

CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE
(Established under the section 42 (5) of the Electricity Act, 2003)

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No. / CGRF /Nashik/NUC/N.U.Dn.1/753/06/2019-20/

Date:

(BY R.P.A.D.)

Date of Submission of the case : 03/04/2019
Date of Decision : 30/08/2019

To.

M/s. Avdhoot Heat Treat Pvt. Ltd.,
F-16 Ambad MIDC Nashik
Nashik 422010
(Consumer No.049139023660)

Complainant

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

Distribution Company

In the matter of refund of Excess amount collected FAC/AEC, GOM Subsidy

Judgment

M/s..Avdhoot Heat Treat Pvt. Ltd.,hereafter referred as the Complainant). Nashik has claimed ..

- a) Refund of FAC / AEC for the year 2012, 2013. To 2015 with Reserve Bank Interest.
- b) The present complaint being filed on 03/04/2019 after the decision of IGRC on 30/03/2019 being well within limitation so the complaint for refund.
Countering the said claim the respondent Maharashtra State Electricity Distribution Co. Ltd.(Dist. Co.) has claimed
- c) Claim is beyond limitation
- d) AEC refunded to all consumer within the state of Maharashtra in the month of Oct.2017.
- e) Regarding FAC which is continuous & variable cost depending on cost of fuel & cost of power purchase by dist.co. /Generating Co, on approval from MERC during truing up process the under recover/ over recovered FAC is being post facto adjusted automatically . Hence no question of refund separately arises.

From the pleading of both the parties following issues arise for our determination.

<u>ISSUE</u>	<u>FINDINGS</u>
1. Is Complainant entitled to refund of AEC	Negative
2. Is Complainant entitled to refund of FAC	Negative
3. Is complaint within limitation.	Negative
4. What order and judgment	As per final Order.

Reasons

As to issue No.1 :

Adverting to refund of additional Electricity Charges (AEC) , it is not in dispute that the respondent Dist. Co.in compliance with the MERC order in Case No. 78/2016, dtd. 13/07/2017 , M/s. Paul Strips & Tubes (P) Ltd. the Dist. Co. in the month of Oct. 2017, had adjusted the additional Electricity charges to its consumers all over Maharashtra so this dispute is set at rest & question of refund of AEC thus do not arise, so this issue is answered in negative.

As to issue No.2 :

As to refund of Fuel adjustment Cost (FAC), from the say of respondent , it appear that as per MERC's order the proposal for fixing up of rates of FAC for further billing cycle for two or three month is forwarded to MERC for approval during this process of truing up the under recovered/ over recovered FAC is being post facto adjusted automatically . Hence no question of refund separately arises. So issue no. 2 the answer is negative.

As to issue No.3 :

Adverting to the claim within limitation reliance is placed on
MSEDCL V/s. Jawahar Shetkari Soot Girani Ltd.
W.P. 6859 of 2017 decided on 21/08/2018

The some & substance of the said ratio is the consumer , being aggrieved must approach the Forum within two years from the cause of action. In the present case the claim is for refund of FAC of the year 2012. 2013 to 2015. The complainant have approached the IGRC with his grievances in the month of Jan. 2019 & before this Forum in the month of April 2019. According to the record, he is the consumer of the respondent from the year 2013. So his Grievances for the year 2012 do not arise at all. The Grievance of refund of FAC for the year 2013 to 2015, considering the ratio discussed supra, the claim is beyond two years needs to be rejected , so rejected. We answer issue No. 3 is negative.

ORDER

- 1** The claim is dismiss with cost.
- 2** 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.
- 3** 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.

4. 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.

(Prasad P. Bicchal)
Member Secretary

(Vivekkumar R. Agrawal)
Chairman

I disagree with decision of CHAIRPERSON & MEMBER SECRETARY
Descending opinion of Member CPO
OBSERVATIONS OF CPO Member

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 capitalizing 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 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.**

5Accordingly 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.

6However, 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....”

The Hon. Commission has finally directed the Distribution Company as follows:

17. However, MSEDCL shall review the refunds made by it so far on account of wrongful premature billing, and make any remaining refunds due to consumers in the next billing cycle.

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 that subsidy on A/C of AEC for the month Feb .2014 received from GOM which has to be confirmed from H.O. and it 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 the 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 is orders to confirm whether AEC III and AEC IV is recovered in six equal monthly installments 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 W.P.6859of 2017 decision Hon. High Court Aurangabad Bench 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 to point out you that as per APTEL Order under ref.(10) above However 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) 1985(Vol2) SCC 590 has directed that public authorities ought not to take technical plea of Limitation to defeat the legitimate claims of the citizens.

As per APTEL decision (Appeal No. 197 of 2009) Tariff fixation is a continuous process and is to be adjusted from time to time. Consequently, the application and enforcement of tariff also constitute a part of Regulatory exercise to which the limitation cannot be applied.

Further Hon. Mumbai H.C. Aurangabad Bench in case AEC/FAC (MSEDCL V/S GIRIRAJ ENTERPRISES) W.P.NO.4516 OF 2018 directed MSEDCL that when refunds have been granted to hundreds of such consumers and these respondents have been discriminated against. MSEDCL Nasik has also refunded these amounts and hence these complainants should not be discriminated.

Nasik CGRF have also issued orders for many Industries in the year 2016-17,2017-18,2018-2019 to refund AEC,FAC and additional FAC. Same Member Secretary had also issued the orders from his posting in Nasik CGRF from the month Jun 2017 to Jul 2018 without differing opinion to refund the AEC/FAC and additional FAC as per rules. Hence now NASIK CGRF should not discriminate in the refund of AEC/FAC and additional FAC.

According to my opinion

1 The MSEDCL should 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 as per Section 62 (6) I.E. Act 2003

2. **MSEDCL had refunded amount of AEC in OCT 2017 Rs. 20892.38 and reconciled the calculation by giving computerized calculation sheet .**

3 The MSEDCL should refund Additional FAC for the month December 2013 with interest as per Section 62 (6) I.E. Act 2003

4 The MSEDCL should refund excess FAC recovered from December 2013 to December 2015 after recalculation/reconciliation FAC with MERC post facto approval.

(Smt. Vaishali V. Deole)
Member

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.

