

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 24 OF 2020

In the matter of Additional Energy Charges

M/s. Paul Strips and Tubes Pvt. Ltd.....Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd. Baramati (MSEDCL)Respondent

Appearances

For Appellant : Mr. Siddhartha Katyal

For Respondent : 1. Mr.Keshav G. Kalumali, Executive Engineer, Baramati
2. Mr. Jaindhar M. Mangalwedhekar, Manager (F&A)
3. Mr. Girish C. Samane, Dy. Manager (F&A)

Coram: Mr. Deepak Lad


Date of Hearing: 8th July 2020

Date of Order :30thJuly 2020

ORDER

This Representation is filed on 12th February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated 19th December, 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL, Baramati Zone (the Forum).


2. The Forum vide its order dated 19.12.2019 has dismissed the grievance in Case No. 17/2019.


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3. Aggrieved by the order of the Forum dated 19.12.2019, the Appellant has filed this representation stating in brief as under: -

- (i) The Appellant is a HT Industrial consumer (No.187239042820) from 26.03.2008 having current sanctioned load of 5445 KW and Contract Demand 3900 kVA, at E-19, MIDC, Jejuri, Tal. Purandar, Dist. Pune.
- (ii) The Maharashtra Electricity Regulatory Commission (the Commission) vide its order dated 05.09.2013 in Case No. 95 of 2013 has allowed the Respondent MSEDCL to recover the accumulated recovery within the period of six months from September 2013 as an Additional Energy Charge (AEC).
- (iii) The Respondent then charged AEC in bills for the period from August 2013 to January 2014 instead of September 2013 to February 2014.
- (iv) Government of Maharashtra (GOM) vide Government Resolution (GR) No.278 dated 29.01.2014 has granted subsidy to all industrial consumers towards the AEC charged and limited the rate of electricity to Rs.6.33 and rest was covered by subsidies starting from February 2014.
- (v) The Appellant filed the petition with the Commission against illegal recovery of AEC which was not as per directions issued by the Commission. It prayed for directions to MSEDCL to refund the AEC collected in the bill of August 2013 and to refund the AEC recovered for the consumption of February 2014.
- (vi) The Appellant referred the Commercial Circular No.218 dated 18.02.2014 of the Respondent wherein it was clearly stated that the AEC would be subsidized by the GOM.
- (vii) The Respondent has passed an adjustment entry in the bill of September 2017 wherein they have added in the bill, the difference between AEC charged in February 2014 and AEC Charged in August 2013.
- (viii) As the AEC charges were subsidized by the GOM where the details were mentioned in the bill of February 2014, the Appellant requested the Respondent to refund the amount of Rs.15,59,375/- of AEC charged in the month of February 2014 which was subsidised by the GOM along with interest at the rate of 18% amounting to Rs.26,50,242/- with total of Rs.42,09,617/-. However, the Respondent did not refund the illegal recovery.


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- (ix) The Appellant filed the grievance with the Forum on 17.09.2019. The Forum, by its order dated 19.12.2019 has dismissed the grievance. The Forum failed to understand the basic issue of grievance. The Forum, in its order dated 19.12.2019 at Point No. 6.7(d), stated as

“Where the representation by the consumer, in respect of same grievance is pending in any proceeding before any court, tribunal or arbitrator or any other authority or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.”


This is an erroneous judgement which is bad in law and has been taken with a biased view for favouring MSEDCL. There is no order passed by the Commission on the present grievance. In fact, the Commission has stated at Point No.14 vide its order dated 13.07.2017 in Case No. 78 of 2016 that

“The issue of the period and quantum of any subsidy under section 65, mentioned by MSEDCL, is a matter between the State Government and MSEDCL.”

- (x) It is clear that refund of subsidy amount given by the GOM to MSEDCL is due to the Appellant.
- (xi) The Appellant, therefore, prays that
- the Respondent be directed to refund the amount of Rs.15,59,375/- of AEC charged in the month of February 2014 which was subsidised by the GOM along with interest at the rate of 18% amounting to Rs.26,50,242/- with total of Rs.42,09,617/-.
 - To take the disciplinary action against the Board Members of the Forum to subvert the process of justice.

4. The Respondent, by its letter dated 13.03.2020 filed its reply stating in brief as below:-

- (i) The Appellant is a HT Industrial consumer (No.187239042820) from 26.03.2008 having current sanctioned load 5445 KW and Contract Demand 3900 kVA, at E-19, MIDC, Jejuri Tal. Purandar, Dist. Pune.



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- (ii) The Commission vide its orders in Case Nos. 28 of 2013, 44 of 2013 and 95 of 2013 dated 03.09.2013, 04.09.2013 and 05.09.2013 respectively, has permitted MSEDCL to recover AEC from all category of consumers with effect from September 2013.
- (iii) In order to avoid complications in billing mechanism, instead of billing all AECs separately, the MSEDCL merged AEC-1, AEC-2, AEC-3 and AEC-4 under one head AEC and also merged Additional FAC 1 & 2 in the month of August 2013 billed in September 2013 as per Respondent's Commercial Circular No. 209 dated 7th September, 2013.
- (iv) Accordingly, the Appellant was levied AEC and Additional FAC towards implementation of Orders issued by the Commission.
- (v) The Appellant has previously filed Case No. 78 of 2016 before the Commission claiming refund of AEC for August 2013 stating that the MSEDCL has recovered AEC on wrongful premature billing from August 2013 instead of September 2013. The said Case is finally decided by the Commission on 13.07.2017. As per relevant Orders of the Commission, the AEC shall be levied in 6 monthly instalments. The Commission, while deciding the Case No. 78 of 2016 in its Para. No. 11 stated that-

“Considering the above discussion and the conjoint reading of the provisions of the Orders quoted at para’s 7 and 8 above, it will be clear that the AEC was applicable for the electricity consumption from 1 September, 2013 to February, 2014. The levy of AEC on the electricity consumed prior to (in the present Case, on the consumption in August billed in September, 2013) or after that period is not mandated by the Commission’s Orders. The Commission directs MSEDCL to take a review of the AEC levied on its consumers and to take corrective steps accordingly. Thus, for instance, if MSEDCL has recovered AEC in 6 installments on the electricity consumption of August, 2013 to January, 2014, it needs to refund the AEC collected on the August, 2013 consumption and recover the AEC for the consumption of February, 2014.....”

- (vi) The MSEDCL, Corporate Office, has issued letter to all Circle Offices for compliance of the directions of the Commission, accordingly, the Appellant has been refunded the amount recovered of AEC for August, 2013 and levied AEC in the month of February, 2014. Thus, finally, MSEDCL recovered AEC from September 2013 to February 2014 (total 6 months) as per the order of the Commission.



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- (vii) The Commission has clarified regarding subsidy under Section 65 of the Electricity Act, 2003 (the Act) is a matter between the State Government and MSEDCL. It has been again reiterated by the Commission in its order dated 04.05.2018 in Case No. 127 of 2017 filed by Shri. B.R. Mantri against MSEDCL and the present Appellant. Therefore, the grievance regarding subsidy may please be rejected in view of Regulation No. 6.7 (d) of the CGRF Regulations as the final order has been passed by the Commission under Case No. 78 of 2016 dated 13.07.2017 and Case No. 127 of 2017 dated 04.05.2018.
- (viii) The Appellant approached the Forum on 17.09.2019. The Forum, by its order dated 19.12.2019, has rightly dismissed the grievance considering all above cited directions.
- (ix) The Respondent specifically denied refund as allegedly claimed by the Appellant.
- (x) Therefore, the Respondent prays that the Representation of the Appellant be rejected in view of the Regulation No. 6.9 of the CGRF Regulations.

5. Though the representation was filed on 12.02.2020, the hearing could not be conducted due to onset of Covid-19 epidemic in March 2020. Since then the conditions were not conducive for conducting the usual hearings through physical presence, the hearing was scheduled on 08.07.2020 on e-platform after the parties consented to it.

6. During the hearing, the Appellant and the Respondent argued in line with their respective written submissions. The Appellant argued that the Commission, in its orders in Case No. 78 of 2016 dated 13.07.2017 and Case No. 127 of 2017 dated 04.05.2018 has not given consolidated final order including individual case of the Appellant in the matter. However, the Commission has decided basic principle i.e. recovery period for AEC charges from September 2013 to February 2014. This is a rational decision of the Commission. The Appellant stated that the AEC period has been correctly implemented by the Respondent after the orders of the Commission in Case No. 78 of 2016 and Case No. 127 of 2017 without properly apportioning the subsidy amount granted by GOM. Hence, the Respondent has created new grievance for the Appellant which is in the jurisdiction of the Forum. Hence the grievance is not barred as per Regulation No. 6.7 (d) of the CGRF Regulations. It is crystal clear that refund of subsidy amount given by the GOM to MSEDCL is due to the Appellant in


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the month of February 2014. The Appellant prays that the Respondent be directed to refund the amount of Rs.15,59,375/- of AEC charged in the month of February 2014 along with interest at the rate of 18%.


7. The Respondent, in its argument stated that the Commission by its order dated 04.05.2018 in Case No. 127 of 2017 in the matter of Shri. B.R. Mantri V/s. MSEDCL and Paul Strips & Tubes Pvt. Ltd. has decided the issue. The Commission has clarified regarding subsidy under Section 65 of the Act is a matter between the State Government and MSEDCL. Therefore, the grievance regarding subsidy may please be rejected in view of Regulation No. 6.7 (d) of the CGRF Regulations as the final order has been passed by the Commission under Case No. 78 of 2016 and Case No. 127 of 2017. The Appellant has also agreed that the bill revision for charging AEC for the period September 2013 to February 2014 instead of August 2013 to January 2014 was compiled as per direction of the Commission. The Respondent prays that the Representation of the Appellant be rejected in view of the Regulation No. 6.9 of the CGRF Regulations.

8. In view of the arguments advanced by both the parties and further their agreeing to reconciliation of AEC levied, the undersigned directed the Respondent to submit the following information:-

- a. Statement showing AEC recovered month wise from August 2013 to January 2014 and subsidy given.
- b. Statement showing proposed bill revision for AEC to be charged for the period September 2013 to February 2014 and subsidy to be given on the bill of February 2014.

9. With reference to direction given during the hearing held on 08.07.2020, the Respondent has furnished the required information vide their e-mail dated 23.07.2020 as below:-


- (i) MSEDCL vide letter No PR-3/Tariff/26517 dated 23.09.2013 had appraised the Commission regarding recovery mechanism of AEC. In the said letter MSEDCL has also categorically stated that in order to avoid complications in


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implementation of Order dated 3rd, 4th and 5th September 2013, MSEDCL will be levying all AEC (i.e. 1 to 4) under one head of AEC.

- (ii) Government of Maharashtra vide GR No.-संकिर्ण२०१३/प्र.क्र.२७८/भाग-१/ऊर्जा-५ dated 29.01.2014 has declared concessional energy charges effective from 1st February 2014. Due to enforcement of the GOM's concessional rate from 1st February 2014, 6th instalment of AEC (1 to 4) would not recover from consumer and on account of 6th instalment, the GOM has given financial assistance to MSEDCL in the form of subsidy.
- (iii) MSEDCL recovered 5 (five) instalments towards AEC from August 2013 to December 2013 and 6th (sixth) instalment in January 2014 consumption (bill issued in February 2014) was subsidized. As such recovery of 6 (six) instalments for the period Aug-2013 (bill issued in September 2013) to Jan-2014 (bill Issued in February 2014) was completed in January 2014 consumption.
- (iv) In view of the directives of the Commission in Case No. 78 of 2016 for computation of period from 01.09.2013 to 28.02.2014, the AEC recovered in the billing month August 2013 (bill issued in September 2013) from M/s. Paul Strips and Tubes Pvt. Ltd. (Con. No.187239042820) was refunded in September 2017 and in the same month the AEC towards consumption of February 2014 was also recovered.
- (v) As such from submission in above Para No.3 and 4, MSEDCL has recovered only 5 (five) instalments. The 6th (sixth) instalment was adjusted as subsidy in January 2014 consumption (bill issued in February 2014).


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**CALCULATION OF BILL BEFORE IMPLEMENTATION OF MERC ORDER
IN CASE NO.78 OF 2016.**

Month	Consumption (units)	AEC Charges for the month (Rs.)	AEC recovered from consumer (Rs.)	Subsidy Against AEC Received (Rs)	Total Subsidy against AEC, Addl. FAC & PF Incentive in bill (Rs.)	Remark
Aug-13	1061910	1399066.43	1399066.43			AEC Recovered from consumer in Aug.2013 bill, is refunded in the bill of Sept. 2017 as per MERC order in Case No.78 of 2016.
Sep-13	1154448	1520985.24	1520985.24			
Oct-13	1092816	1439785.08	1439785.08			
Nov-13	1096812	1445049.81	1445049.81			
Dec-13	1264572	1666073.61	1666073.61			
Jan-14	1268753	1671582.08	0.00	1671582.08	1773686.24	
Feb-14	1183586	0.00	0.00	0.00		AECRs.15,59,374/- Recovered from consumer in the bill of Sep.2017 as per MERC order in CaseNo.78 of 2016.

10. The Appellant submitted its rejoinder vide email dated 24.07.2020 stating as below:

- (i) The hearing of the above-mentioned case was held through Video Conference on 08.07.2020. After hearing complete arguments from both the parties, the Hon'ble Electricity Ombudsman ordered that the Respondent should, by 13.07.2020, give in writing the monthly electricity bills plus AEC due from Paul Strips & Tubes Pvt. Ltd and how much has been paid by Paul Strips & Tubes Pvt. Ltd and how much has been provided as subsidy by GOM.
- (ii) The Respondent officials have completely disregarded the said order and in a renewed effort to further confuse the matter they have annexed three documents namely Exhibit- A, B & C. At the outset I would like to state that as the matter is under appeal, these new documents provided are inadmissible.


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- (iii) Further I would like to state that the documents provided by the Respondent officials are interim circulars of the Respondent issued for the purpose of implementation of the Commission orders. Hence, they do not supersede the Commission Order and so are irrelevant to the matter at hand.
- (iv) In the said letter dated 23.07.2020, the Respondent has once again tried to confuse the proceedings by mentioning five instalment and six instalments. It has already been clarified in the Appellant's letter dated 06.07.2020 and on the hearing held on 08.07.2020 that the period of charging the AEC to Paul Strips & Tubes Pvt. Ltd has been ascertained by the Commission vide their order under Case No. 78 of 2016 that is from beginning of September 2013 to the end of February 2014.
- (v) The issue to be decided is that for the month of February 2014, the AEC charged to Paul Strips & Tubes Pvt. Ltd should be refunded with interest as the same has been mentioned in the electricity bill of February 2014 and MSEDCL Commercial Circular No.218 dated 13.02.2014.
- (vi) It is abundantly clear that the Respondent officials are trying to confuse the issue and the Appellant request to order the refund of the AEC charged for the month of February 2014 for Rs.15,15,375/and interest (26,50,242/- calculated up to February 2020) up to date.

Analysis and Ruling

11. Heard both the parties and perused all the documents on record. The grievance of the Appellant relates to refund of excess recovery of AEC recovered in February 2014 instead of adjusting it against the subsidy granted by the GOM. The Respondent argued that it has recovered 5 instalments towards AEC from August to December 2013 and sixth instalment in January 2014 was subsidized hence recovery of six instalments for the period from August 2013 to January 2014 was completed.

12. In this case, my observations are as below: -


- (a) The Commission ordered recovery of AEC to be made in six instalments from September 2013 to February 2014. The Respondent got itself confused and recovered the same from August 2013 to January 2014. Here the Respondent's


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action to calculate AEC is on consumption of August, September, October, November and December of 2013 and January 2014. In addition, the Respondent passed on the subsidy on the consumption of January 2014 against AEC. It inter alia means that the Respondent recovered AEC from August 2013 to December 2013 and the AEC of January 2014 deemed not recovered because of subsidy granted by GOM.

- (b) This action on the part of the Respondent is totally not as per the directives of the Commission which has specifically said in its order that consumption of September 2013 and onwards till consumption of February 2014 to be considered for levy of AEC and subsidy is a matter between the GOM and MSEDCL.
- (c) The Appellant, nowhere in its representation nor in its arguments and for that matter in rejoinder has even remotely touched upon the subsidy it received during January 2014. It simply harped on the AEC recovered in February 2014 by the Respondent and not setting it off against the subsidy of the GOM.
- (d) If the Commission's orders order dated 05.09.2013 in Case No. 95 of 2013, order dated 13.07.2017 in Case No. 78 of 2016 and order dated 04.05.2018 in Case No. 127 of 2017 are to be implemented in letter and spirit then the Respondent should calculate the AEC for the consumption for the month of September, October, November, December of 2013, January 2014 and February 2014.
- (e) The GOM's G.R. dated 29.01.2014 granted subsidy from February 2014. Therefore, AEC levied on consumption for the month of February 2014 will have to be set off against the subsidy of the GOM. However, the Respondent set off the AEC levied on consumption of January 2014.
- (f) The Respondent appears to have wrongly interpreted the Commission's orders in the matter and instead of levying AEC on the consumption of September 2013 to February 2014, it levied AEC on consumption of August 2013 for which bill is issued in September 2013 and likewise up to consumption of January 2014, bill for which is issued in February 2014. Therefore, this wrong interpretation by the Respondent resulted in passing the GOM subsidy to the Appellant on AEC levied on consumption of January 2014 instead of February 2014.
- (g) This mistake needs to be corrected accordingly by the Respondent by levying and recovering AEC on the consumption of January 2014, and it further needs to levy


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
AEC on the consumption of February 2014 which shall be adjusted against the GOM subsidy.

13. In view of the above, I pass the following order.

- (i) The Respondent to levy and recover AEC on the consumption of January 2014 and subsidy already granted needs to be withdrawn.
- (ii) The Respondent to levy AEC on consumption of February 2014 which shall be adjusted against the GOM subsidy.
- (iii) Adjustments / revision in view of directions given in (i) and (ii) to be carried out, and bill to be revised accordingly.
- (iv) Other prayers of the Appellant are rejected.
- (v) Directions to be implemented within 30 days of the order and compliance thereof to be reported within next 30 days.

14. The order of the Forum is modified to the extent above as Regulation 6.7(d) of the CGRF Regulations is not applicable in the instant case as the Respondent has failed to implement the orders passed by the Commission.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

