

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 219 OF 2019

In the matter of refund of Fuel Adjustment Charges

Thyssenkrupp Electrical Steel India Pvt. Ltd..... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., (MSEDCL) Nashik..... Respondent

Appearances:

For Appellant : 1. Milind Khambate, Sr. Manager
2. Madhukar Gosavi, Dy. Manager
3. Vinayak Salunke, Head-Electrical

For Respondent : 1. Mrs. P.V. Bankar, Executive Engineer (Admin)
2. D.R. Mandalik, Sr. Manager (F & A)
3. Mrs. Nital Varpe, Jr. Law Officer

Coram: Mr. Deepak Lad

Date of Hearing: 23rd Jan 2020 &
12th June 2020

Date of Order : 9th July 2020

ORDER

This Representation is filed on 11th December 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 23rd October 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL, Nashik Zone (the Forum).

2. The Forum, by its order dated 23rd October 2019 has dismissed the grievance with cost.
3. Not satisfied with the order of the Forum dated 23.10.2019, the Appellant has filed this representation stating in brief as under: -
- (i) The Appellant is an HT Industrial consumer (No. 052089006996) having current sanctioned load 26288 KW and Contract Demand 15500 kVA, at Post- Gonde, Village Wadivarhe, Tal- Igatpuri, Dist. Nashik from 16.09.1995. The Appellant is paying electricity bills regularly.
- (ii) The Respondent has excessively recovered amount toward Fuel Adjustment Charges (FAC) through electricity bills during the period from December 2013 to June 2015. The FAC rate billed by the Respondent is not as per FAC circular issued by it for the respective month. In support of this, the Appellant submitted that as per the Respondent's Circular No. 193, the FAC rate for May 2014 was 0.0364 Rs./kWh, however, it levied 0.1477 Rs./kWh which is meant to be levied for June 2014 as per Circular No. 194. Thus, it billed excess FAC of (Rs. 0.1477- 0.0364) 0.1113 Rs. /kWh in May 2014.
- (iii) It is observed that FAC was getting billed as per previous month's FAC rate declared by MSEDCL through monthly FAC circulars. The Appellant put on record the calculations for expected FAC refund from MSEDCL which is as below: -

Table 1

Month	Consumption kWh	Billed by MSEDCL			
		FAC rate		FAC Amount	
		HT- Industries (continuous) Rs./ kWh	HT- Industries (Non continuous) Rs./ kWh	Rs.	HT- Industries (continuous) Rs.
Nov - 2013					
Dec - 2013	2,673,317	-0.0797		-213,063	
Jan - 2014	160,119	0		0	
Feb - 2014	1,986,098	0.0474		94,141	
Mar - 2014	3,330,279	0.1711		569,811	
Apr - 2014	1,951,734	0.0364		71,043	

May - 2014	3,366,774	0.1477		497,273	
Jun - 2014	2,103,021	0.3898		819,758	
Jul - 2014	2,552,056	0.1301		332,022	
Aug - 2014	2,705,757	0.3664		991,389	
Sep - 2014	2,487,719	0.6043	0.5505	1,503,329	1,369,489
Oct - 2014	3,376,789	0.2122	0.2019	716,555	681,774
Nov - 2014	911,265	0.5192	0.4259	473,129	388,108
Dec - 2014	3,265,871	0.9052	0.8138	2,956,266	2,657,766
Jan - 2015	2,644,098	0.2292	0.2489	606,027	658,116
Feb - 2015	2,059,251	0.1674	0.0875	344,719	180,184
Mar - 2015	2,816,795	1.402	1.266	3,949,147	3,566,062
Apr - 2015	3,248,686	1.402	1.2445	4,554,658	4,042,990
May - 2015	2,437,948	-0.4344	-0.4559	1,059,045	-1,111,460
Jun - 2015	2,937,102	0.5546	0.5489	1,628,917	1,612,175

Table 2

Month	Expected billing as per FAC circular				Difference	Remark
	MSEDCL Circular No.	FAC rate		FAC Amount		
		HT- Industries (continuous)	HT- Industries (Non continuous)			
		Rs. / kWh	Rs. / kWh	Rs.	Rs.	
Nov-13						
Dec-13	189	-0.2806		-750,133	-537,069	
Jan-14	--	0		0	0	
Feb-14	--	0		0	-94,141	
Mar-14	190	0.0474		157,855	-411,956	Calculation as per HT-continuous tariff category
Apr-14	191	0.1711		333,942	262,899	
May-14	193	0.0364		122,551	-374,722	
Jun-14	194	0.1477		310,616	-509,141	
Jul-14	197	0.3898		994,791	662,769	
Aug-14	198	0.1301		352,019	-639,370	
Sep-14	199		0.3293	819,206	-550,283	
Oct-14	201		0.5505	1,858,922	1,177,149	
Nov-14	202		0.2019	183,984	-204,123	
Dec-14	203		0.4259	1,390,934	-1,266,831	
Jan-15	204		0.8138	2,151,767	1,493,651	

Feb-15	205		0.2489	512,548	332,363	
Mar-15	207		0.0875	246,470	-3,319,593	
Apr-15	209		1.266	4,112,836	69,847	
May-15	216		1.2445	3,034,026	4,145,487	
Jun-15	218		-0.4559	-1,339,025	-2,951,200	
Total refund (Rs.)					-2,714,267	

Notes: -

- (a) The Appellant was billed as per HT- continuous tariff category during November 2013 to June 2015, but as a result of Electricity Ombudsman Order No. 150 of 2016 dated 14.12.2016, the Appellant is considered under HT- Non-Continuous Tariff Category and received differential refund for FAC due to change in tariff category from Continuous to Non continuous from September 2014 to June 2015. FAC Circular is not issued for January 2014 and February 2014 months.
- (b) Thus, total refund against excess billing works out to be Rs. 27,14,267/- (Twenty seven lakhs fourteen thousand two hundred and sixty seven only) plus applicable interest.
- (iv) The Appellant has done follow up with the Respondent, SE, Nashik Urban Circle regarding refund of excess billed FAC charges through letter dated 18.12.2018 and follow up letter dated 12.03.2019. But there was no response from the Respondent on its request for refund of excess amount.
- (v) Therefore, the Appellant filed the grievance in Internal Grievance Redressal Cell (IGRC) on 05.04.2019 to refund excess billed FAC. The IGRC by its order dated 29.06.2019 has rejected the grievance without applying its mind.
- (vi) The Appellant approached the Forum on 19.08.2019 to resolve its grievance. The Forum by its order dated 23.10.2019 has dismissed the grievance on the ground of limitation of 2 years as per Regulation 6.6 of the CGRF Regulations.
- (vii) The Appellant agreed to the truing up process of FAC and MSEDCL had issued all FAC circulars after considering truing up of FAC in every month. Accordingly, FAC rate should get applied to corresponding month because electrical consumption is not constant in every month.

(viii) The Nashik Forum on similar Case No. 74-18 in Case of M/s. Reliable Autotech Pvt. Ltd; dated 16.02.2019 has made following observations at Sr. No.14 which is as below:-

*“Hon. Supreme court (Madras port Trust v/s Himanshu International) has directed that public authorities ought not to take technical plea of limitation to defeat the legitimate claims of the citizens.
The MSEDCL is directed to refund excess FAC recovered from November 2012 to December 2015 after recalculation/ reconciliation of FAC with MERC post facto approval.”*

(ix) Refund of excess FAC amount collected for the period before two years from the date of request is given to following consumers by the Forum which are as below:-

a. M/s. Jindal Polyfilms Ltd; Igatpuri, Nashik, CGRF decision no. CGRF/Nashik/NUC/N.U.Dn.1/671/03/2018-19 dated 19/04/2018

b. M/s. Slidewell Meilleur Tech Pvt. Ltd; Nashik, CGRF decision no. CGRF/Nashik/NUC/N.U.Dn.1/736/67/2018-19 dated 15/02/2019

(x) The Appellant approached MSEDCL for refund of excess FAC amount through letter dated 18.12.2018. i.e. much before the decision of Forum on similar cases of M/s. Slidewell Meilleur Tech Pvt. Ltd; Nashik and M/s. Reliable Autotech (P) Ltd; Nashik. Thus, such discrimination by MSEDCL is not ethical and acceptable to the Appellant.

(xi) Due to aforesaid unreasonable stand by MSEDCL, The Appellant is forced to pay higher FAC, which is detrimental to the Appellant and which leads to undue hardship & irreparable losses.

(xii) Therefore, the Appellant prays that the Respondent be directed to refund of excess billed FAC charges along with applicable interest at the earliest possible.

4. The Respondent, by its letter dated 30.12.2019 filed its reply stating in brief as below :-

(i) The Appellant is an HT Industrial consumer (No. 052089006996) from 16.09.1995 having current sanctioned load 26288 KW and Contract Demand 15500 kVA, at Post-Gonde, Village Wadivarhe, Tal- Igatpuri, Nashik.

- (ii) The Appellant has applied for refund of excess amount collected towards FAC from December 2013 to June 2015.
- (iii) FAC is charged by MSEDCL taking into account variation of cost for power purchase and accordingly FAC is levied to its consumer on monthly basis in accordance with the methodology and formula approved by the Commission. The Commission approves the said FAC post facto after details scrutiny and approve the rate for the particular month which may be higher/lower than actually charged by the MSEDCL. Accordingly, the Respondent apply adjustment in the consumer bill throughout the State of Maharashtra.
- (iv) The Commission accorded approval to FACs periodically which are as below: -

Table 3

Sr. No.	Particulars	Date of Approval
I	Post Facto approval of FAC submission of MSEDCL for the month of November 2012 & December 2012	28.07.2014
II	Post Facto approval of FAC submission of MSEDCL for the month of January 2013 to March 2013	28.07.2014
III	Post Facto approval of FAC submission of MSEDCL for the month of April 2013 to June 2013	04.12.2014
IV	Post Facto approval of FAC submission of MSEDCL for the month of July 2013 to September 2013	18.12.2014
V	Post Facto approval of FAC submission of MSEDCL for the month of October 2013 to March 2014	11.02.2016
VI	Post Facto approval of FAC submission of MSEDCL for the month of April 2014 to September 2014	16.02.2016
VII	Post Facto approval of FAC submission of MSEDCL for the month of October 2013 to March 2015	03.06.2016
VIII	Post Facto approval of FAC submission of MSEDCL for the month of April 2015 to March 2016	29.07.2016

The prayer of the Appellant for refund of FAC from December 2013 to June 2015 precisely gets covered in above orders of the Commission.

- (v) The FAC rate chart as per Commercial Circular of the Respondent from November 2013 to July 2015 is as below: -

Table 4

Bill of the Month	Circular No.	Date	Billing month	Rate	Rate Charged	Remark
Nov-2013	187	13.11.2013	Nov-2013	-7.97	-7.97	
Dec-2013	189	24.12.2013	Dec-2013	-28.06	-7.97	FAC rate was not amended as per current months FAC circular due to Circular issued in month end i.e. 24.12.2013 after bill generation.
Jan-2014			Jan-2014	0	0	
Feb-2014	190	10.03.2014	Mar-2014	4.74	4.74	Rates as per General Commercial Circular
Mar-2014	191	05.04.2014	Apr-2014	17.11	17.11	Rates as per General Commercial Circular
Apr-2014	193	08.05.2014	May-2014	3.64	3.64	Rates as per General Commercial Circular
May-2014	194	11.06.2014	Jun-2014	14.77	14.77	Rates as per General Commercial Circular
Jun-2014	197	07.07.2014	Jul-2014	38.98	38.98	Rates as per General Commercial Circular
Jul-2014	198	07.08.2014	Aug-2014	13.01	13.01	Rates as per General Commercial Circular
Aug-2014	199	05.09.2014	Sep-2014	36.64	36.64	Rates as per General Commercial Circular
Sep-2014	201	08.10.2014	Oct-2014	60.43	60.43	Rates as per General Commercial Circular
Oct-2014	202	03.11.2014	Nov-2014	21.22	21.22	Rates as per General Commercial Circular
Nov-2014	203	29-11-2014	Dec-2014	51.92	51.92	Rates as per General Commercial Circular
Dec-2014	204	02.01.2015	Jan-2015	90.52	90.52	Rates as per General Commercial Circular
Jan-2015	205	02.02.2015	Feb-2015	22.92	22.92	Rates as per General Commercial Circular
Feb-2015	207	27.02.2015	Mar-2015	16.74	16.74	Rates as per General Commercial Circular

Mar-2015	209	01.04.2015	Apr-2015	140.2	140.2	Rates as per General Commercial Circular
Apr-2015	216	30.04.2015	May-2015	140.2	140.2	Rates as per General Commercial Circular
May-2015	218	02.06.2015	Jun-2015	-43.44	-43.44	Rates as per General Commercial Circular
Jun-2015	219	03.07.2015	July-2015	55.46	55.46	Rates as per General Commercial Circular
Jul-2015	221	21.08.2015	Aug-2015	63.43	55.46	FAC rate was not amended as per current months FAC circular due to Circular issued in month end i.e. 21.08.2013 after bill generation.

(vi) The Respondent filed the Petition with the Commission which is registered as Case No 65 of 2019 with the following prayers: -

- “b. To allow the petitioner to recover the FAC calculated for the month ‘n-2’ from the consumers for consumption in ‘n-2’th month to be billed in the month ‘n’;*
- c. To allow it to include any variation in the PGCIL transmission Charges under the FAC calculation and to be levied to the consumers;*
- d. To remove deduction being made in FAC of nth month on account of exceed of Distribution Loss level as compared to approved level.”*

The Commission has dismissed the Petition of the Respondent. The relevant extract of the order is quoted below: -

“8. The amendments in the Regulations cannot be carried out through an Order. Out of four issues on which MSEDCL has suggested changes in provisions relating to FAC in MYT Regulations, the Commission notes that issue of levy of FAC to consumers for the period in which that FAC has resulted has been already addressed by the Commission in its Order dated 3rd November 2016 in Case No. 48 of 2016 as under:

2.14 Fuel Adjustment Charge.....

.....

Commission's Ruling

The existing FAC formula in the Regulations has been specified after due consultation, and is intended to pass on changes in fuel-related costs from time to time during the year, as envisaged in the EA, 2003, in addition to the base tariff set for the year so as to take into account cost variations which have to be met by Licensees and Generators. Not providing for FAC, or lowering the ceiling, would not only affect Licensees and Generators adversely, but also result in

consumers having to pay higher carrying cost for the period till the tariff is next revised. The Commission approves the FAC submitted by MSEDCL post facto after detailed scrutiny, and the subsequent tariff determination and truing-up processes take into account the facts emerging at that time.....

Regarding changing the current methodology and allowing billing of FAC determined for the “nth” month on the consumption of the “n-2 th” month, electricity supply being an ongoing business, consumers are regularly both added and exit from the system. Under the principles of ongoing business in the electricity sector, the impact of truing-up and associated carrying costs as well as FAC is recovered only from consumers who are receiving supply at the time of such recovery, and is not recovered on a one-to-one basis from the same consumers as were receiving supply at the time the costs were incurred. Therefore, such change in the methodology for billing FAC is not tenable.”

9. Accordingly, the Commission opines that the existing methodology needs to be continued as per the provisions of the existing MYT Regulations, 2015 till the end of the current control period.

10. As far as other issues raised by MSEDCL regarding FAC mechanism is concerned, the Commission is of the opinion that MSEDCL may raise these issues during public consultation process on draft MYT Regulations for fourth control period.”

- (vii) The Regulation 6.6 of the CGRF Regulations provides that Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. The consumer has filed complaint in respect of the Case in IGRC vide letter dated 05.04.2019. The IGRC by its order dated 29.06.2019 has rejected the complaint.
- (viii) The Consumer approached the Forum on 19.08.2019. The Forum by its order dated 23.10.2019 has dismissed the grievance. The Forum observed that the Consumer was not entitled to refund any Fuel Adjustment Charges. The Forum also observed that the grievance is barred by limitation as per Regulation 6.6 of the CGRF Regulations.
- (ix) Therefore, in view of the above-mentioned Regulation, claim of the Appellant is not maintainable. The Appellant has agitated claims which he had not pursued for about 4 years.
- (x) The Respondent relied upon the judgment of the High Court of Bombay, Bench at Aurangabad in W.P. No. 6859 of 2017 in the matter of MSEDCL V/s. Jawahar Shetkari Soot Girani Ltd. Dhule, The Hon’ble High Court of Judicature of Bombay Bench at Aurangabad where the grievance cases filed by the Consumers are rejected

for being beyond the limitation period of two years as per Regulation 6.6 of the CGRF Regulations.

- (xi) The Respondent referred the judgement of Hon'ble Supreme Court dated 13.03. 2019 in Appeal No.2960/2019 order in which it laid down that plaint can be rejected if suit is clearly barred by limitation.
- (xii) The Respondent referred to the order of the Electricity Ombudsman (Mumbai) in Representation No. 145 of 2019 in which the consumer's application is rejected in view of limitation of 2 years' period as per Regulation 6.6 of the CGRF Regulations.
- (xiii) The Respondent prayed that the Representation of the Appellant be rejected.

5. During the first hearing on 23.01.2020, the Appellant and the Respondent argued in line with their respective written submissions. The Appellant argued that the Respondent has not applied FAC rate for the respective month as per the circular issued by it. The Respondent changed the methodology of billing the FAC and hence the Appellant financially suffered. The Appellant argued that the Nashik Forum has issued orders dated 19.04.2018 in Case of Jindal Polyfilms Ltd. V/s MSEDCL, and dated 15.02.2019 in Case of Slidewell Meilleur Tech Pvt. Ltd. V/s MSEDCL for refund of excess FAC amount collected for the period two years prior to the date of request by the respective complainants. However, the Respondent has not applied these orders in the instant case which amounts to discrimination by the Respondent. The Appellant argued that the stand taken by the Respondent with respect to limitation period as per CGRF Regulations is not correct as public authorities ought not to take technical plea of limitation to defeat the legitimate claims of the consumer. Therefore, the Appellant prays that the Respondent be directed to refund excess billed FAC charges along with applicable interest at the earliest possible.

6. The Respondent in its argument stated that the methodology of the levy of FAC, actual FAC levied and other related issues are explained to the Appellant. However, if the Appellant still has any doubt, it is ready to reconcile again for the disputed period. However, the grievance of the Appellant is time barred as per Regulation 6.6. of the CGRF Regulations. The same has been appropriately upheld by the Forum. The Respondent pointed out that the Appellant had filed grievance before the Forum on 19.08.2019 whereas the Appellant through this representation is praying for refund of money alleged to have been excessively collected by it for a period December

2013 to June 2015. As a matter of fact, FAC has been correctly charged to the Appellant for the disputed period. It further argued that the judgment of the High Court of Bombay, Bench at Aurangabad in W.P. No. 6859 of 2017 in the matter of MSEDCL V/s. Jawahar Shetkari Soot Girani Ltd. Dhule, has upheld the provision of Regulation 6.6 of the CGRF Regulations which decides the period of limitation for filing of grievance before the Forum.

7. In view of the arguments advanced by both the parties and further their agreeing to reconciliation, the undersigned directed them to sit together at the Respondent's office on a mutually convenient date to understand the issues and reconcile the FAC calculations for the disputed period. The hearing was therefore adjourned till 25.02.2020. In pursuance of this directive, the parties sat together on 11.02.2020 at Respondent's Office, Nashik and issued minutes duly signed by the persons present from both the sides. The minutes of the meeting are as follows:-

- (a) As per consumer's representative of the Appellant; the FAC rate for corresponding month is not applied as per corresponding Circular of MSEDCL. As per Circular No. 219 of the Respondent, there was an anomaly for levying the FAC during the disputed period. Before the disputed period i.e. prior to November 2013, FAC declared in October 2013, November 2013, were applied for the respective month October 2013 and November 2013. However, in disputed period, FAC declared in March 2014, was applied for February 2014. FAC declared in April 2014, was applied for March 2014. The methodology was continued up to June 2015. After July 2015, FAC declared in July 2015, was applied for July 2015 and so on. Due to this, there is refund of Rs. 27.14 Lakh for the period from December 2013 to June 2015. The representatives do not agree the stand of MSEDCL.
- (b) According to the Respondent, as per Commercial Circular No. 189, FAC rate for December 2013 was -28.06 paise/unit, whereas FAC charged to consumer is -7.97 paise/unit. As same FAC was levied in previous month i.e. November 2013. Also as per Commercial Circular No. 219, FAC to be levied for July 2015 was 63.43 paise/unit whereas FAC was charged was 55.46 paise/unit. Only FAC for the month December 2013 and July 2015 was not levied as per Commercial Circular as amendment was not received. Hence, only 2 months difference of FAC to be charged /refunded to consumer.

8. Though the Appellant submitted signed copy of the MOM vide its email dated 24.02.2020, immediate hearing could not be scheduled. However, by mid-March 2020, the COVID-19 epidemic situation arose and the situation subsequent to it did not permit routine regular hearing. Hence, virtual hearing on e-platform was scheduled on 19.03.2020. However, the hearing could not be conducted as it was postponed at the request of both parties due to travel restrictions arising out of COVID-19 epidemic. However, the conditions did not warrant for conducting usual hearings through the physical presence, hence, the hearing was scheduled on 12.06.2020 on e-platform after the consent from the parties. During the hearing, both the parties reiterated their written submissions. Since the hearing was through e-platform and there were technical connectivity issues, the virtual hearing was not healthy hence parties were asked to submit their arguments in writing which they did. The Appellant submitted their arguments vide email dated 16.06.2020. This submission in short speaks about the deviation in standard practice of applicability of FAC till November 2013 for the period from December 2013 to June 2015. The Respondent again corrected the same by issuing Circular No. 219 dated 03.07.2015. Hence, the Appellant is entitled for refund of excess charges recovered on account of anomaly in adopting a practice for the disputed period from December 2013 to April 2015. As regards plea of limitation by the Respondent, the Appellant cited the orders of the Nashik Forum and also cited the Judgment of Hon. Supreme court (Madras Port Trust V/S Himanshu International) wherein it has directed that public authorities ought not to take plea of Limitation to defeat the legitimate claims of the citizens. Therefore, it is humbly requested to the Hon. Electricity Ombudsman, to consider our appeal and direct SE, MSEDCL, Urban Circle to refund of excess billed FAC charges along with applicable interest at the earliest possible.

9. The Respondent submitted its written arguments which in brief are as below:

FAC rates applied to the consumer are as per prevailing MSEDCL Circulars issued from time to time. As per Commercial Circular No. 193 dated 08.05.2014, FAC rate is 3.64 paise/unit applied for consumption of April 2014. FAC for the month of February 2014 to be billed in the month of March 2014 is 3.64 paise/unit and consumption for March 2014 is billed in April 2014 and so on. FAC applied in the bill are after the date of issuing FAC Circular.

Table 51. Before Dispute Period:-

Circular No.	Rate to be applied		Narration	Bill for the month	Billing Period	
	HT I N	HT I C				
178	0.64	-9.71	In the billing month of May 2013	May-13	01-05-2013	31-05-2013
179	9.52	-0.22	In the billing month of June 2013	Jun-13	01-06-2013	30-06-2013
180	-2.02	-6.14	In the billing month of July 2013	Jul-13	01-07-2013	31-07-2013
183	3.27	3.29	In the billing month of Aug 2013	Aug-13	01-08-2013	31-08-2013
185	-12.96	-14.66	In the billing month of Sept 2013	Sep-13	01-09-2013	30-09-2013
186	-8.73	-7.72	In the billing month of Oct 2013	Oct-13	01-10-2013	31-10-2013
187	-7.97	-6.24	In the billing month of Nov 2013	Nov-13	01-11-2013	30-11-2013
189	-28.06	-22.46	In the billing month of Dec 2013	Dec-13	01-12-2013	31-12-2013

As per above statement narrated in circular “*in the billing month*” means month for which bill is issued. Hence FAC rate applied for the month for which bill is issued.

- FAC Circular No 178 for May 13 is issued on 10.05.2013, bill for May 13 is issued on 11.06.2013 i.e. after Circular Date.
- FAC Circular No 179 for June 13 is issued on 11.06.2013, bill for June 13 is issued on 11.07.2013 i.e. after Circular Date.
- FAC Circular No 180 for July 13 is issued on 12.07.2013, bill for July 13 is issued on 12.08.2013 i.e. after Circular Date.
- FAC Circular No 186 for Oct. 13 is issued on 11.10.2013 bill for Oct. 13 is issued on 11.11.2013 i.e. after Circular Date.
- FAC Circular No 187 for Nov 13 is issued on 13.11.2013 bill for Nov 13 is issued on 10.12.2013 i.e. after Circular Date.

Table 62. Dispute period: From Dec 2013 to June 2015

Circular No.	Rate to be applied		Narration	Bill for the month	Billing Period	
	HT I N	HT I C				
190	4.74	4.28	to be billed in the month of Mar 14	Feb-14	01-02-2014	28-02-2014
191	17.11	16.41	to be billed in the month of Apr 14	Mar-14	01-03-2014	31-03-2014
193	3.64	3.36	to be billed in the month of May 14	Apr-14	01-04-2014	30-04-2014
194	14.77	13.62	to be billed in the month of June 14	May-14	01-05-2014	31-05-2014
197	38.98	34.92	to be billed in the month of July 14	Jun-14	01-06-2014	30-06-2014
198	13.01	11.18	to be billed in the month of Aug 14	Jul-14	01-07-2014	31-07-2014
199	36.64	32.93	To be billed in the month of Sept 14	Aug-14	01-08-2014	31-08-2014
*continue same like other month up to June 2015						

As per above statement narrated in circular “*to be billed in the month*” means for bills which are being billed and issued in that particular month. Hence FAC rate applied for previous month’s consumption which is being billed and issued in next month. i.e. consumption for Feb 14 is billed and bill is issued in March 14, consumption for March 14 is billed in April 14 & so on.

Table 73. After Dispute Period:-

Circular No.	Rate to be applied		Narration	Bill for the month	Billing Period	
	HT I N	HT I C			Circular	
219	55.46	54.89	in the billing month June 15	Jun-15	01-06-2015	30-06-2015
221	63.43	57.28	in the billing month July 15	Jul-15	01-07-2015	31-07-2015

As per above statement narrated in circular “*in the billing month*” means month for which bill is issued. Hence FAC rate applied for the month for which bill is issued. i.e. billing month June 15, FAC charged for consumption of June 15.

4. Circular No. 219 dated 03.07.2019

Consumer’s objection is on ‘anomaly’ word stated in the circular. The bills are issued to consumer on different dates and for different period. Hence there were possibilities that, some consumers are billed before circular date and others are after it. Hence, rates applied were also different. Hence, the word anomaly is used.

5. On the issue of Limitation, the Respondent reiterated its say in the submission which covers various Judgments with respect to Regulation 6.6 of CGRF Regulations.

10. Analysis and Ruling

Heard both the parties and perused the documents on record. The grievance of the Appellant relates to refund of excess recovery of FAC recovered during the period of December 2013 to June 2015. I note that the Commission accorded its post facto approval to FACs periodically details of which are as below:

Table 8

(i)	Post Facto approval of FAC submission of MSEDCL for the month of November 2012 & December 2012	28.07.2014
(ii)	Post Facto approval of FAC submission of MSEDCL for the month of January 2013 to March 2013	28.07.2014
(iii)	Post Facto approval of FAC submission of MSEDCL for the month of April 2013 to June 2013	04.12.2014
(iv)	Post Facto approval of FAC submission of MSEDCL for the month of July 2013 to September 2013	18.12.2014
(v)	Post Facto approval of FAC submission of MSEDCL for the month of October 2013 to March 2014	11.02.2016
(vi)	Post Facto approval of FAC submission of MSEDCL for the month of April 2014 to September 2014	16.02.2016
(vii)	Post Facto approval of FAC submission of MSEDCL for the month of October 2014 to March 2015	03.06.2016
(viii)	Post Facto approval of FAC submission of MSEDCL for the month of April 2015 to March 2016	29.07.2016

The Appellant's prayer for refund of FAC is from December 2013 to June 2015 precisely gets covered in above orders of the Commission. The Respondent in its submission dated 05.08.2019 has however submitted that FAC is correct, on the contrary, the Appellant prayed that the Respondent be directed to refund the excess bill amount of Rs. 27.14 Lakh towards FAC charges along with applicable interest as it has deviated from the standard practice of application of FAC for the disputed period.

From the bare perusal of the above orders, it is seen that the first applicable order is issued by the Commission on 28.07.2014 and the last one is on 29.07.2016. Even assuming the last date of 29.07.2016 as the latest date for cause of action, the Appellant should have approached the Forum on or before 29.07.2018 so as to abide by the provision of Regulation 6.6 of the CGRF Regulations which is quoted below:

“6.6 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.”

The Appellant approached the Forum on 19.08.2019 i.e. much after 29.07.2018. The Respondent has submitted that it had already taken the plea of limitation at the Forum. I noticed that the Forum has recorded this plea and rejected the grievance being time barred.

Pursuant to my directives during the first hearing on 23.01.2020 to the parties to reconcile the issues after verification of facts and figures, I noted that there was disagreement amongst the parties as could be seen from the minutes of the meeting drawn on 11.02.2020. Notwithstanding the merit of the case, I am of the opinion that the Appellant has failed to approach the grievance redressal mechanism within two years from the cause of action even after considering the last date as 29.07.2016 for cause of action. The Appellant claimed that it has been badly hit financially on account of the act of commission or omission on the part of the Respondent. I am, therefore, surprised to note that the Appellant wasted valuable time in approaching the grievance redressal mechanism particularly when the claim for refund is the tune of Rs. 27,14,267/- plus applicable interest.

The Appellant has referred the Nashik Forum's order in which Apex Court Judgment dated 3 January, 1979 in Madras Port Trust vs Himanshu International is referred. In the said Judgment, it is stipulated that the public authorities ought not to take technical plea of limitation to defeat the legitimate claims of the citizens. The relevant extract of the said Judgment is quoted below: -

“2. We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by Section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this Section is one which the court always looks upon with disfavour and it is unfortunate that a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the

citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the appellant was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Article 136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on Section 110 of the Madras Port Trust Act (II of 1905).”

After perusing the above quote in the said Judgment, I am of the opinion that the ratio of the Judgment is not applicable to the instant representation for the simple reason that in electricity sector, such cases are being dealt day in and day out. If the provision of Regulation 6.6 of the CGRF Regulation providing time limit of two years for the consumer to file its grievance from the cause of action before the Forum is ignored, assuming it to be mere technicality, then the flood gates of such representations will paralyze the entire grievance redressal mechanism and provision of Regulation 6.6 will be totally frustrated. By any stretch of imagination, period of two years to file a grievance from the date of cause of action is not a small period. It is necessary to appreciate the facts recorded in the said Judgment that the decree of Rs. Rs. 4,838.87 was passed against the Custom Department, which is a small amount, for which the department has approached the Apex Court. On the contrary, the amount involved in the instant representation is to the tune of Rs. 27,14,267/- plus applicable interest. These two issues also need to be viewed in proper perspective. Therefore, implementation of Regulation 6.6 in letter and spirit is very much essential and cannot be wished away merely on the ground of technical issue. Therefore, the ratio of this Judgment is not applicable to the instant representation.

The undersigned in past has decided similar cases in view of limitation in approaching the grievance redressal mechanism. If the cases like the instant one are allowed to be exhumed and dissected on the basis of hindsight and that too with no bar on time that has elapsed, it will lead to opening of flood gates of grievances and the spirit of Regulation 6.6 of CGRF Regulation will get frustrated and there will be complete chaos. The Constitutional Courts, in its various judicial pronouncements has upheld the provision of Regulation 6.6 of the CGRF Regulations. Some of the relevant judgments are quoted below: -

- (a) The Hon'ble High Court of Bombay, Bench at Nagpur in W.P. No. 1650 of 2012 has upheld the provision under this Regulation. Relevant portion of the judgment is reproduced below:

“6. Regulation No. 6.6, which is quoted above, The cause of action in the case before the Forum arose way back in 2004 and in when the Cell did not deal with the complaint within the reasonable time.

7. Proviso to Regulation No. 6 indeed provides that a complaint made about the grievance to any officer of the petitioner company is a complaint to the Cell. Going by this logic, I am inclined to accept the submission that the complaint made by the respondent no. 2 herein in 2004 and the subsequent complaints he made, were the complaints made to the Cell within time. But, in 2011, when the Cell rejected his complaint, he did not remain present before it. Admittedly, before that date, he had already approached the Forum. The question is, whether the complaint made to the Forum was within time. The answer has to be in negative, because, the cause of action for approaching Forum arose in 2004, or at the most in 2006 when the Forum was established. What happened before the Cell was hardly of any consequence. When the regulations came into force, the respondent no. 2 was aware that his complaint is already delayed and that he could have lodged the complaint directly to the Forum because of such exceptional circumstances. No doubt, in the normal circumstances, a complaint to the Forum would come after the complaint to the Cell. But, this is a case of exceptional nature. The cause of action in the complaint arose in 2003-04, the regulation came into force in 2006, the Forum and Cell were established in 2006, the respondent no. 2 was suffering disconnection since 2003, he was suffering losses because of non supply of electricity since 2003 and so, he could have approached the Forum directly.

8. The facts thus indicate that the respondent no. 2 delayed the filing of the complaint before the Forum and the Cell inordinately. Prior to 2006, he had opportunity to file a suit for damages etc. Even that was admittedly not done. In my view, the case initiated by the respondent no. 2 even before the Cell and the Forum was delayed. There is no time limit prescribed for approaching the Cell, but when no time is prescribed, it must be 'reasonable time'. As stated above, the complaint was inordinately delayed. The explanation is not forthcoming for the delay. In view of this, the case of the respondent no. 2 was hopelessly time barred.”

- (b) Hon. Bombay High Court, Bench at Aurangabad in W.P. No. 6859, 6860, 6861 and 6862 of 2017 in its judgement dated 21.08.2018 has also taken a similar view which is very much relevant in the instant Representation. The relevant portion of the judgment is quoted below:

“37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

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 coexist 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 coexist 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.”

- (c) In a recent judgment, the Hon. Supreme Court in Civil Appeal No. 2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if suit is clearly barred by limitation.

Therefore, this provision of Regulation 6.6 is a settled position in law and if Regulation 6.6 is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all, to contest the claim irrespective of the period elapsed from the cause of action. The provision of Regulation 6.6 will be frustrated.

I, therefore, decide the case in the matrix of Regulation 6.6 and dispose it of accordingly as being time barred. No order as to cost.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)