supreme Court vide its Interim order dated 31.08.007 In Civil appeal No. 4305 of 2007 (case diary no 20340 of 2007 wherein MSEDCL has challenged the MERC & APTEL order disallowing MSEDCL to recover infrastructure cost from consumers.

8) Applicant submits that, on 10.11.2016, Supreme Court has dismissed the appeal of MSEDCL challenging MERC order & APTEL order prohibiting MSEDCL from recovery of infrastructure cost for providing electricity supply. (MERC case No. 70 of 2005)

9) The disposal of the said petition has resulted in vacation of stay granted by Hon'ble Supreme Court & thus the order of MERC dated 8 September 2006 continues to remain in force. Accordingly, it was duty of MSEDCL to refund the cost of Infrastructure post Apex Courts decision dated 10.11.2016 read with MERC order dated 8 Sept 2006 (70 of 2005) 17 May 2007 (82 of 2006) and 1 September 2010 (93 of 2008).

10) MSEDCL has released circular to this effect on 12.10.2017 directing refund of unlawful recovery till 30.04.2007 followed by another circular widening scope of refund of recovery made till 20.05.2008 giving effect to MERC order dated 1 September 2010 (93 of 2008) considering the fact that MSEDCL has introduced the official scheme of spend first and then get refund through energy bills from 20.05.2008 for infrastructure cost.

11) MSEDCL has recovered the following charges in violation of approved schedule of charges from applicant while granting sanction and releasing new connection which are as hereunder: -

- a) ORC Supervision charges @ 15% on labor : Rs. 23,538/-
- b) Cubicle and cable testing charges : Rs. 5000/-
- c) Transformer testing charges : Rs. 3000/-
- d) Infrastructure cost including cubicle metering: Rs. 17,23,825/-

Detailed is the abstract sheet of unlawful recovery made in violation of schedule of charges approved by MERC in case No 70 of 2005 order dated 8-09-2006.

TABLE A: Excess Charges recovered during LT connection

| Sr .No. | Detailed description of amount | Amount |
|---------|--|--------------------|
| 1 | Supervision charges @ 15% on labor component of estimate | 23,538/- |
| 3 | Cubicle testing charges | 5,000/- |
| 5 | Transformer testing charges | 3,000/- |
| 6 | Infrastructure cost with cubicle metering | 17,23,825/- |
| | Total: | 17,55,363/- |

12) MERC has ordered to pay interest on such recovery @ 12% p.a. in MERC case No 23 of 2004. Accordingly, applicant is entitled for interest @ 12% p.a. to be credited annually till the date of refund.

13) The Grievance was submitted before IGRC for its redressal. However, IGRC while disposing the grievance denied the claim of infrastructure stating that it is not the case where the applicant has deposited infrastructure cost with MSEDCL and later MSEDCL created infrastructure. IGRC observed that It is the case wherein infrastructure work is being executed by consumer under the supervision of MSEDCL and hence refund can not be made.

14) Applicant begs the attention of Hon'ble CGRF toward the fact that the order of MERC was limited for refund on unlawful recovery till 30.04.2007 and further not to recover any amount on account of infrastructure cost. However, MSEDCL disobeyed these directives till 20.05.2008 and thereafter MSEDCL introduced the circular of spent first and then get reimbursed on 20.05.2008. Under these circumstances, it cannot be said that amount incurred by consumer cannot be refunded. It is admitted position on part of MSEDCL that from 20.05.2008, it has taken proactive stand by obeying the order of MERC and thus MSEDCL issued a fresh circular extending the ambit of ORC refund from 30.04.2007 to 20.05.2008 proactively. Therefore, the stand taken by IGRC is inconsistent with the board resolution and also is in violation of the provisions of act, order of MERC, APTEL and so also the order of Hon'ble Supreme Court.

Prayer of the complainat before the Forum:

- 1) Direct MSEDCL to refund Rs. 17,55,363/- (including cubicle metering & testing charges) along with interest thereon @ 12% p.a. from the date of collection till the date of refund.
- 2) Any other relief which Hon'ble CGRF may deem fit considering facts and circumstances of the case including cost Rs. 10,000/-

Reply filed by Non Applicant MSEDCL before the Forum.

The case was admitted to the Forum on date 05.01.2019 and a copy of the grievance was forwarded on date 07.01.2019 to the Nodal Officer, MSEDCL, O&M Circle Yavatmal for submitting para-wise reply to the Forum on the grievance within 15 days under intimation to the complainant. The scheduled hearing in case no 01/2019 was 31.01.2019. However N.A. MSEDCL vide letter dated 30.01.2019 to the Forum requested the Forum to postpone the hearing. N.A. filed the reply on date 12.02.2019 before the scheduled hearing on date 14.02.2019.

The Non Applicant submits the reply as below:-

- 1) The order passed by Internal Grievance Redressal Cell Yavatmal's order dated is totally based on MERC order in case no 70 of 2005 dated 08.09.2006 in which it is clearly mentioned that, "The Commission totally rejects proposal to recover service line charges from prospective consumers except in case of consumers requiring dedicated distribution facility". The present consumers line is DDF as defined in SOP regulations as follows. Dedicated Distribution Facility means such facilities, not including a service line, forming part of the distribution system of the distribution licensee which are solely dedicated to the supply of electricity to a single consumer or group of consumers on the same premise or contiguous premises.
- 2) The answering respondent specifically submits that the line of the complainant is erected by himself due to his urgency and the same is DDF. There is nothing to show that the line is not DDF and there is no specific submission by the consumer before IGRC or before the Forum.
- 3) It is accepted by N.A that the required infrastructure as per sanctioned estimate is created by applicant consumer after making payment as per demand note toward various charges including service connection charges Rs. 15,000/- which are paid separately. However, the estimate framed under ORC is actually DDF .
- 4) N.A. accepts that I.G.R.C. has awarded the refund of testing charges, but since the same are challenged before the Forum , the N.A. MSEDCL requests the Hon'ble Forum to reject the case being out of limitation as per Regulation 6.6 CGRF & E.O. Regulations 2006. In order to substantiate their contention N.A has produced the judgment of Hon'ble High Court of Bombay, bench at Aurangabad in W.P 6860 of 2017 dated 21.08.2018. N.A submits that the cause of action for filing complaint before IGRC or CGRF arose on the date of connection i.e 08.08.2008 and therefore the present complaint is not tenable on the ground of time limitation.
- 5) The N.A. has not violated any provisions of supply code moreover the complainant is not eligible for refund of since it was a Dedicated Distribution Facility connection and the work was executed by the complainant.
- 6) The complainant's argument that it was duty of MSEDCL to refund the cost of Infrastructure post Apex Courts decision dated 10.11.2016 read with MERC order dated 8 Sept 2006 (70 of 2005) 17 May 2007 (82 of 2006) and 1 September 2010 (93 of 2008) does not have any substance in the present context as the supply to the complainant's premise is of D.D.F nature which is again reiterated by N.A.

MSEDCL's circular no CE/Dist/D-IV/MERC/25079 dt 12.10.17 wherein it reads "the SLC , ORC and meter charges shall not be refunded where consumers have opted for DDF supply".

- 7) The circular no CE/Dist/D-IV/MERC/25079 dt 12.10.17 is issued for refund of infrastructure cost paid during the period 20.01.2005 to 30.04.2007. Thereafter an amendment to this circular is issued wherein only the dates are extended i.e period considered 20.01.2005 to 20.05.2008 and the consumers who have opted for DDF are not eligible. The complainant has avoided the terminology DDF throughout the complaint as well as during the pleading before IGRC.

Submission during the hearing before the Forum:

By the Applicant:

Applicant consumer admits the receipt of soft copy from non applicant as reply on 31.01.2019 and soft of annexures thereon on 12.02.2019 through e mail. In this context, the written note of argument of applicant is as hereunder:- MSEDCL has changed its entire stand taken vide its submission before IGRC & subsequent order which is a clear afterthought stand on following ground.

- a. The submission before IGRC from MSEDCL is recorded in its order which is as hereunder:-

“ The refund of ORC cost is not done as application has not paid ORC charges or meter charges. Only the estimate is sanctioned under ORC but the work is executed by consumer by paying supervision charges through licensee electrical contractor.”

As per circular No CE/Dist/D-IV/MERC/25079 dt 12.10.2017 and its amendment dated 29.12.2017, if a consumer paid the ORC charges or meter cost then it need to be refunded except for DDF work.

The estimate is sanctioned under ORC but the work is not done by MSEDCL by accepting ORC amount. The work is executed by consumer through licensee electrical contractor by paying 15% supervision charges. Therefore only testing charges to be refunded. Infrastructure cost is disallowed.

Thus the submission of MSEDCL before IGRC and subsequent order of IGRC is on different ground whereas the stand taken before Hon'ble CGRF is altogether on different ground.

Applicant submits that the definition of DDF can not be read in isolation as such this is resulted in misinterpretations in past also giving rise to elaborate it in MERC case No 56 of 2007 due to misinterpretation of MSEDCL. The same needs to be interpreted along with detailing given by MERC in case No 56 of

2007 order dated 16.02.2008 wherein it is specifically mentioned that DDF facilities cannot be imposed upon consumer.

MSEDCL has made submission before MERC in case no 93 of 2008 which reads as hereunder:

Schedule of Charges: It is submitted that, once again instructions are issued to the field Officers to ensure recovery of charges strictly as per the Schedule of Charges Order dated 8th September 2006. There would be rare cases where the field Officers might have recovered the charges in violation of the said schedule of charges. However, the instruction shall be once again given (on or before 30th June 2009) to all the field officers to ensure that the charges for new service connection/enhancement of connected load/contract demand shall strictly be recovered in accordance with the “Schedule of Charges” and specific relevant provisions of Supply Code Regulations.

Further, it is submitted that, Schedule of Charges Order dated 8th September 2006 has been contested by MSEDCL and matter is sub- judice before the Hon. Supreme Court. In the same matter, Hon Supreme Court has stayed the refund of any excess amount that would have been recovered by MSEDCL from consumers in violation of Schedule of Charges. As far as guidelines issued vide Circular dated 20th May 2008 is concerned, these guidelines are prospective in nature and cannot be enforced retrospectively. In view of this, refund of any excess amount recovered in violation of the schedule of charges would not be possible till the matter pending before the Hon’ble Supreme Court is finally disposed off.

In the same case, Hon’ble MERC ruled that,

Regarding, 10,740 number of cases where MSEDCL has recovered charges other than approved Schedule of Charges; the Commission is of the view that these are only indicative cases found out on the sample checking basis. MSEDCL either has to scrutinise details of all the consumers released during the period of 9th September 2006 to 20th May 2008 for charges levied other than approved Schedule of Charges or publicly appeal either through news papers or electricity bills, asking the consumers to contact MSEDCL if such charges are levied on them during above period. Thereafter, MSEDCL should adjust the extra charges collected by MSEDCL in the energy bills of the respective consumers. If any consumer has any grievance regarding excess charges levied by MSEDCL and its refund, they may file the same before the concerned Consumer Grievance and Redressal Forum established by MSEDCL under the provisions of Section 42(5) of the EA 2003 read with the “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006”. This directive of refund of excesses recovered charges will not be

applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007.

Thus applicant submits that the Hon'ble Supreme Court has dismissed the appeal made by MSEDCL & thus the stay granted on refund of ORC charges is also vacated resulting release of circular of MSEDCL to refund ORC cost.

The argument advanced by MSEDCL have no merit considering regulation 3.3.3 of supply code 2005 which reads as hereunder:-

Regulation 3.3.3 of supply code 2005:-

Where the provision of supply to an applicant entails works of installation of dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.

Regulation 18 of supply code 2005:-

18.1 Every Distribution Licensee shall, within one month from the date of notification of these Regulations or within one month from the grant of licence, whichever is later, file with the Commission for approval, a schedule of charges for matters contained in these Regulations and for such other matters required by the Distribution Licensee to fulfill its obligation to supply electricity to consumers under the Act and these Regulations: Provided that the Distribution Licensee shall file the schedule of charges along with every application for determination of tariff under Section 64 of the Act together with such particulars as the Commission may require.

18.2 The Commission shall after examining the schedule of charges filed before it by a Distribution Licensee under Regulation 18.1: (a) issue an order granting its approval thereon, with such modifications or such conditions as may be specified in that order; or (b) reject the schedule of charges filed before it for reasons to be recorded in writing if it is not in accordance with the provisions of the Act and / or these Regulations:

Provided that the Commission shall reasonably consider the views of all interested parties before the schedule of charges of a Distribution Licensee is approved, modified or rejected by the Commission under this Regulation 18.2: Provided further that the Commission may approve the schedule of charges for each Distribution Licensee or may fix a schedule of charges applicable to a class of Distribution Licensees or to all Distribution Licensees in the State.

Provided also that the schedule of charges approved by the Commission shall, unless otherwise amended or revoked, continue to be in force for such period as may be specified in the order of the Commission granting such approval.

18.3 Any deviation from the approved schedule of charges shall be only with the prior approval of the Commission.

18.4 The existing schedule of charges of the Distribution Licensee shall continue to be in force until such time as the schedule of charges submitted by the Distribution Licensee under Regulation 18.1 is approved by the Commission.

19. Terms and Conditions of Supply

19.1 Any terms or conditions of the Distribution Licensee, whether contained in terms and conditions of supply and / or in any circular, order, notification or any other document or communication, which are inconsistent with these Regulations shall be deemed to be invalid from the date on which these Regulations come into force.

19.2 Every Distribution Licensee shall, within a period of four months from the date of notification of these Regulations, modify and update the terms and conditions of supply and all circulars, orders and any other document or communication relating to the supply of electricity to consumers to make them consistent with these Regulations:

Provided that every Distribution Licensee shall, at the end of four months from the notification of these Regulations, confirm such modification and up-dation to the Commission, along with a copy of the revised terms and conditions of supply: Provided further that any existing circulars, orders and any other document or communication relating to the supply of electricity to consumers not modified or updated in accordance with this Regulation 19.2 shall be deemed to be invalid at the end of four months from the date of notification of these Regulations.

19.3 The Commission may, upon a review of the terms and conditions of supply submitted by the Distribution Licensee, direct the Distribution Licensee to amend or modify any clause contained therein which is, in the opinion of the Commission, inconsistent with the provisions of the Act or these Regulations.

Complainant stressed upon the legal provisions mentioned above and requests the Forum to consider them while deciding the case.

N.A. MSEDCL in its written submission has submitted that:

The connection was urgently needed by the consumer and hence has erected the infrastructure at his own cost and hence there is no violation of Supply code in the present matter.

As regards to the say of N.A. the complainant submits that standard of performance mandates MSEDCL to release the connection requiring augmentation of distribution mains within three months from the date of application. The complainant reiterates that if any consumer opts to spend first then it does not constitute DDF. Circular dated 20.05.2008 covers such connections within the scope of Non DDF.

The consent given by the complainant is self explanatory. It clearly states that the applicant has opted to carry out the work under ORC and as such he cannot wait for MSEDCL's chronology wherein the connection would have been released beyond the time prescribed by SOP regulations. The refund in similar cases is given through energy bills vide circular dated 20.05.2008 and therefore the date of circular has been extended till 20.05.2008

Submission by NA during the hearing:

Nil

Having heard both the parties and examining material placed on record, the Forum has to decide on the following points:

1. Time limitation for the complainant to approach CGRF.

In the context of time limitation, the NA takes the reference of clause 6.6 of MERC (CGRF & EO) Regulations 2006 and has also cited the judgement in the WP No. 6859/2017 MSEDCL Vs Jawahar Shetkari Sut Girni Limited decided by Hon. Bombay High Court, Aurangabad Bench on 21-08-2018.

The Forum holds the opinion that the time limitation that has been defined under clause 6.6 in MERC (CGRF & EO) Regulations 2006 is for the complainant to approach CGRF. The cause of action in that case becomes the disposal or non-disposal of the complaint by IGRC within 2 months. The time limitation for the complainant to approach IGR Cell is dealt with by MERC (CGRF & EO) Regulations 2006 under Clause no. 3.3. Here it is required from the distribution licensee to frame necessary rules and procedure along with time limitations for consumers to approach IGR Cell with their grievances. Clause 3.3 a,b and c elaborate upon the process to be followed while finalizing such Rules and procedures. There is nothing placed on record by the NA to indicate the very existence of any such Rules and Procedures as on date. Hence the Forum concludes that in absence of any such Rules and Procedures, the cause of action applies only upon the consumer being aggrieved by the decision of IGRC. Hence in the present case the point of time limitation raised by the respondent does not seem to hold any substance. Therefore the Forum proceeds to consider the grievance further.

2. The complainant claims the refund of ORC charges of Rs. 1755363/- (including metering cubicle and testing charges). This claimed amount corroborates with the estimate of the work prepared by the NA MSEDCL and the same is placed on record.

NA claims that this work is under DDF scheme and hence refund is not applicable here. However NA has not brought on record any document which proves that the said applicant is indeed under a Dedicated Distribution Facility. On the contrary, the estimate made by NA as well as the undertaking from the consumer clearly indicate that the consumer has been sanctioned the connection under ORC scheme. Thus the Forum feels that since the consumer does not belong to DDF category, he is entitled for the refund as per MERC Order Numbers 70 of 2005, 82 of 2006 and 93 of 2008.

3. Now as far as the demand of interest at 12% per annum by the applicant is concerned, the MERC order in case no. 23 of 2004 makes it very clear that the NA is bound to pay interest at the rate of 12% per annum from the date of connection to the date of actual refund.

Hence the Forum proceeds to pass the following unanimous order.

ORDER

1. The complaint in case no. 01 of 2019 is partly allowed.
2. NA MSEDCL is directed to refund the amount of Rs. 17,55,363/- along with interest at the rate of 12% per annum from the date of release of connection till the date of actual refund.
3. No order as to cost.
4. NA MSEDCL is directed to submit compliance of this order within one month 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, Vijai Nagar, Chhaoni,
Nagpur- 440013.

