

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/AZ/ARC/746/2019/31
Registration No. 2019070006**

Date of Admission : 02.07.2019

Date of Decision : 15.10.2019

M/s Luminaz Safety Glass Pvt.Ltd., : COMPLAINANT
Gut No.62,63,66 Limbejalgaon,
Nagar Road, Tq. Dist. Aurangabad-431136
(Consumer No. 508789075370)

VERSUS

For Consumer : Shri H.A.Kapadia

For Licensee : Shri.Y.B.Nikam
Executive Engineer,Rural Circle,
Aurangabad.

CORAM

Smt. Shobha B. Varma, Chairperson
Shri Makarand P Kulkarni, Tech. Member/Secretary
Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

- 1) The applicant M/s Luminaz Safety Glass Pvt. Ltd., Gut No.62,63,66 Limbejalgaon, Nagar Road, Tq.Dist. Aurangabad-431136 having Consumer No. 508789075370. The applicant has filed a complaint against the respondent through the Executive Engineer i.e. Nodal Officer, MSEDCL Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 02.07.2019.

The brief facts of the dispute are as under:-

- 2) The complainant is authorized signatory of the above named Company situated at Gut No. 62, 63 & 64, Village Limbejalgaon, Nagar Road, Aurangabad.
- 3) The Respondent is authorized and Responsible officer of Maharashtra State Electricity Distribution Company which is engaged in distribution of electricity in Aurangabad and within state of Maharashtra.
- 4) In view to start manufacturing of safety glasses required for Automobile Industries, the complainant submitted application for release of 33 Kv HT connection with connected load of 5305 Kw and 2000 KVA contract demand in the office of Superintending Engineer, MSEDCL, Rural Circle Aurangabad on 30.03.2016.
- 5) It is submitted by the complainant that after processing application, Superintending Engineer, MSEDCL Rural Circle, Aurangabad issued load sanction vide his letter dt. 08.07.2016. The complainant was asked to pay Rs.19,84,586/- which includes Rs. 19,47,334/- as security deposit and Rs.34,480/- towards 1.3% normative charges. The Superintending

- Engineer, in the said sanction letter (Para 6(b)) also permitted to procure and install 33 kv metering cubicle and agreed to refund the cost of same through bill adjustment.
- 6) It is further submitted by the complainant that along with load sanction letter, the Superintending Engineer, MSEDCL Rural Circle, Aurangabad also issued Technical sanction letter on 08.07.2016. The technical sanction No. was shown as SE/ARC/HT-Billing/1.3% Normative charges /2016-17/13 and sanction was accorded under 1.3% Normative scheme. As per said sanction, complainant was asked to develop necessary infrastructure required for providing supply to the factory.
 - 7) It is submitted by the complainant that the petitioner has procured all the required material and completed the erection work of HT line etc along with installation of 33 kv metering cubicle at the factory. The electricity connection was released after execution of agreement and completion of other formalities in the month of Jan. 2017.
 - 8) It is further submitted by the complainant that the Respondent was expected to refund the cost incurred by them towards development of infrastructure and towards procurement of 33 kv metering cubicle which is agreed upon by the Respondent. However since no refund was received, the complainant filed his grievance before IGRC of Respondent Company on 22.02.2019. Order was passed on it on 05.03.2019.
 - 9) It is submitted by the complainant that in spite of Hon'ble Supreme Court order, MERC directives and MSEDCL own circulars regarding refund of infrastructure and metering cost, IGRC dismissed the grievance without going into merit of the subject by its order dt. 25.03.2019. The IGRC further went on to refuse the refund cost towards metering cubicle

in spite of the fact that the same was agreed upon (para 6 (b)) in the sanction letter dt. 08.07.2016. Therefore present grievance is filed by the complainant.

- 10) The complainant submitted that since, he has not demanded electricity supply on dedicated Distribution lines (DDF), Respondent issued sanction under SE/ARC/HT-Billing/1.3% Normative charges Scheme. The layout drawing prepared by Respondent at the time of sanction also confirm that the said 33 kv line from which supply has been extended to the factory is not an express feeder.
- 11) It is further submitted by the complainant that the above facts confirms that, the complainant has not demanded supply on DDF and the estimate sanction by Respondent is not under DDF Scheme wherein consumer has to bear cost of infrastructure.
- 12) The complainant has submitted that, as per provision of sanction 43 of Electricity Act 2003 and orders passed by Hon'le MERC, it was mandatory for Respondent to refund the cost of Rs. 26.86 lacs incurred by the complainant towards development of infrastructure. The complainant is also eligible to get refund of Rs.2.00 lacs incurred towards purchase of 33 kv metering cubicle.
- 13) The complainant further cited the following circulars published by Respondent which are related to refund of infrastructure and meter cost.
 - a) Circular No. 22197 dt.20.05.2008
 - b) Circular No. 39206 dt.21.12.2009
 - c) Circular No. 5489 dt.14.03.2018
 - d) Circular No. 9245 dt.23.04.2018

e) Circular No. 10992 dt.15.05.2018

f) Circular No. 7949 dt.19.03.2019

g) Copy of Newspaper publication

- 14) The complainant submitted that all above mentioned circulars stipulates that, MSEDCL is duty bound for development of required infrastructure for releasing connection to consumers and in case the same is developed by consumers, the cost of infrastructure and meter is required to be refunded to respective consumers.
- 15) The petitioner has also relied upon following orders:-
1. Copy of the order dt.20.03.2019 passed by Hon'ble High Court, Nagpur in WP No.468/2018.
 2. Copy of the order dt.17.05.2007 passed by Hon'ble MERC incase No. 82/2006.
 3. Copy of the order dt.10.12.2018 passed by Hon'ble E.O., Nagpur in Representation No.68/2018.
 4. Copy of the order dt.05.10.2017 passed by Hon'ble E.O., Nagpur in Representation No.39/2017.
- 16) The complainant submitted that as per CEA Regulations and MERC dt. 08.09.2006(Case No.70/2006) and MSEDCL circular No.43 dt. 27.09.2006 the metering is required to be provided by Distribution Licensee i.e. MSEDCL. It is mandatory on the part of Respondent to refund the cost of infrastructure and meter to respective consumers, in case the same is borne by the consumer. In spite of crystal clear provision, MSEDCL is deliberately avoiding to comply with the orders.
- 17) The complainant therefore prayed as follows:

- 1) To direct MSEDCL to refund cost incurred by us towards development of infrastructure along with interest.
- 2) To direct MSEDCL to refund of cost of 33 kv metering cubicle incurred by us along with interest.
- 3) To direct MSEDCL to pay suitable compensation.

The Respondent MSEDCL submitted its reply (P.No.25) as follows:-

- 18) That after handing over of installation & execution of agreement etc, 33 kv supply was released by MSEDCL on 09.01.2017.
- 19) That the limitation described by MERC (CGRF & Electricity Ombudsman) regulations 2006, R.6.6 would render the grievance raised by the complainant before the forum beyond limitation.
- 20) In the present matter the cause of action arose admittedly when supply was released to the consumer on 31.10.2016, thereby depicting that the consumer has to approach before the forum within two years from the date 09.01.2017 i.e. upto 09.01.2019. In the instant matter the complainant has filed the complaint before the forum on 02.07.2019 i.e. beyond the period of limitation as demarcated in regulation 2006.
- 21) This Court of limitation is fortified in the judgment of Bombay High Court Aurangabad Bench, in a bunch of writ petitions No.6859 to 6862/2017 filed by MSEDCL against M/s Jawahar Shetakari Soot Girni Ltd.
- 22) The grievance of complainant may be dismissed.

The complainant has submitted rejoinder as under:-

- 23) It is submit that the concerned office of MSEDCL submitted its reply on the grievance before IGRC and stated (Para 5 & 6) that since the consumer has applied for DDF connection and as estimate is sanctioned

- under DDF, refund is not possible. However IGRC, in its order dt. 15.03.2018 dismissed the grievance on the ground of limitation.
- 24) The complainant submitted that, he has not demanded 33 kv supply on express feeder nor Respondent has sanctioned the same under DDF scheme. The complainant submitted that it is pertinent to note that the submission of technical estimate by concerned filed officer, the line diagram submitted along with estimate and monthly electricity bills issued after release of connection all confirms that the supply provided to the petitioner was not from Express feeder.
- 25) The complainant wish to bring to kind consideration of Hon'ble Forum that application of consumer, sanction by MSEDCL, payment, applicable tariff, provision of Electricity Act-2003 and MERC regulations are all part of legal agreement executed between consumer and MSEDCL before release of connection. The terms and conditions of the agreement are binding on both parties.
- 26) The complainant wish to submit that in the sanction letter dt. 08.07.2016, Respondent at para 7(b) has agreed to refund cost of metering cubicle if the same is purchased by consumer. Since the said sanction letter is part of HT agreement, Respondent can't violate the terms and conditions of agreement on the ground of limitation. The issue of time limit does not attract in present matter. The complainant is therefore eligible to get refund of metering cubicle cost incurred by him.
- 27) The complainant further wish to bring to kind notice of Hon'ble Forum that MSEDCL has filed appeal against the order passed by Hon'ble MERC and APTEL in the matter of refund of charges like ORC, RLC and other

such charges collected by MSEDCL towards development of infrastructure works for providing supply to consumer was pending before Hon'ble Supreme Court (Appeal No.20340). The complainant wish to submit that the appeal filed by MSEDCL was dismissed by Hon'ble Supreme Court vide order dtd. 10.11.2016. The petitioner has submitted application for release of electricity connection on 30.03.2016 and Respondent has accorded load sanction on 08.07.2016 i.e. prior to order passed by Hon'ble Supreme Court. The HT connection was thereafter released to the factory in the month of January 2017. This facts confirms that the process of application and sanction was carried out before the order dt. 10.11.2016 passed by Hon'ble Supreme Court. Now since Hon'ble Supreme Court has upheld the order passed by MERC and APTEL, MSEDCL is duty bound to comply same.

- 28) In view of above submissions, it is crystal clear that MSEDCL has not released the electricity connection to the factory from Express feeder and cost towards purchase of metering cubicle and development of infrastructure was incurred by complainant.

The petitioner has submitted further rejoinder as under:-

- 29) That, during hearing on 03.09.2019, Respondent shown their readiness to refund cost of two Nos. of 33 kv metering cubicle being mandatory and as per terms and conditions mentioned in the sanction letter. However, Respondent has admitted that the 33 kv HT supply provided to the petitioner is non DDF.
- 30) The complainant submits that, 33kv HT connection was released to his factory in the month of January 2017. Respondent was expected to

refund or adjust the cost incurred by us towards metering cubicle and infrastructure in the post month bill i.e. bill of February 2019.

- 31) The complainant has filed his grievance before IGRC of Respondent on 22.02.2019 which confirms that the present grievance is within limitation as per provision of MERC Regulations.
- 32) We have perused the pleadings submitted by both the parties. Heard Consumer Representative Shri. Kapadia & Shri. Y.B. Nikam, Executive Engineer for Respondent. Following points arise for our determination & we have recorded findings for the reasons to follow:-

Sr.No.	POINTS	ANSWER
1	Whether the claim is within limitation?	No.
2	Whether the petitioner is entitled for refund of infrastructure cost & metering cubicle cost?	No.
3	Whether the petitioner is entitled for compensation?	No.
4	Whether order passed by IGRC is just legal & correct.	Yes.
5	What order & cost?	As per final order

REASONS

- 33) **Points 1 & 2:-** As can be seen from the sanction letter (P.No.14), (P.No.15) & the bill (P.No.19) the connection is given to the petitioner from 33 Kv feeder, which is common feeder. Parties are not of dispute that the petitioner is Non Express consumer & work was done under 1.3% normative charges. Technical sanction was granted to the petitioner on 08.07.2016 (letters P.No.10 to 14). It is also not in dispute that infrastructure & metering cubicle cost was incurred by the

petitioner, work was completed & connection was released to the petitioner on 9th January 2017. According to the petitioner, the refund of infrastructure cost is Rs.26.86 Lacs & of meter cubicle cost is Rs.2.00 Lacs.

34) In support of his claim, the petitioner has referred following circulars:-

Sr. No.	Circular No.	Date
1	22197	20.05.2008
2	39206	21.12.2009
3	5489	14.03.2018
4	9245	23.04.2018
5	10992	15.05.2018
6	7949	19.03.2019

35) In case No. 70/05 decided on 8th September 2006 by Maharashtra Electricity Regulatory Commission (for short purposes hereinafter referred as MERC) in para 6.4 laid- down following guidelines:-

“As per the provisions of the Act developing infrastructure is the responsibility of Licensee. The Commission therefore directs that the cost towards infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL. The recurring expenses related to capital investment on infrastructure shall be considered in ARR determination.”

36) In circular No.25097 dt. 12 October 2017 clause No.7 stipulates that

“The SLC, ORC & meter charges shall not be refunded in the cases where consumers have opted for DDF supply.”

- 37) Circular No.22197 dt.20.05.2008 was issued subject to decision of pending appeal No.4305/2007 before Supreme Court , para 3 of it refers that:
- “The list of pending applications in order of chronology (category wise) shall be maintained. In case any consumer or group of consumers wants early connections out of its own volition or choice, he may get the work executed at his expenses under MSEDCL supervision & get the refund of expenses so incurred through his energy bills. However, he will have to get the estimates & specifications sanctioned from the appropriate authorities & he will be required to pay supervision charges to MSEDCL.”
- 38) Some guidelines were also issued in above circulars.
- 39) Considering the aforesaid guidelines it is clear that in case of Non DDF consumer, infrastructure cost is refundable. Referring to para 5 (b) of the sanction letter dt.08.07.2016 (P.NO. 10 to 12) it mentions as follows:
- “The HT TOD Meter and metering equipment for new / fresh HT connection will be as per MSEDCL’s standards in accordance with the specification laid down and as per the list of make & models approved by MSEDCL. In case, if the consumer is in hurry, he can procure the metering equipment’s from the approved vendor of MSEDCL, test it at MSEDCL lab and install at site. The approved cost of the metering equipment’s produced by consumer will be adjusted in to the post energy bill as per MSEDCL standards.”
- 40) Considering this entitlement, now it is to be seen as to whether the claim is within limitation & when cause of action arose?
- 41) As regards refund of infrastructure cost, we would like to refer recent circular dt. 19.03.2019 which are supplementary guidelines for

infrastructure development to release new connections. There is reference of earlier circular No. CE(Dist.)/D-III/NSC/30011 dt.20.12.2018. Para 2(a) refers to refund of cost of material & erection charges will be made for only works carried out upto mains supply /SFU. Para 2(e) refers as follows :-

“The refund of expenditure shall be carried out in five equal installments. There shall be no delayed payment charges or interest liable & permitted over & above amount to be refunded. The refund of expenditure will be permitted only after release of permanent power supply to project / consumer. In case of phase-wise projects where group of buildings are there in first or further phase, refund will be carried out only after completion of all works & release of permanent power supply to each building in the phase.”

- 42) It is important to note that in this case permanent power supply was released 9th January 2017, (letter P.No.18). Hence, this particular dispute arose after decision of appeal No. 4305/2007 dt. 10th November 2016. As such cause of action firstly arose on 9th January 2017. The dispute before IGRC was filed on 22.02.2019 & it was decided on 15.03.2019. The copy of order passed by IGRC is produced at P.No.27 to 29.
- 43) Referring to R.6.6 of MERC Regulations 2006 (CGRF & Ombudsman), it prescribes as follows:-
- “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.”*
- 44) At this juncture we would like to refer ratio laid down in the judgment of Hon. High Court in W.P. No. 6859/2017, 6160/17, 6861/17, 6862/17 copy of it is produced at (Pg. No. 39 to 42) - MSEDCL, Division Office

Dhule Urban Dist. Dhule V/s Jawahar Shetkari Soot Girni Ltd. decided on Dt. 21.08.2018 as follows:-.

“42) I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company 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 and 6.7 co-exist harmoniously. I am of the view that the consumer has to approach the Cell with promptitude and within 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.

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) ineffective. 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.

44) Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013. February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08.08.2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27.08.2016. In the third petition, the FAC Bills from January to March

2010 are subject matter of the representation to the Cell, dated 26.06.2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08.08.2016 with reference to the FAC Bills of December 2013, February and May 2014.

45) As such, all these representations to the Cell were beyond the period 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".

45) Considering the ratio of the aforesaid case, the first cause of action being arisen on 09.01.2017 i.e. the date of release of permanent power supply, the petitioner ought to have filed the dispute before IGRC up to 09.01.2019, hence it was time barred as such, IGRC has rightly dismissed the dispute as time barred.

46) Consumer Representative Shri. Kapadia has relied upon the judgment delivered by Hon'ble Ombudsman, Nagpur in Representation No.34/17, decided on 24.07.2017. It was the case for refund of infrastructure cost which was treated as dedicated Distribution facility (DDF) on the point of cause of action, it was observed at para 9 as follows:

"In my view the date when the cause of action arose should be taken as the date on which the respondent rejected the objection raised by the appellant to the release of new connection to the consumer on the so called DDF".

- Therefore dispute was held to be raised within limitation. Considering the recent Judgment of Hon'ble High Court, it prevails.
- 47) Be the fact as it may, it is seen that appeal filed by the petitioner before this forum against the order of IGRC is not preferred within 60 days as per R.6.4 of MERC Regulations (CGRF & Ombudsman) 2006. There is delay of 48 days in filing the appeal. Not only that but considering the date of first cause of action i.e. 09.01.2017, the present dispute being filed on 02.07.2019 is also not filed within two years from the date of cause of action.
- 48) It is important to note that even if the adjustment in post energy bills is considered, then the post month bills issued after 09.01.2017 (release date of permanent supply) would crop up on 01.02.2017, 01.03.2017, 01.04.2017, 01.05.2017, 01.06.2017. Even if this circumstance is considered & till these dates infrastructure cost is not adjusted, still the dispute filed before this forum was required to be filed up to 01.06.2019 i.e. within two years from the date of cause action. But it is filed on 02.07.2019. Hence, considering the ratio of the above referred case, the dispute being not filed within stipulated time of two years from the date of cause of action, it results in disentitlement of the petitioner to claim refund of infrastructure cost & meter cubicle cost. Hence, the complete claim, being not filed within limitation, deserves to be rejected. We accordingly, answer point No. 1 & 2 in the negative.
- 49) **Point No. 3:-** Since the claim is dismissed, petitioner is not entitled for compensation. We, answer point No.3 in the negative.
- 50) **Point No.4:-** Order passed by IGRC is found just, legal & correct & upheld. We answer point No.4 in the affirmative.

- 51) Considering above discussion, we proceed to pass following order in reply to point No.5.

ORDER

- 1) Petition stands dismissed.
- 2) Parties to bear their own costs.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Makarand P. Kulkarni
Member / Secretary

Sd/-
Vilaschandra S.Kabra
Member