

CONSUMER GRIEVANCE REDRESSAL FORUM,
AKOLA ZONE, AKOLA.

"Vidyut Bhavan" Ratanlal Plot, Akola. Tel No 0724.2434475

O R D E R

Dt:- 19.10.2019

Complaint No :- 45 of 2019 Dated 03.09.2019

In the matter of grievance pertaining to refund of infrastructure cost with interest recovered under DDF.

Quorum

Dr. V. N. Bapat - Chairman

Shri. D. M. Deshpande - Member (CPO)

Shri. Ajit k. Patil - Member Secretary

1. M/S Samyak Krushi Utpadak :- Complainant
Prakriya Sahkari Sansthan
Survey no. 144/2A Chikhal gaon
Consumer No. HT - 310149026810.
c/o Shri. Ashish S. Chandarana,
Flat no. 302, Satguru Villa Apartment
Sahakar Nagar Gorakshan Road
Akola - 444004.

.....Vrs.....

Superintending Engineer, :- Respondent
MSEDCL, O. & M.
Circle Akola.

Appearances

1. Ashish S. Chandarana - Representative for Complainant
2. Shri. A. R. Khobragade - Executive Engineer (Adm.)
MSEDCL, O. & M. Circle Akola.

1) On being aggrieved by the decision of IGRC Akola issued vide SE/AKL/3066 dated 10/07/2019, the complainant approached this Forum under clause 6.4 of MERC CGRF and OMBUDSMAN Regulation 2006 for resolving the grievance.

2) Complainant's case in brief is that complainant is HT consumer of NA MSEDCL. According to complainant present dispute is about refund of infrastructure cost recovered under 'DDF' by NA MSEDCL though the infrastructure on field does not constitute Dedicated Facility and cost of infrastructure under common network has to be borne by NA MSEDCL as per EA 2003. According to complainant the said cost can be reimbursed to NA MSEDCL through ARR in tariff proposals by Hon'ble MERC. According to complainant 11 KV line erected to give power supply is tapped from 11 KV chikhhalgaon Feeder as per line diagram filed on record as Annexure A2 and as per sanctioned estimate filed as Annexure A3. According to complainant NA MSEDCL before IGRC in their reply admitted the fact of 11 KV tapped HT line but denied to refund the cost on the ground that estimate is sanctioned under 'DDF' scheme. According to complainant there cannot be estoppel against law.. According to complainant corporate office of MSEDCL have accepted their responsibility of providing infrastructure as per circular filed on record as Annexure 5. Complainant referred and filed on record ORDER issued by Hon'ble High Court Nagpur bench in similar matter between M/s Darpan Poly Pack Nagpur and MSEDCL wherein it is held by Hon'ble High Court on the basis of MERC case no 56 of 2007 that infrastructure cost is liable to be refunded if infrastructure on field is not 'DDF'. The High Court order is filed as Annexure A-6. According to complainant IGRC Akola erred and passed order without considering observations passed by Hon'ble High Court.

Complainant's Prayer

1. Direct NA MSEDCL to refund infrastructure cost in line with observations of Hon'ble High Court in WP no. 468 of 2018 issued on 20/03/2019.
2. Direct NA MSEDCL to comply the order passed by IGRC Akola in respect of refund of metering cubicle cost.
3. Direct NA MSEDCL to pay interest at bank rate on both the refund amounts from the date of connection till refunded.
4. Any other relief which CGRF may deem fit.

3) Reply came to be filed by NA MSEDCL on 24/09/2019. According to NA MSEDCL, complainant has applied for HT electric supply at Gut no. 144/2 Chikhalgaon Tq. Barshitakli for contract demand of 375 KVA on 15/04/2013. According to NA MSEDCL three options were available as per circular no CE/Dist/D'III/25680 dated 19/06/2008 for releasing connection with infrastructure.

1. Infra to be erected by MSEDCL for releasing the connections as per chronology and priority of the areas.
2. Infra to be erected by consumer under Non-DDF CCRF scheme in which cost is refundable through energy bills.
3. Infra to be erected by consumer on giving option for 'DDF' wherein cost is non refundable.

According to NA MSEDCL at the time of application for new connection the provisions as above were brought to the notice of complainant and as there was urgency complainant submitted consent to execute the work under 1.3% supervision 'DDF' scheme. The work is executed as per sanctioned estimate dated 18/06/2013 under DDF scheme. According to NA MSEDCL no other consumer is supplied electricity from erected 11 KV line of 3.0 Km except complainant's premises. NA MSEDCL requested Forum to dismiss the grievance of refund of infrastructure cost. NA MSEDCL Annexed copy of circular CE/Dist/D'III/25680 dated 19/06/2008, and consent letter on Rs. 100/- stamp paper.

4) Shri Ashish S. Chandarana learned representative for complainant and Shri. A. R. Khobragade, Executive Engineer (Adm.) for MSEDCL were present for the hearing held on 11/10/2019. Shri Ashish S. Chandarana urged before Forum that NA MSEDCL have tried to mislead the Hon'ble Forum by providing circular dated 19/06/2018 as aforesaid circular cannot be read in isolation but has to be read with reference to circular dated 20/05/2008. The said circular has been filed on record by complainant representative. Shri Ashish S. Chandarana further brought to the notice of Forum that NA MSEDCL kept silent on the referred High Court order in WP no. 468 of 2018 dated 20/03/2019 which is exclusively based on MERC order in case no. 56 of 2007 wherein tapping of HT line is held to be Non-DDF activity by Hon'ble High Court and directed respondent to refund the cost of infrastructure recovered under DDF head. Shri Ashish S. Chandarana urged that MSEDCL in their reply attempted to mislead the Forum by

saying that DDF facility is available in urgency when as per circular dated 20/05/2008 Non-DDF CCRF facility has to be availed in urgency and for dedicated distribution facility separate option has to be exercised as per supply code regulation 2005. Shri Ashish S. Chandarana further brought to the notice of Forum that NA MSEDCL nowhere in their reply denied that 11 KV line is provided by tapping from existing Non-DDF line. Shri Ashish S. Chandarana specifically brought to the notice of Forum that objection to tapping of 11 KV line and erection of infrastructure under Non-DDF scheme was intimated to NA MSEDCL by letter dated 16/07/2013 which is received to NA MSEDCL on 17/07/2013 before release of connection on 30/11/2013 which established the fact that applicant had disputed the sanction of estimate under DDF prior to release of supply.

5) Shri. A. R. Khobragade, Executive Engineer (Adm), MSEDCL urged before Forum that consumer was well aware of MSEDCL circulars regarding issue of new connection wherein three options were available for erection of infrastructure (i) connection as per chronology (ii) infrastructure under Non-DDF refundable scheme (iii) Dedicated Distribution Facility as per consent of the consumer. As consumer opted for DDF by exercising consent the cost of infrastructure is non refundable. On being asked by Forum regarding actual infrastructure of 11 KV line constitute DDF on site as per MERC case no. 56 of 2007 Shri. Khobragade learned representative for MSEDCL agreed that the said infrastructure is provided by tapping of 11 KV line from existing network and hence does not fall under DDF category as per definition in MERC case no. 56 of 2007.

6) On concluding the hearing Forum directed NA MSEDCL to file on record on or before 17/10/2019 the work completion report after adding necessary centages and VAT.

7) Shri. Ashish S. Chandarana learned representative of complainant has filed on record on dated 17/10/2019, Hon'ble High Court Nagpur bench order in WP no. 3997 of 2016 dated 18/07/2017 and Apex Court order in civil appeal no. 3699 of 2006 dated 12/02/2016 in support of the objection raised by Member (Secretary) regarding **Cause of Action** and further submitted that the issue of cause of action has not been raised by NA MSEDCL before IGRC or CGRF as grievance is not related to fresh controversy or dispute but pertains to

enforcement of MERC order in case no. 56 of 2007 and implementation of Judicial orders cannot be restricted under the shelter of cause of action.

8) NA MSEDCL filed on record on dated 17/10/2019, WCR for amount Rs. 4,90,760/- against infrastructure and WCR for Rs. 2,03,132.93/- against service connection charges without adding centages.

9) Having heard the parties and considering material placed on record Forum is of the view that the following issues should be decided to arrive at the decision.

1. As per dissenting opinion of minority Member (Secretary), the consumer has not filed a grievance within the time limit prescribed under Regulation 6.6 of MERC CGRF and E.O. Regulation 2006
2. Whether Dedicated Distribution Facility (DDF) is provided by MSEDCL on site.

Forum is of the view that it is established fact on record that NA MSEDCL have neither raised the issue of limitation (Cause of Action) before IGRC Akola nor before CGRF Akola in the present grievance. On the contrary, IGRC Akola in their order no. 3066 dated 10/07/2019 have partly decided the grievance in favour of complainant and ordered NA MSEDCL to refund the cost of metering cubicle. NA MSEDCL in their reply to the notice of grievance complaint have not raised the issue of cause of action or the representative of NA MSEDCL at the time of argument did not raise the issue of cause of action before this Forum. Member (Secretary) of the Forum however, in his dissenting opinion relied on the decision of Hon'ble High Court bench at Aurangabad order issued by a single bench in WP no. 6859 of 2017. Forum is fortified by the rational laid down in the following cases cited by the complainant **WP no. 3997 of 2016, MSEDCL V/S Shilpa steel and power ltd. decided by Hon'ble Bombay High Court (Nagpur bench) on 31/07/2019.** The Hon. court has said the following.

"08] On careful perusal of clause 6.6 of the Regulation and in view of the judgment of division bench of this court, submission made on behalf of petitioner that cause of action arose in Jan 2010 is unsustainable. Respondent no. 01 filed complaint before IGRC on 24/04/2015. By its order dated 29/04/2015, IGRC rejected the grievance of respondent no. 01. The order of IGRC was challenged before Forum on 08/05/2015. It means from the date of rejection of complaint by IGRC, grievance was filed before the Forum within a month i.e. on 08/05/2015. In this background, respondent

no. 02 has rightly held that grievance of respondent no. 01 was well within limitation, as cause of action has arisen from the date of rejection of grievance by IGRC.”

Civil appeal no. 3699 of 2006 Rashtriya Ispat Nigam Limited V/S M/S. Prathyusha Resources & Infra Pvt. Ltd. and another decided by Hon’ble Apex Court dated 12/02/2016. The relevant extract is as under

“We shall now consider the settled law of the subject. This Court in a catena of judgments has laid down that the cause of action arises when the real dispute arises i.e. when one party asserts and the other party denies any right. We find that the view taken by the High Court is correct as to when the real dispute arose between the parties to be adjudicated by the arbitrator.”

Appeal no. 197 of 2019 MSEDCL V/S MERC and another, Decided by Hon’ble Appellate Tribunal for electricity dated 11/03/2019, where in amongst other points one of the points was whether the proceedings initiated by R-2, the consumer were barred by limitation ? It was laid down in para 10 that

“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 Himanshu international reported in (1979) 4 SCC 176 that public authorities ought not to take technical plea of limitation to defeat the legitimate claims of the citizens.”

Considering the rationale laid down in the aforesaid cases, Forum has come to the conclusion that the cause of action in this case lastly arose when IGRC Akola in their order dated 10/07/2019 partly allowed the grievance complaint and ordered to refund the cost of metering cubicle.

Point no. 02 - Whether Dedicated Distribution Facility (DDF) is provided by MSEDCL on site.

Having heard the parties and considering material placed on record Forum is of the view that dispute to be resolved is whether 'DDF' Facility extended by MSEDCL is in accordance with various provisions under Electricity Act 2003, supply code regulation 2005 read with SOP Regulation 2014 and MERC guidelines issued in case no. 56 of 2007 dated 16/02/2008. The various provisions are reproduced below.

Dedicated Distribution Facility (DDF) as per Regulation 2 (g) of supply code Regulation 2005

2(g) "Dedicated Distribution facilities means such facilities, not including a serviceline, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or group of consumers on the same premises or contiguous premises."
"

As per MERC guidelines in case no. 56 of 2007 dated 16/02/2008.

1. The commission observed that consumers should not be burdened with infrastructure cost which are the liability of MSEDCL.
2. It was observed that Dedicated Distribution Facility should be provided on specific request by the consumer and not as per direction of MSEDCL. DDF cannot be shared or imposed. DDF shall remain as dedicated connection forever.
3. DDF asset ownership remain with consumer and shall be entitled to the depreciated value of such DDF on termination of agreement or May be retained by consumer.
4. Mere extension or tapping of the existing line (L.T or H.T) cannot be treated as DDF.
5. DDF means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers.
6. The commission observed that if paucity of funds is the actual reason behind burdening consumers for DDF, MSEDCL May seek the recovery of the same as an annual revenue requirement.

As per SOP regulation 2014 clause 4.6

Where an applicant seeks Dedicated Distribution Facilities (DDF), the distribution licensee shall intimate the charges to be borne by applicant within 30 days.

On going through the various provisions as above Forum is of the view that dedicated distribution facility is requested by the complainant as per his consent on record. It is a fact on record from the line diagram of 11 KV Chikhalgaon feeder submitted by complainant that the said line diagram is signed by Assistant Engineer and Executive Engineer of MSEDCL where in infrastructure of 11 KV line to be provided for giving connection in the present grievance is shown as tapping of 11 KV line from Chikhalgaon feeder. As per the provision of MERC order in case no. 56 of 2007 dated 16/02/2008 the facility provided by MSEDCL in the present grievance cannot be said to Dedicated Distribution Facility as mere extension or tapping of existing line does not amount to DDF. It is a fact on record that the 11 KV line provided does not emanate from 33/11 KV substation Nimbi which makes it clear that connection provided to complainant was a line tapping from the existing feeder to the point of supply at the premises of the complainant. Once this factual aspect stood established, it could not be said that the claim raised on behalf of complainant was without any merit. Forum relied on judgment passed by Hon'ble Bombay High Court (Nagpur bench) in WP no. 468 of 2018 dated 28/03/2019. Forum is of the view that NA MSEDCL needs to be directed to refund the infrastructure cost incurred by the complainant against DDF with interest as per MERC practice direction dated 22/07/2019. WCR submitted on record by MSEDCL on 17/10/2019 is not in line with the directions issued by the Forum at the time of hearing as the centages as per relevant cost data are not considered to arrive at the actual expenditure incurred by the complainant. Forum is of the view that NA MSEDCL should revise WCR by adding Centages as per cost data of the relevant period and the amount so arrived should be refunded with interest at the rate equivalent to bank rate declared by Reserve Bank of India prevailing during the relevant period. As per Hon'ble High Court order in WP no. 468 of 2018 the interest is admissible from the date of complaint to IGRC Akola on 17/05/2019.

With these observations, Forum proceeds to pass following majority order with dissenting opinion of minority (Member/Secretary) on record.

Dissenting opinion of Member Secretary (Shri. Ajit K. Patil)

As a Member Secretary of Forum I am of the opinion that as per Regulation no. 6.6 of MERC (CGRF & Electricity Ombudsman) Regulation 2006 which states "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," and hence the case no. 45 of 2019 can not be entertained and shall be dismissed.

Moreover the said estimate is sanctioned vide SE/AKL/TECH/ESTT/2013-14/DDF Dated 18-06-2013. The consumer has submitted consent and thereafter estimate is framed. Total estimated amount is Rs. 7,32,724.00/-. The connection is released on 30-11-2013 and consumer approached IGRC after six (6) years. The consumer have neither disputed about work done nor payment made against the same connection while releasing the supply. Further the meaning of the word/term "Cause of Action" can be interpreted with reference to writ petition no. 6859 of 2017 in the High Court bench at Aurangabad. The cause of action begun in 2013 itself and consumer had adequate time span of two (2) years to reach upto Forum.

As the Consumer hasn't approached Forum within specified time limit, the application of consumer be dismissed.

Sd/-
Member/Secretary

ORDER

1. That the Complaint No. 45 of 2019 Dated 03/09/2019 is hereby partly allowed.
2. That the NA MSEDCL is directed to refund the infrastructure cost of Rs. 4,90,716/- after allowing VAT and adding centages as per relevant cost data with interest at bank rate declared by Reserve Bank of India prevailing during relevant period from 17/05/2019 till refunded in the ensuing energy bill payable by the complainant.
3. That the NA MSEDCL is directed to refund the cost of metering cubicle Rs. 82,200/- after allowing VAT and adding centages as per relevant cost data with interest at bank rate declared by Reserve Bank of India prevailing during relevant period from 30/11/2013 till refunded in the ensuing energy bill payable by the complainant.
4. Parties to bear their own cost.
5. That the NA MSEDCL is directed to submit a compliance report to this Forum within one month of this order.

Sd/-
Member (CPO)

Sd/-
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, Shrikrupa, Vijaynagar,
Chhaoni, Nagpur-440 013. Phone:- 0712-2596670.

No.CGRF/AKZ/Akola/229

Date: 19-10-2019

To,
The Nodal Officer
Superintending Engineer,
MSEDCL, O. & M.
Circle Akola.

The order passed on **19-10-2019** in the Complaint No. **45 of 2019** is enclosed herewith for further compliance and necessary action.

Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Akola Zone, Akola.

Copy s.w.r. to:-

1) Chief Engineer, MSEDCL, Akola Zone, Akola.

Copy to :-

M/S Samyak Krushi Utpadak Prakriya Sahkari Sansthan Survey no. 144/2A Chikhal gaon, c/o Shri. Ashish S. Chandarana, flat no. 302 Satguru Villa Apartment Sahakar Nagar Gorakshan Road Akola - 444004.