

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 83 & 84 OF 2022

In the matter of Refund of Infrastructure Cost

- I) Sou. Vanita Babasaheb Kitture (Mahalakshmi Textiles)  
(C.No.250010072111) (Rep. 83 of 2022)
- II) Shri Babasaheb Kallappa Kitture (HUF)  
C.No.250010072120) (Rep. 84 of 2022) ..... Appellants

V/s.

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

Appearances:

- Appellant : 1. Pratap Hogade, Representative  
2. Mukund Mali
- Respondent : 1. P. T. Rathi, Executive Engineer  
2. N. D. Ahuja, Addl. Executive Engineer


**Coram: Vandana Krishna (I.A.S. Retd.)**

Date of hearing: 10<sup>th</sup> August 2022

Date of Order : 10<sup>th</sup> October 2022

## ORDER

These combined Representations were filed on 10<sup>th</sup> May 2022, and separate Representation of each of case is filed on 02.06.2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 2<sup>nd</sup> March 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum).

  
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2. The Forum, by its common order dated 02.03.2022 has rejected these two grievance applications in Case No. 09 of 2020.


3. The Appellants have filed these representations separately against the said order of the Forum. The facts in both the representations are similar in nature, therefore, they are clubbed together for the purpose of this order. The hearing was held physically on 10.08.2022 where both the parties attended. The written submissions and the arguments of the Appellants are stated in brief as below: -

(i) The basic details of these Appellants are as below:

Rep. No.	Name of Consumer	Consumer No.	Address	Sanctioned Load (HP)	Contract Demand(KVA)	Date of Connection	Present Status
83/2022	Sou. Vanita Babasaheb Kitture	250010072111	House No. 2297, Gat No. 781/A, Saharanagar, A/P. Rui.	66	55	02.11.2006	PD in March 2016
84/2022	Shri Babasaheb Kallappa Kitture	250010072120	House No. 2297, Saharanagar, A/P. Rui.	34	28	02.11.2006	PD in July 2015

(ii) Previously, Appellants as LT Industrial consumers had applied for power supply for running their power looms for 66 HP and 34 HP on 10.10.2005 & 20.12.2005 respectively to the Executive Engineer, Ichalkaranji of the Respondent. The Respondent had issued sanction letter with estimate of work under Out Rate Contribution [ORC(P)]. Appellants had paid supervision charges and set up all the concerned infrastructure works as per the Respondent's estimate & directions, then handed over the infrastructure to the Respondent, and thereafter the load was released on 2<sup>nd</sup> November 2006.

The issue of refund of Infrastructure Cost was pending due to Civil Appeal No. 4305 of 2007 filed by MSEDCL to the Hon'ble Supreme Court of India, New Delhi. There was a stay on refund. Finally, the Hon'ble Supreme Court dismissed the Civil Appeal on 10.11.2016. Thereafter it become clear that consumers are eligible and can claim for refund of all the expenses done for infrastructure works.


  
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- (iii) **Infrastructure Work Details:** The details of the Infrastructure Works carried out is tabulated below:

<b>Details</b>	<b>Description</b>
Estimate No.	ORC(P)/157/2006-07
Estimate Amount	Rs.4,31,000/-
Sanctioned Letter Date	20.10.2006
Scope of Work	HT line 0.28 Km, LT line 0.18 Km, Distribution Transformer Centre 100 KVA and Concerned Works and Metering Works.
Work completion and the load release date	02.11.2006
Total Refundable Principal Amount claimed.	Rs. 4,31,000/- only + Interest


- (iv) The issue of refund of infrastructure cost was pending due to Civil Appeal No. 4305 of 2007 filed by MSEDCL with the Hon'ble Supreme Court of India. There was a stay on refund of infrastructure costs. Finally, the Hon'ble Supreme Court of India dismissed the C.A No. 4305 of 2007 on 10.11.2016. Thereafter, it became clear that the Appellants are eligible and can claim for refund of all the expenses done under ORC (P) for infrastructure works.
- (v) After the final decision of the Hon'ble Supreme Court in C.A. No.4305 of 2007 dated 10.11.2016, MSEDCL issued its first "Refund Circular" on 12.10.2017.

  
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- (vi) The Appellants filed a complaint before IGRC on 10.10.2019 demanding refund of their infrastructure expenses with interest under ORC (P). This was overlooked by the IGRC and rejected on allegedly wrong grounds on 11.12.2019. The Appellants approached the Forum on 14.02.2020 but it was rejected on 02.03.2022 on the basis of limitation of 2 years and assuming ORC (P) as DDF Connection. Therefore, the Appellants filed representations before the Electricity Ombudsman.
- (vii) The Appellants argued that this denial of refund is totally wrong, illegal and against the orders of the Hon'ble Commission and Hon'ble Supreme Court and MSEDCL's own refund circulars. The detailed submissions in this regard are given in the following paragraphs.

- **Work Done** - The work done by the Appellants as per estimate of MSEDCL is HT Line 0.28 KM, LT Line 0.18 KM, Distribution Transformer Centre 100 KVA and Concerned works and Metering Costs as per MSEDCL estimate and directions. Also, the Appellants have set up outdoor type 33 and 11 KV switchgears at Tilwani Substation.
- **Feeder Details** - The name of the feeder is 11 KV Abhar Phata Feeder, which is emanating from 33/11 KV Chandur Substation.
- **Other Consumers** - There are many other consumers getting power supply from the same 11 KV Abhar Phata Feeder. There are many other HT and LT consumers on this 11 KV Feeder which can be clearly seen on the Single Line Diagram.
- **Metering Work:** The Appellants did the metering work with purchase of DTC Meter. As per the Commission's Order regarding "Schedule of Charges" dated 08.09.2006 in Case No. 70/2005 and corresponding MSEDCL Circular No. 43 dated 27.09.2006, meters are to be installed by the licensee. Also, if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars (Circulars No. 21560 dated 09.05.2017 and No. 34307 dated 03.09.2007). However, the Respondent did not follow these directives in the present case.

  
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- (viii) **The Commission's Order dated 16.02.2008 in Case No. 56 of 2007:** HT Line 0.28 KM, DTC, concerned work and Metering work was done by the Appellants and many other consumers are getting supply from the same feeder. "Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)" is the Clarification given by the Commission, on the demand of MSEDCL itself.
- (ix) **Work Non DDF and ORC:** It is clear from the definition of DDF in the Regulations and clarifications given by the Commission in the above-mentioned order, the feeder and the work done is clearly Non DDF and ORC. Hence, the Appellants are fully eligible for the refund of the above-mentioned amounts along with interest thereon as per MSEDCL's own office estimates.
- (x) **The Commission's Order dated 17.05.2007 in Case No. 82 of 2006:** The Commission has given clear directions as follows: -  
*Para 4 end - "MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the order dated September 8, 2006."*  
*Para 5 end - "The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests."*  
*Para 9 end - "While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006."*
- (xi) **The Commission Order dated 21.08.2007 in Case No. 82 of 2006:** The Commission has issued further Order dated 21.08.2007 in the same Case No. 82 of 2006, imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL for compliance as per Order dated 17.05.2007.
- (xii) **DDF Clarifications:** Again Case No. 56 of 2007 was filed by the same petitioner before the Commission for the compliance of the directions issued

  
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on 17.05.2017 in Case No. 82 of 2006. In this Case issues of ORC, DDF and Non DDF were fully discussed by the Commission. In this order, dated 16.02.2008, the Commission has clarified the concept and issued detailed clarification on the definition of "DDF" on the request of MSEDCL itself.

*Para 9 - "The Commission observed that consumers should not be burdened with infrastructure costs which are the liability of MSEDCL. .... MSEDCL may seek the recovery of the same as an annual revenue requirement."*

*Para 12 - "It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility."*


*Para 12 - "Thus, in the distribution system, Dedicated Distribution Facility 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."*

*Para 12 - "Also Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Section 43 of Electricity Act 2003 read with SoP Regulations."*

(xiii) **Provisions of Section 62 (6) of the Electricity Act, 2003:** It is noticeably clear from the directions of the Commission quoted in Para 9 of the order dated 21.08.2007 that *"The directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally. It is well settled that interest shall also be leviable on such amounts"*. Also, it is clear from the directions quoted in Para 8 above that *"Consumers should not be burdened with infrastructure costs which are the liability of MSEDCL"*.

Also, Section 62 (6) of the EA 2003 reads as below,

Section 62(6) - *"If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess*

  
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*amount shall be recoverable by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."*

The directions of the Commission clearly state that

*"The collection towards infrastructure cost is totally illegal and consumers should not be burdened with infrastructure costs."*

Also, Section 62(6) clearly states that excess recovered amount must be refunded to the concerned person along with the interest thereon. Hence, the Appellants are clearly eligible to get the refund of infrastructure cost along with the interest thereon.

- (xiv) **MSEDCL Circular 20.05.2008:** After this order dated 16.02.2008, MSEDCL has issued circular on 20.05.2008 as Guidelines for release of new connections on the basis of above-mentioned Commission orders. The circular itself clarifies that all the Non DDF connections are refundable.
- (xv) **MSEDCL Circular 21.12.2009:** MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of the infrastructure cost. It is pertinent to note here that it is clearly stated in the circular that the work may get executed under DDF and the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.
- (xvi) **MSEDCL Civil Appeal in Supreme Court:** In the meanwhile, MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007), in which Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31.08.2007. Hence all the Refunds were stopped.
- (xvii) **Supreme Court Order 10.11.2016:** Finally, the Civil Appeal filed by MSEDCL before the Hon'ble Supreme Court came for final hearing in the year 2016. The Hon'ble Supreme Court heard the matter, issued final order on dated 10.11.2016 and dismissed the Civil Appeal in toto.
- (xviii) **MSEDCL Circular 12.10.2017:** After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement concerned orders of the


  
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Commission in letter and spirit. MSEDCL issued circular for refund of SLC, ORC and meter cost after 11 months vide its circular No. CE/Dist/D-IV/MERC No. 25079 on 12.10.2017. In this circular dated 12.10.2017, MSEDCL has denied refund in DDF Cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by the Commission in its order dated 16.02.2008 on demand of MSEDCL itself. But if the connection is actually Non DDF and it is named as DDF or ORC (P) by MSEDCL for its own convenience or in order to avoid any refund, then it is nothing but ORC and hence consumers are eligible to get the refund along with the interest thereon.

(xix) **MSEDCL Refund Period Circular dated 29.12.2017:** In its first refund circular dated 12.10.2017 MSEDCL has stated the refund period from 20.01.2005 (means the date of Supply Code Regulations) to 30.04.2007 (means the date mentioned in the Commission's Order dated 17.05.2007). Thereafter MSEDCL has issued Amendment Circular on 29.12.2017 the copy of which is enclosed herewith. The refund period is revised from **20.01.2005 up to 20.05.2008** (means the date of MSEDCL Non DDF refundable circular). The Appellants' estimates and work done periods is about 06.06.2006 to 09.11.2006. Hence these amounts are eligible for refund as per MSEDCL's own refund circulars.

(xx) **Supply Code Regulations:** After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF or ORC (P) in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words "DDF" or ORC(P), MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually, using the phrase DDF or ORC(P) and imposing cost on consumers is illegal and against the orders of the Commission. Actually, such works are nothing but ORC. Actually, such act and such conditions of MSEDCL are against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below:


  
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19.1 "Any terms and conditions of the Distribution Licensee, whether contained in the terms and conditions of supply and/or in any circular, order, notification or any other document or communication, which are inconsistent with these Regulations, shall be deemed to be invalid from the date on which these Regulations come into force."

- (xxi) **Interest:** As per provisions of Section 62 (6) of the Electricity Act 2003, it is binding on the licensee to refund the excess recovered amount to the concerned person/consumer along with interest equivalent to the bank rate.
- (xxii) Actually, the Appellants' expenditure on all the concerned work is more than the estimate of MSEDCL. But logically and reasonably, they can claim the estimate amount only. Hence, on the basis of all above mentioned grounds, they are eligible to get the refund of all the above mentioned MSEDCL's own estimate amount of Rs.4,31,000/- along with interest at bank rate.
- (xxiii) **Compensation** – These are complaints other than bills. Hence as per **SoP regulations 2014, Regulation No. 7.6, "In other cases the complaint shall be resolved during subsequent billing cycle."** Appellants have filed the complaint before IGRC on 10.10.2019. It was necessary and binding on MSEDCL to resolve it in subsequent billing cycle means up to the end of November 2019 or in the bills received in December 2019. But MSEDCL has failed to do so. Hence Appellants are eligible for SoP Compensation of Rs.100/- per Week or part thereof from 1<sup>st</sup> December 2019.
- (xxiv) **SLC, ORC and DDF/DDS all are Infrastructure Charges** - Observations of IGRC in its order are totally wrong. The IGRC noted in the order that the work is done under ORC (P) and MSEDCL has not recovered money, hence not refundable. In fact, SLC, ORC/ORC (P) and DDF/DDS all these 3 types of charges are the charges towards Infrastructure Cost. ORC was allowed up to 20.01.2005 i.e., up to the date of Supply Code Regulations. SLC was allowed up to 08.09.2006 i.e., up to the date of Schedule at charges. DDF is allowed from 20.01.2005, but in the cases only where the connection is actually DDF as per Supply Code Regulations and as per THE COMMISSION Clarificatory Order dated 16.02.2008. In our case the

  
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connection is totally Non DDF. Also, it is stated as ORC (P) means actually ORC. As per MERC regulations and orders, in case of all ORC or Non DDF connections, Infrastructure Costs cannot be recovered from the consumers. Hence Appellants are fully eligible for refund.


(xxv) **ORC (P)** - Hon'ble Forum has totally erred in assuming that "ORC (P) is DDF connection and hence it is non-refundable".

Actually, there was no scheme in existence in MSEDCL which was named as ORC (P). ORC is out right contribution and ORC was the scheme in existence at that time. The Scheme was started in the Year 1996, and it was stopped on 20.05.2008 i.e., from the date of new MSEDCL circular on the basis of the Commission Order dated 16.02.2008.

(xxvi) ORC(P) is nothing but ORC. The difference is only in the pattern of cost recovery. In ORC, full amount was being recovered by MSEDCL from the consumer and the infrastructure work was being done by MSEDCL. In ORC (P), the cost was being imposed on the consumer and the consumer was bound to create the infrastructure as per MSEDCL estimate and directions. In both the cases the infrastructure created by MSEDCL, or consumer was the property of the MSEDCL and was being booked in its assets register. The infrastructure created by the Appellants was handed over to MSEDCL at the same time before connection. Hence these connections are nothing but ORC connections. Hence the infrastructure cost imposed on the Appellants is refundable with interest.

(xxvii) **Limitation:** - The Forum has rejected the grievance only on the basis of limitation of 2 years and assuming ORC (P) as DDF. This observation is totally wrong and illegal.

(xxviii) This SLC, ORC, DDF issue was before Hon'ble Supreme Court in Civil Appeal No. 4305 of 2007 filed by MSEDCL itself. Hon'ble Supreme Court has issued final order on dated 10.11.2016 and on that date the stay on refund is vacated. Then after MSEDCL HO itself has issued circulars for refund on dated 12.10.2017, and then after on 07.11.2017 and on 29.12.2017. In the MSEDCL circular dated 29.12.2017, MSEDCL itself has stated that the

  
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refund period is **20.01.2005 to 20.05.2008**. The expenditure is within the period **19.06.2006 to 02.11.2006**. Hence Appellants are fully eligible for the refund. The circular was issued by MSEDCL on 29.12.2017 and then after Appellants had applied for refund in IGRC on 10.10.2019. The date of cause of action is 29.12.2017 and Appellants have applied for refund in IGRC on 10.10.2019 and with the Forum on 10.02.2020. There is no delay if IGRC application is considered. Minor 1.5 months delay if Forum's application is considered. Appellants request to Hon'ble Ombudsman to condone this minor delay. Hence there is no issue of any limitation. Hence the order of the Forum is totally wrong, illegal and it needs to be set aside.

(xxix) Also, it should be noted that MSEDCL has itself represented before various Courts that the judgement towards refund of ORC is pending before Hon'ble Supreme Court, Delhi. Also, it should be noted that any excess or illegal recovery is against the provisions of Section.62(6) and the licensee has no right to retain it with itself on any grounds. It must be refunded to the concerned person with interest. The licensee can recover these expenses through ARR as allowed by the Commission in its various orders.

(xxx) **Limitation - Additional Submissions**


**(1) Schedule of charges is a part of Tariff -**

Determination of Tariff is an absolute responsibility and authority of the Regulatory Commission as per the provisions of the Act. Schedule of Charges is a part of Tariff to be determined by the Regulatory Commission as per the provisions of S.45, S.62, S.64 of the Act and as per provisions of Supply Code regulation No. 18 framed by the Commission.

**(2) Tariff is a Continuous Process -**

Hon'ble ATE in its order in Appeal No. 197 of 2009 dated 11.03.2011 has clearly stated as below,

*"The tariff fixation is a continuous process and is to be adjusted from time to time. Any recovery or refund through ARR is not barred by Limitation."*

  
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It is important to note that the issue before ATE was SLC refund. It means the refund of Infrastructure Cost recovery. All these SLC.ORB/ ORC-P/Non DDF etc. are the various names of Infrastructure Cost and nothing else.

Also, there are much other evidence of such time to time adjusted and recovered or paid charges e.g., RLC refund, Mula Pravara refund, C/NC difference refund, SLC/RAC, Regulatory Assets refund/recovery etc.

**(3) Illegal recovery must be refunded -**

Metering cost recovery is illegal, hence refundable. Any illegal recovery from the consumers must be refunded. Illegal recovery under any heading means for meters or in the name of SLC, ORC, ORC(P), named DDF but actually Non DDF is not allowed by the Commission. Hence refund of such illegal recovery cannot be barred by limitation.

Infrastructure cost recovery of Non DDF works in the name of ORC, ORC(P) or DDF is also illegal, hence refundable.

**(4) Section 62 (6) - No limitation -**


Section 62(6) quoted in Para 9 of these submissions relates to the refund of the excess money recovered by the licensee, with interest to the concerned person.

It should be noted that Section 62 or Section 62(6) has no limitations. Hence refund of excess money is not barred by limitation.

(xxxii) **Multi Party - Additional Submissions: -**

First circular regarding multi party scheme bearing Commercial Circular No. 6 was dated 01.09.2005 and the power supply to multiple consumers in one premise for power looms was started. Further circulars issued are No. 151 dated 25.11.2011, No. 320 dated 19.07.2019 etc.

Appellants request Hon'ble Ombudsman to please note that till today MSEDCL has not taken any approval from the Commission for this Multi-Party Scheme. Hence it is clear that as per Supply Code Regulations -

  
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Regulation 19.1, any terms, and conditions, which are inconsistent with the regulations or the Commission's Orders are invalid. Hence, Appellants have to analyze the contradictory terms and conditions.


MSEDCL wide the above-mentioned circulars have imposed the infrastructure cost, Transformer Cost and Metering Cost on these Multiparty consumers, which is totally wrong, against the Supply Code Regulations, against the Schedule of Charges order and against various infrastructure cost (SLC/ORC/ORC-P/Non DDF etc.) refund orders. Hence these conditions are invalid.

Any infrastructure cost on 11 KV or above is totally disallowed as per Schedule of Charges order dated 08.09.2006. All the meters should be owned by the licensee as per Metering Regulations, above mentioned order dated 08.09.2006 and various MSEDCL refund circulars. Hence these costs cannot be recovered from or imposed on the consumer or group of consumers.

In Multiparty Scheme only DTC can be considered as DDF because the DTC is being installed in the consumers premises and no other connections are given from the DTC to other consumers. Hence DTC can be considered as DDF, provided that the ownership should be in the name of the consumer or group of consumers.

Also, in this scheme MSEDCL takes possession of all the assets after completion and books the infrastructure in its own assets register. It means that ownership goes to MSEDCL. In such cases, all these connections cannot be considered as DDF connections. All these connections become Non DDF and hence eligible for refund. Only DTC can be considered as DDF, if MSEDCL allows and accepts that the ownership the DTC will be of the concerned consumer or group of consumers.

(xxxii) Appellants hereby humbly pray to the Hon'ble Ombudsman as below,

  
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(1) These connections should be declared as Non DDF, or ORC connections given in the specified refund period based on Supply Code Regulations, Concerned the Commission's Orders and Concerned MSEDCL Circulars.

(2) The expenditure amount as per MSEDCL own estimate in total Rs. 4,31,000/- should be refunded along with the interest thereon at bank rate from November 2006 up to the date of repayment, as both the consumers are P.D. from March 2016 and July 2015 respectively.

or

Alternatively, the depreciated value of the infrastructure cost as of March 2016 and July 2015 should be refunded along with interest from March 2016 / July 2015 till the date of repayment based on Supply Code Regulation No. 3.3.5 because the infrastructure is being used by other consumers.


(3) SOP Compensation, for delay in Complaint Resolution, amount Rs. 100 /-per week from 1st December 2019 should be awarded.

(4) Any other orders may be passed by the Hon'ble Electricity Ombudsman, in the interest of justice, as it may think fit and proper.

4. The Respondent filed a reply by its letter dated 01.07.2022. The Respondent attended the hearing on 10th August 2022. The Respondent's submission and arguments in brief is as below:

- (i) The Appellants have filed the present Representation on 08.06.2022 (?) whereas the Forum has issued the orders on 02.03.2022 which is beyond two months period as prescribed in Regulation 17.2 /19.1 of CGRF & EO Regulations 2006 /2020. Hence the Representations are not maintainable.
- (ii) The Respondent referred Regulation 6.6 of CGRF & EO Regulations 2006 (6.6 which is now 7.8 as per CGRF & EO Regulations 2020)

*"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."*

  
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(iii) In view of this, the Appellants have filed the alleged grievance before the Forum on 10.02.2020 and the cause of action happened on 19.06.2006. Similarly, the Electricity Ombudsman (Mumbai) in its order dated 12.05.2021 in Representation No. 17 of 2021 in Case of Ramayya Textiles (Prop. Sunil Mallayya Swami) V/s MSEDCL (Ichalkaranji) has rejected the grievance on the ground of this Regulation 6.6 mentioned above. The relevant portion of the order is reproduced below:

***“10.) Now let us examine as to whether the instant representations fit into the matrix of the period 08.09.2006 to 30.04.2007 which is considered by the Commission for refund with respect to their date of payment. This is envisaged in the Commission’s order dated 17.05.2007 in Case No. 82 of 2006.***

*11. Further, the Commission in its order dated 16.02.2008 in Case No. 56 of 2007 has specifically denied grant of relief as regards refund of the cost as stipulated under its order dated 17.05.2007 in Case No. 82 of 2006. In this order dated 17.05.2007 at para 9 (d), the Commission has said that “MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of Meter and ‘CRA’, together with interest, on and from September 8, 2006 (which was the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;”*

*12. Therefore, it is clear that the amount collected by the MSEDCL during period 08.09.2006 to 30.04.2007 was the subject matter of dispute and which was subsequently ordered to be refunded post dismissal of C.A. No. 4305 of 2007 by the Hon’ble Supreme Court.*

*13. On conjoint reading of all the Orders of the Commission, the Judgment of the Hon’ble Supreme Court and more particularly, the Commission’s order dated 08.12.2014 in Case 105 of 2014, the refund to the eligible consumer needs to be done on the criteria of date of payment of those charges by the individual consumer and in this case, by the Appellant. The Appellant in the instant representation has paid the supervision charges on 04.07.2006 which is prior*

  
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to 08.09.2006, the date being the date of issue of Schedule of Charges order in Case No. 70 of 2005.

**14. The Appellant was at liberty to have agitated the matter before the grievance redressal mechanism at the time of payment or within two years therefrom before the Forum under CGRF Regulation 2006. However, it approached the Forum on 12.12.2019. It is very Page 15 & 16 of 2021 Ramayya Textiles interesting to note that the Appellant has paid the amount on 04.07.2006 which is prior to the date of Schedule of Charges order of the Commission. The entire legal case is on Schedule of Charges order which is issued on 08.09.2006 and the Circulars and the Commission's directives are issued pursuant to the dismissal of CA No. 4305 of 2007.**

*15. If the Appellant is allowed to take advantage of the developments subsequent to Judgment in CA No. 4305 of 2007 then anyone who has done the work under DDF or Non DDF prior to 08.09.2006 will have to be given advantage of if such consumers file the applications. It will be a complete state of chaos.*


*16. Therefore, the case does not stand scrutiny either on merit or on limitation prescribed under Regulation 6.6 of CGRF Regulations 2006. The Appellant appears to have filed the representation without properly appreciating the Judgment of the Hon'ble Supreme Court and the respective orders of the Commission in this context.*

*17. I therefore reject the representation which is disposed of accordingly.''*

(Emphasis added)

The Respondent also cited the orders of Rep. No. 189 and 190 of 2018, 15 of 2021 and 16 of 2021 which were identical cases in case of refund of infrastructure cost and dismissed by the Electricity Ombudsman (Mumbai) on the same ground.

- (iv) Also, further it is pertinent to note that the Appellants' date of payment of various charges including supervision charges was 19.06.2006 which is prior to the order of the Commission dated 08.09.2006 in Case No. 70 of 2005 regarding Schedule of Charges. In this regard, the Hon'ble Bombay High Court,

  
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Aurangabad Bench has given Judgment on limitation ground in W.P. No 6859 of 2017 which has ruled as below:

*“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”*

- (v) Further, the Commission, in its order in Case No. 5 of 2020 of M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others V/s. MSEDCL at para no.17 has cited the Judgment of the Hon’ble Supreme Court in case of A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. The ratio of the said judgment is applicable to the present case also. The observation of commission in para 17 reads as under

*The Hon’ble Supreme Court, in the case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. while disposing of the Civil Appeal No, 6036,6061, 6138 of 2012, 9304 of 2013, and 6835 of 2015 dated 16 October, 2015 (2016) 3SCC 468, (Para 30), has held that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court. The relevant extract of the Order is reproduced below:*

*“In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. **Hence, we hold that a claim coming before the***

  
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***Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.” (Emphasis Added)***

From various citations above, it is seen that the consumer has approached the forum beyond the time framework prescribed in the CGRF Regulations 2006 /2020, hence the Case is not maintainable on limitation grounds.

**Detailed Submission:**


- (vi) The Appellants are the consumers under Multiparty Group Agreement in same premises under one roof at House No. 2297, Saharanagar, A/P. Rui, and load was sanctioned as per Commercial Circular No. 6 dated 1.09.2005 in the subject matter of “Power supply to individual entrepreneurs coming under one premise to establish Power-Looms.” Both these two consumers are of one family. The basic details of these Appellants are captured in para 3(i) of the Appellant’s submission. The Appellants had enjoyed benefit of lower LT tariff and subsidy. The Appellants were permanently disconnected in July 2015(Cons. No. 250010072111) and March 2016(Cons. No.250010072120). (Note: As per Appellant, vice versa)
- (vii) There are no further relations of the Respondent from last 6/7 years till date with these both permanently disconnected consumers. Hence, they are not entitled to file these representations as per definition of consumer provided under Section2(15) of the Act.
- (viii) The Appellants were governed by, then prevailing Commercial Circular No. 6 dated 01.09.2005. The connections were sanctioned vide no EE/ICH/ORC(P) /157/06-07 vide no. 4190 and 4191 dated 20.10.2006. The Appellants accepted the provisional sanction and had paid the supervisory charges and other charges for connection on 19.06.2006 abiding with the terms and conditions of sanction. The date of connection of consumer was 2.11.2006. The Appellants had paid 1.3 % service connection charges of Rs.1650/-, security deposit (SD) amount of Rs.66000/- and DTC metering of Rs.19000/- and Processing fee Rs 100/-,

  
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totaling to Rs 91,350/-. The Appellants had then, paid the amount without any protest and did the work under the then available scheme of ORC(P), which is also in line with Regulation 3.3.8 of Supply Code Regulations 2005 of the Commission.

- (ix) The Appellants had paid 1.3% supervision charges only and no other ORC /SLC or any amount was recovered. The amount recovered was for DTC metering, and not consumer meter. However, Hon'ble Supreme Court has rejected the Appeal No. 4305/2007 and confirmed the Commission's order to refund the amount collected from 18.09.2006 to 30.04.2007 towards SLC, ORC, and Meter charges. In the instant case, the amount under ORC, SLC or consumer meter cost is not recovered, the case of refund does not arise.
- (x) The individual entrepreneurs, coming under one premises/shed to establish power loom generally needs power supply at Low Tension due to high tariff subsidiary. Or otherwise, all these individual entrepreneurs have to take High Tension power supply from the Board, which most of the times becomes difficult due to space constraint and high tariff and low subsidiary. Further, it is stated that the Appellants were under one multiparty agreement where in one shed more than one LT connections were given and with an intention of having common infrastructure to all these consumers keeping in mind techno economical concept. This expenditure was solely done by them in the interest of consumers and was not reflected in the ARR.
- (xi) It is submitted that Regulation 3.4.3 of Supply Code Regulations 2005 that *"Unless otherwise specified all HT and LT charges refer to 1 point of supply and each separate establishment shall be given separate point of supply"* Therefore as per said provision each consumer is required to take separate supply but for convenience of power loom industry a special sanction has been given for the said consumers based on circular No.6 dated 01.09.2005. Therefore, the demand of Appellants to refund the cost of infrastructure is liable to dismiss. In short, the Appellants enjoyed the benefits under the multiparty scheme and afterword's they have opted for refund of infrastructure cost against the principle of equity.


  
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- (xii) The Appellants has given 2 Nos of LT connections as per provision of Commercial Circular No. 6 dated 01.09.2005, and breach of the multiparty agreement, would attract the billing of this consumer on LT billing above 67 HP, and MSEDCL would have no option other than to recover the tariff difference billed to consumer from LT to HT from date of connection. The consumer is abiding with one aspect of agreement, however, is denying the other aspect of expenses which are actually dedicated and used by himself only. The agreement always has to be dissolved in to-to.
- (xiii) Also, further, it stated that the Vanita Babasaheb Kitture (Con. No. 250010072111, 66 HP Load) was permanently disconnected in March 2016 and Babasaheb Kallapa Kitture (HUF) (Con. No. 250010072120, 34 HP load) was permanently disconnected in July 2015.
- (xiv) The Appellants have done the work of 0.18 KM HT line and 100 KVA Distribution Transformer which is exclusively used by him and dedicated to them. There is no other connection given from their Dedicated Transformer.
- (xv) The Respondent quoted Regulation 3.3.8 of Supply Code Regulations 2005 which is reproduced as below:

*“3.3.8 Where the Distribution Licensee permits an applicant to carry out works under this Regulation 3.3 through a Licensed Electrical Contractor, the Distribution Licensee shall not be entitled to recover expenses relating to such portion of works so carried out by the applicant: Provided however the Distribution Licensee shall be entitled to recover, from the applicant, charges for supervision undertaken by the Distribution Licensee, at such rate, as may be approved in the schedule of charges under Regulation 18, not exceeding 15 per cent of the cost of labour that would have been employed by the Distribution Licensee in carrying out such works.”*

*3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the*

  
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*applicant, based on the schedule of charges approved by the Commission under Regulation 18''*

*“3.3.5 Where the Distribution Licensee has recovered the expenses referred to in Regulation 3.3.3 above at any time after the notification of these Regulations, the consumer shall be entitled to the depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations: Provided that where such facilities have been provided by the consumer, then such facilities may be retained by the consumer upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations”*

(xvi) The Respondent cited the WP No. 1588 of 2019 in Case of MSEDCL V/s Mahamaya Agro Industries and others. The reasoning and ratio of the said case is squarely applicable to the present case. The Hon'ble High Court has quashed the Order passed by the Electricity Ombudsman, Nagpur, in which the EO had directed MSEDCL to refund the cost of infrastructure of 0.4 km H.T. line to M/s Mahamaya Agro Industries Ltd.

(xvii) In view of the aforesaid facts, the representation of the Appellant be rejected being no merit factually as well as lawfully.


5. The Appellants had submitted additional Rejoinder on 10.08.2022 and the Respondent also submitted its additional say on 26.08.2022. Both are kept on record.

### **Analysis and Ruling**

6. Heard the parties. Perused the documents available on record. To decide the cases, we perused various orders of the Commission, Judgments of the Tribunal and Courts concerning the issues in the Case. The details are given below: -

(a) The Commission's order dated 08.09.2006 in **Case No. 70 of 2005** regarding Schedule of Charges: -

Relevant portion of the order applicable in the instant representation is reproduced

  
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below:

*“The Commission totally rejects MSEDCL proposal to recover Service Line Charges from the prospective consumers except in Cases of consumers requiring dedicated distribution facilities. As per the provision of the Act, developing infrastructure is the responsibility of the licensee. The Commission therefore directs that the cost towards infrastructure from delivery point of transmission system to distribution mains should be borne by MSEDCL. The recurring expenses related to the capital investment on infrastructure shall be considered during ARR determination [for detail ruling refer Section – III (6)].”*

- (b) ATE judgment dated 14.05.2007 in **Appeal No. 22 of 2007** filed by MSEDCL against the Commission order in Case No. 70/2005 Case 08.09.2006. The relevant portion of the order is reproduced as below: -

*“18. In view of the above, it is clear that the “Service Line Charges” as proposed by the appellant are being allowed to be recovered through tariff. If the aforesaid proposal on “Service Line Charges” made by the appellant is accepted it will amount to doubling of the recovery of the expenses from the consumers. The appeal is accordingly dismissed.”*

- (c) The Commission’s order dated **17.05.2007 in Case No. 82 of 2006**

[In the matter of refund of monies collected by MSEDCL towards Outright Contribution Charges (ORC) and cost of meter while providing new connections against the Order dated September 8, 2006, in Case No. 70 of 2005 (Schedule of Charges Order)].

Operative part of order in Case No. 82 of 2006 is reproduced below: -

*“9. Having considered the material.....*

(a) .....


(b) .....

(c) .....

(d) **MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and ‘CRA’, together with interests, on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006, in Case No. 70 of 2005) up to April 30, 2007;**

(e) **MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of the amount of Rs. 6500/- (collected under the head ‘CRA’) and the interest amount collected towards ORC, cost of meter and ‘CRA’ from Devang Sanstha.....**

*The Commission observes with concern that primarily incidences of collection of amounts towards ORC, cost of meter and ‘CRA’ post the operation of the Order dated September 8, 2006 in Case No. 70 of 2005 and the issuance of the Commercial Circular No.43 on September 27, 2006, are demonstrative of severe anomalies in the functioning of MSEDCL. The said acts have been overtly mechanical on the part of errant and negligent officials who have not paid adherence to the revisions in the erstwhile schedule of charges which have been mandated under the Order dated September 8, 2006. The Commission*

  
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Further observes that the stand taken by MSEDCL that their field officers should gain clarity on the implementation procedure enunciated under the Order dated September 8, 2006 within two weeks from April 13, 2007, is misconceived. The Commercial Circular No. 43 issued by MSEDCL themselves on September 27, 2006 provides for enough clarity on the import of the said Order. On the issues raised in the complaint as to refund of the depreciated value of amounts spent on DDF, as per Regulation 3.3.3 of the Supply Code having not yet materialised in favour of various consumers, the Commission observes that the position of law is well settled under the Supply Code.

While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006. The Commission further observes that consumer representatives /organisations who/which are invited to attend hearings and/or make submissions, should ensure sufficient co-operation.


There shall be directions to MSEDCL in terms of the above. The Commission reiterates that appropriate action under Section 142 of the EA, 2003 may be considered by the Commission on the Managing Director, Director (Operations) and Chief Engineer (Commercial) of MSEDCL, should the directives issued to MSEDCL under this Order not be complied with.” **(Emphasis added)**

(d) **The Commission’s order dated 21.08.2007 in Case No. 82 of 2006**

(In the matter of compliance by MSEDCL of directions issued under Order dated 17.05.2007.)

Relevant portion of the order is reproduced below: -

“8. MSEDCL has submitted under affidavit that the amounts collected under the head CRA actually pertains to SCC (service connection charges) and is therefore not liable to be refunded. The Commission is of the finding that completely contradictory statements have been made by MSEDCL, which one hand during the hearing, as recorded in the order dated May 17, 2007, submitted before the Commission that CRA is a head-based charge akin to SLC (service line charges). In fact, on the Commission’s finding that collection of head-based charges in the nature of ‘CRA’ has been unlawful, Shri. K.B. Fakir, Electrical Engineer, MSEDCL-Beed Circle, undertook to refund amounts collected from Devang Sanstha, towards ORC, CRA, and cost of meter, together with interest. To this, the Commission had directed MSEDCL to refund to Devang Sanstha and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interest. The Commission is of the view that MSEDCL had all the time available if there was a need to seek a review of the Order dated May 17, 2007 on the contention that CRA is nothing but SCC. However, no such review application has been filed by MSEDCL. MSEDCL has not found it pertinent or necessary to seek a review but has gone ahead and concluded itself that compliance of the Commission’s direction to refund CRA amounts, is not required, as CRA pertains to SCC. This is based on MSEDCL’s interpretation which MSEDCL has not found necessary to check with the Commission by seeking a review. In view of the submissions of MSEDCL under its affidavit filed on May 28, 2007, the Commission holds that MSEDCL has contravened the directions of the Commission under the Order dated May 17, 2007 is therefore liable to be penalized under Section 142.

  
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**11. MSEDCL shall submit to the Commission their statutory auditor's certificate to the effect that the amounts collected illegally together with interest, as held at paragraph 9(d) and (e) of the Order dated May 17, 2007, have been refunded to the concerned consumers."**

*(Emphasis added)*

- (e) Hon. Supreme Court judgment in **Civil Appeal No. 4305 of 2007 (DPR No. 20340 of 2007)** filed by MSEDCL against ATE judgment in Appeal No. 22 of 2007.

*"Refund is stayed till the matter comes up for hearing on the date fixed i.e. 14<sup>th</sup> September, 2007"*

The above interim stay was continued by the Supreme Court vide its order dated 14<sup>th</sup> September 2007 as follows:

*"Until further order, interim order passed by this Court shall continue to operate."*

- (f) Commission's order dated 16.02.2008 in **Case No. 56 of 2007**.

(In the matter of Compliance of directives issued to MSEDCL under Order dated May 17, 2007 passed in Case No. 82 of 2006).

Relevant portion of the order (56 of 2007) is reproduced below: -


*"12. Having heard the parties and after considering the material placed on record, the Commission is of the view as under:*

*(1) Since, MSEDCL do not have a clear conception of Dedicated Distribution Facility and the levy of ORC in the EA 2003 regime, it is necessary to provide guidance on the same and issue necessary directions as under:*

*(i) At many places prospective consumers with an intention to get better quality of supply seek Dedicated Distribution Facility, though distribution network is available in nearby vicinity and it is possible to give supply by extending the existing network. Such consumers seeking Dedicated Distribution Facility will have to pay the cost incurred in providing the Dedicated Distribution Facility. As per Regulation 2(g) of the Supply Code:*

*"(g) "Dedicated distribution facilities" means such facilities, not including a Service line, 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 a group of consumers on the same premises or contiguous premises;"*

*It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as a facility solely or clearly dedicated for giving supply. Thus, in the distribution system, Dedicated Distribution Facility 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. The transformer or the substation can also form a part of Dedicated Distribution Facility if it is provided exclusively for giving supply to these consumers and no other consumer is fed from the said transformer/substation. Also, Dedicated*

  
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*Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Section 43 of the EA 2003 read with the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. In fact, the licensee should take advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfil 'Universal Service Obligation' as per the spirit envisaged in the EA 2003 and the Regulations made thereunder.*

*It is also necessary to point out certain specific portions of the Supply Code Regulations dealing with Dedicated Distribution Facilities, as under:*

*"3.3.5 Where the Distribution Licensee has recovered the expenses referred to in Regulation 3.3.3 above at any time after the notification of these Regulations, the consumer shall be entitled to the depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:*

*Provided that where such facilities have been provided by the consumer, then such facilities may be retained by the consumer upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:*

*Provided however that where the discontinuance of supply is on account of the consumer's failure to pay any sum under Section 56 of the Act, the Distribution Licensee, in addition to the rights available under that Section, shall be entitled to adjust such sums due from the depreciated value of facilities to which the consumer is entitled under this Regulation 3.3.5 or to retain facilities of such depreciated value as to cover such sums due from such consumer to the Distribution Licensee."*

(2) *In view of the above, the Commission hereby directs that:*

*(i) MSEDCL should submit 'Schedule of Charges' proposing rates on normative basis, for providing Dedicated Distribution Facilities within two weeks from the date of this order, in accordance with the requirement of Regulation 3.3.3 of the Supply Code Regulations, which specifies as under:*


*3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated Distribution Facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.*

*Therefore, the MSEDCL are directed to levy charges for Dedicated Distribution Facilities based on the schedule of charges approved by the Commission under Regulation 18. The MSEDCL shall take immediate action in this regard. There shall be direction to the MSEDCL in terms hereof.*

*(ii) Issue instructions to the field offices clarifying the meaning of the term Dedicated Distribution Facility and making it clear that the charges towards the same, as approved by the Commission, should be recovered only if the consumer precisely seeks such facilities.*

*(iii) Should immediately prepare and submit CAPEX schemes for network expansion required for catering prospective consumers based on load survey and demand projection.*

*The scheme should basically cover the equipment/material required to release anticipated new connections.*

  
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(3) With reference to the prayers of the Petitioners to direct refund of ORC and such other head based charges, the Commission is of the view that taking into account the submissions of the MSEDCL that there have been many instances where there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities) though different nomenclatures may have been used, hair splitting will not be possible in the present petition in this regard. It will not be appropriate to direct refund under this Order as the Order dated August 31, 2007, passed by the Hon'ble Supreme Court in Appeal No. 20340 of 2007 is still in force as the term SLC which is subject matter of appeal has purportedly been charged by MSEDCL herein using the nomenclature of ORC in many Cases although they both are and pertain to SLC. In view of the admittedly overlapping nature of these charges with Service Line Charges which is sub-judice before the Hon'ble Supreme Court, the Commission declines to order refund as stipulated under its Order Case May 17, 2007. It is for the Petitioners to make suitable prayers and agitate in the said proceedings in Appeal No. 20340 of 2007 as the stay Order dated August 31, 2007 continues. This applies also in Case of the third prayer in the present petition.

(4) The issue raised by the Petitioners relating to refund of meter cost, has been raised by MSEDCL under its petition filed on December 19, 2007, seeking a review of the direction contained in the Order dated May 17, 2007 to refund the cost of meter, which stipulates as under:

“5. ....The refunding should be made by MSEDCL in a lumpsum and at one go, and not via adjustments in future energy bills.”

- (g) The Commission's order dated 01.09.2010 in Case No. 93 of 2008.  
(In the matter of Petition of Akhil Bhartiya Grahak Panchayat, Latur seeking directions against MSEDCL for non-compliance of the Electricity Supply Code Regulations and the Electricity Act, 2003).


“19. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

iii. Regarding, 10,740 number of Cases where MSEDCL has recovered charges other than approved Schedule of Charges; the Commission is of the view that these are only indicative Cases found out on the sample checking basis. MSEDCL either has to scrutinise details of all the consumers released during the period of 9th September 2006 to 20th May 2008 for charges levied other than approved Schedule of Charges or publicly appeal either through news papers or electricity bills, asking the consumers to contact MSEDCL if such charges are levied on them during above period. Thereafter, MSEDCL should adjust the extra charges collected by MSEDCL in the energy bills of the respective consumers. If any consumer has any grievance regarding excess charges levied by MSEDCL and its refund, they may file the same before the concerned Consumer Grievance and Redressal Forum established by MSEDCL under the provisions of Section 42(5) of the EA 2003 read with the “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006”. This directive of refund of excesses recovered charges will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007.”

- (h) The Commission's order dated 08.12.2014 in **Case No. 105 of 2014**  
(In the matter of Petition of MRVGS for penal action against MSEDCL for breach of provisions of law in respect of new electricity connections to Agricultural consumers, and non-compliance of certain other directions).

The relevant portion is reproduced below: -

“16. MSEDCL appears to have complied with the direction to ascertain if additional charges beyond the approved Schedule of Charges were recovered during the relevant

  
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period from consumers, or publicly appeal to affected consumers and refund the charges. **Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response.** However, MSEDCL should submit to the Commission, before the Technical Validation Session (TVS) in respect of its pending MYT Petition, the number of consumers identified, and additional charges refunded or pending for refund so far.

17. The Commission has noted MSEDCL's submission regarding compliance of directions to review its Circulars and practices in the context of DDF, service connections, etc.

18. MSEDCL's Reply in the present proceedings is silent on submission of a Schedule of Charges for DDF. While there may be complexities in such an exercise, the Commission directs MSEDCL to make its submission to the Commission on this matter before the TVS to be held on its pending MYT Petition, since the Schedule of Charges would also be addressed in those proceedings.

19. The Commission is of the view that, while there has been no breach of the provisions of law or the Commission's Orders as contended in some matters, with regard to the remaining no useful purpose would be served by invoking Sections 142 and 146 of the EA, 2003 in view of the foregoing." **(Emphasis added)**

- (i) **Supreme Court judgment dated 10.11.2016 in Civil Appeal No. 4305 of 2007** filed by MSEDCL. Relevant portion of the judgment is reproduced below: -

*"Ms. Rimali Batra, the learned counsel, appearing for the appellant has argued vehemently and has made all submissions, which could have been made. However, we are unable to agree with her submissions. The impugned judgement does not require any interference.*

*The Civil Appeal is dismissed. Pending application, if any, stands disposed of."*

- (j) **Letter No.3955 dated 20.07.2017 from the Commission addressed to MSEDCL** for compliance of Commission's directives regarding refund of amount recovered other than approved schedule of charges by the MSEDCL, after the Judgment dated 10.11.2016 of the Supreme Court dismissing Civil Appeal No. 4305 of 2007.


Relevant portion of the letter is quoted below: -

*"6. With dismissal of MSEDCL's Appeal, stay granted on refund of amount becomes non exist. Hence, MSEDCL needs to comply with the Commission's order dated 17 May, 2007 and 21 August, 2007 and refund the amount to the consumers.*

*7. In view of above, MSEDCL is required to submit compliance of the Commission's orders dated 17 May, 2007 and 21 August, 2007."*

From above referred orders, a few things emerge distinctly: -

- (i) Commission issued Schedule of Charges order dated 08.09.2006 in Case No. 70 of 2005. MRVGS filed a petition (Case No. 82 of 2006) with the Commission, as

  
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MSEDCL unauthorizedly collected monies under the head of ORC, cost of meter and CRA in violation of Schedule of Charges order. The direction of the Commission dated 17.05.2007 in this Case is as below: -

*“9 (d) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and ‘CRA’, together with interests, on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007.”*

It clearly means that the refund was limited to the period from 08.09.2006 to 30.04.2007.

- (ii) MSEDCL filed Appeal with the ATE being Appeal No. 22 of 2007 against Commission’s order in Case No. 70 of 2005. ATE in its judgment dated 14.05.2007 upheld the order of the Commission. This was challenged by MSEDCL in Supreme Court in Civil Appeal No. 4305 of 2007.
- (iii) MRVGS filed a complaint through Case No. 82 of 2006 seeking refund of monies collected by MSEDCL towards ORC, cost of meter and CRA. Commission issued order on 21.08.2007 and imposed penalty on MSEDCL. Relevant portion being as below: -
- “11. MSEDCL shall submit to the Commission their statutory auditor’s certificate to the effect that the amounts collected illegally together with interest, **as held at paragraph 9(d) and (e) of the Order dated May 17, 2007, have been refunded to the concerned consumers.**”*  
*(Emphasis added)*
- (iv) Supreme Court stayed the judgement of ATE by order dated 31.08.2007 thereby staying the refund, and further on 14.09.2007 the Supreme Court issued directions that until further orders, interim order issued by it shall continue to operate.
- (v) MRVGS filed petition with the Commission on 05.11.2007 through Case No. 56 of 2007 seeking compliance of directions issued by the Commission in its order dated 17.05.2007 in Case No. 82 of 2006. The Commission in this order said that it will not be appropriate to direct MSEDCL for refund in view of the pendency of Civil Appeal in the Supreme Court. It also clarified the issue of DDF. It means that no refund can be ordered for the Cases falling between 08.9.2006 to 30.04.2007, on account of stay granted by the Hon’ble Supreme Court.
- (vi) At this stage, in view of above development, MSEDCL issued Circulars on 09.05.2007 for refund of meter cost, and on 20.05.2008 regarding guidelines for


  
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releasing new connections and augmentation. In this Circular MSEDCL framed a policy for recovery of charges towards development of infrastructure.

- (vii) In the meantime, on 10.11.2016, the Supreme Court dismissed Civil Appeal No. 4305 of 2007 which was filed by MSEDCL against ATE Judgment. Therefore, the stay got automatically vacated and the Commission's order in Case No. 70 of 2005 dated 08.09.2006 became operative.
- (viii) The Commission then issued letter dated 20.07.2017 to MSEDCL for compliance of Commission's directives regarding implementation of its order dated 17.05.2007 and 21.08.2007 both in Case No. 82 of 2006.
- (ix) On close scrutiny of the legal travel of the Case, it is noted that the issue of SLC was taken up at ATE and then in Supreme Court by MSEDCL. The Commission has also accepted the reality that there has been an overlap between ORC and SLC. The Commission, in its order dated 17.05.2007 in Case No. 82 of 2006 **has stipulated period of refund for amount collected towards ORC, Cost of Meter and CRA from 08.09.2006 to 30.04.2007**. However, this refund could not take place because of specific order of the Commission dated 16.02.2008 in Case No. 56 of 2007 due to Civil Appeal No. 4305 of 2007 pending in Supreme Court and stay thereon.

7. It is important to note that barring the consumers from whom the amount towards ORC, Cost of Meter and CRA was collected by MSEDCL during 08.09.2006 to 30.04.2007, the rest of the consumers, if any, who paid such amount, they had an option to adopt the grievance redressal mechanism under the Regulations of the Commission for redressal of their grievance with respect to refund. This is clear from para 19 of the Commission's order dated 01.09.2010 in Case No. 93 of 2008 which is quoted above at Para No. 21 (g). Moreover, the Commission, in its order dated 08.12.2014 in Case of 105 of 2014 has specifically said that it is satisfied with the action of MSEDCL in compliance of its order in Case No. 82 of 2006. The Commission in this order has specifically said that **"Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response."** The relevant paragraph of the Commission's order is captured at Para No. 21 (h) of this order.

  
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8. Now let us examine whether the instant representations fit into the matrix of the period 08.09.2006 to 30.04.2007 which is considered by the Commission for refund with respect to their date of payment. This is envisaged in the Commission's order dated 17.05.2007 in Case No. 82 of 2006.


9. Further, the Commission in its order dated 16.02.2008 in Case No. 56 of 2007 has specifically denied grant of relief as regards refund of the cost as stipulated under its order dated 17.05.2007 in Case No. 82 of 2006. In this order dated 17.05.2007 at para 21 (d), the Commission has said that *"MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of Meter and 'CRA', together with interest, on and from September 8, 2006 (which was the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;"*

10. Therefore, it is clear that **the amount collected by the MSEDCL during period 08.09.2006 to 30.04.2007 was the subject matter of dispute**, and which was subsequently ordered to be refunded post dismissal of C.A. No. 4305 of 2007 by the Hon'ble Supreme Court.

11. On conjoint reading of all the Orders of the Commission, the Judgment of the Hon'ble Supreme Court and more particularly, the Commission's order dated 08.12.2014 in Case 105 of 2014, the refund to the eligible consumer needs to be done on the criteria of date of payment of those charges by the individual consumer and in this Case, by the Appellants.

12. The Appellants under these Representations have agitated the matter of refund of ORC, Metering Cost, etc. which they incurred / paid for work carried out by them. As per IGRC order dated 11.12.2019, the Appellant paid supervision charges on 19.06.2006 and started its works.

SR. No.	Particulars	Amount Paid (Rs.)	Remarks
1	Service Connection Charges	1650/-	Receipt No. 0464238 dated 19.06.2006.
2	1.3 % Supervision Charges	4900/-	
3	Processing Fee	100/-	

  
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4	DTC Metering	19000/-	
5	Security Deposit	66000/-	
	Total	91650/-	

13. The electric connection was released on 02.11.2006. In view of above, discussion wherein the various orders of the Commission, the Judgments of ATE and then the Hon'ble Supreme Court and subsequent developments, the works under the Estimates sanctioned under the respective Representations No. 83 and 84 2022 do not fall in the bracket of the period **08.09.2006 to 30.04.2007** as contemplated under the orders of the Commission which has been explained hereinabove. The Appellant was at liberty to have agitated the matter before the grievance redressal mechanism at that point of time. Even if it had not chosen to agitate the matter at that point of time, it could have well agitated the issue after the Commission's order dated 08.12.2014 in Case No.105 of 2014 wherein it has been made crystal clear by the Commission at para 16 that ***“Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response.”*** Despite this, the Appellants approached the Forum on 10.02.2020. This exceeds the period of two years from the date of cause of action, and therefore, does not fit into the regulatory matrix stipulated under Regulation 6.6 of the CGRF Regulations 2006 which says that 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. Therefore, the prayers of the Appellants do not stand scrutiny in the face of Regulations and Orders of the Commission.

14. In addition, the Appellants have opted for Multi- Party Group connections where the Appellants have to incur the expenditure on their own, as they are the beneficiaries of the scheme, as both the connections of power loom were given in one “premises” without any separation.

15. The Respondent issued a Commercial Circular No. 06 of 2005 dated 01.09. 2005 in the subject matter of “Power supply to individual entrepreneurs coming under one premise to establish Power- Looms”.

The preamble of this circular is reproduced as below:

  
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 Secretary  
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*“In recent times, due to the upward trend for cloth in market, various power loom consumers under one premises/shed are coming up in our State at different locations. The individual entrepreneurs, coming under one premises/shed to establish power looms generally needs power supply at Low Tension. As such, all these individual entrepreneurs have to take High Tension power supply from the Board, which most of the times becomes difficult due to space constraint. It would also not be reasonable to insist on all the individual entrepreneurs to install their own transformers, metering KIOSKS, etc., which would occupy considerable space in such common shed/premises. “*

16. The Respondent issued following guidelines for multi-party consumers.

*“1. It is proposed to limit this facility only in respect of power loom consumer where there is a severe space constraint. This is applicable in respect of industrial complex building/shed.*

*2. An individual entrepreneur having load requirement up to 107 HP/201 HP form a group of max. 10/5 entrepreneurs situated in the same industrial complex building shed having total load of a Group shall be less than 500 KVA.*


*3. All these entrepreneurs can install a common transformer of appropriate capacity equivalent or more than the aggregate load requirement of all the entrepreneurs in the respective group.*

*4. All the individual entrepreneurs in the respective groups having load requirement up to 107HP/201 HP shall be Low Tension consumers of the Board. They will have to opt for M.D. base tariff.*

*5. The said common transformer shall be either jointly maintained by the respective group of entrepreneurs or can be maintained by agency sponsoring such group of power loom consumers/main consumer.*

*6. It will be mandatory for the Central Agency/Group of consumers to ensure that the transformer is installed in a closed room and will be accessible only to authorized MSEB personnel. Further a cable will have to be laid through duct in the adjoining closed room for distributing the said connections. The cable and meter room will also be under the control of MSEB and only authorized MSEB personnel will have access to the same. All the meters will be placed in the distribution room. Further the secondary side of transformer will also be sealed and necessary arrangement will have to be made for the sealing by the consumer.*

*7. The Board shall not be responsible for any loss that may be caused to any of the individual entrepreneurs from a particular group due to failure of the said transformer or the Board shall not be liable for any alternate arrangement of maintaining the power supply in such circumstances.*

  
(Dilip Dumbre)  
Secretary  
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8. *All the individual entrepreneurs from the respective groups shall have to execute special and independent agreement of power supply as per usual practice in addition to tripartite/multipartite agreement with the Board and in case there happens to be agencies sponsoring such group of power loom consumer, then such agency shall also be a party to tripartite/multipartite agreement.*

9. *All those consumers billed on L.T. side must opt. for LT MD tariff and LT TOD meter to be installed for these entire consumers.*


10. *All the consumers availing power supply by such arrangement shall be billed as per the provisions of the tariff prevailing from time to time and shall also be liable for all such incentives/disincentives as may be applicable.*

11. *Whenever a group of entrepreneurs is given power supply from a common transformer, these entrepreneurs shall also pay to the Board the cost of installation of metering on High Tension side of the said transformer. In case the assessment of group of consumers is less in comparison with readings of HT meter, the differential amount will be recovered from group of consumers proportionately. However, no benefit will be extended to consumers in case the meter on HT side records less reading than the reading of combined group of consumers.*

12. *In case of default in payment of energy bill by any one of the consumers from the said group and/or breach of the provision of the tariff/conditions of supply, the disconnection of power supply to be effected at the main point of supply, which will automatically results in disconnection of power supply of all the consumers at the same time. “*

17. Under the above multi-party agreement, it is seen that the Appellants as well as the Respondent were both benefitted. In other words, this scheme got a good response precisely because it was a win-win situation for both parties. The Appellants were benefitted in the following ways:

- (a) Got supply for power looms under the LT tariff category, wherein the Government subsidy is more than under HT tariff category.
- (b) Space constraint issue was solved for individual consumers, by providing supply to multiple consumers in one premises.
- (c) Common infrastructure of power supply including distribution transformer, metering kiosk etc were developed by the multiple consumers in one premises.

  
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- (d) Less power interruption as the transformer and LT lines were dedicated to these consumers.

18. The Respondent was benefitted as below:


- (a) Common infrastructure was provided by these multiple consumers thereby there was no burden on the Respondent to provide infrastructure, and hence, no budgetary provision was required to be made in its Annual Revenue Requirement.
- (b) Common energy audit meter was installed in addition to the individual meters so that if there was any considerable difference in the energy consumption, the loss in consumption units was proportionately imposed on them. Hence the energy consumed was automatically audited.
- (c) 100% recovery against energy consumption was ensured, as supply of all would be disconnected even if one consumer defaulted.

19. This scheme was initiated by the Respondent with multiparty power loom consumers in particular premises through an agreement under certain terms and conditions as highlighted in para 12 of this order. This was an internal arrangement by the Respondent for the welfare of the power loom industries in the State of Maharashtra to avoid its migration to other states.

20. The Respondent cited the WP No. 1588 of 2019 in Case of MSEDCL V/s Mahamaya Agro Industries and others. The reasoning and ratio of the said case is squarely applicable to the present case. The Hon'ble High Court has quashed the Order passed by the Electricity Ombudsman, Nagpur, in which the EO had directed MSEDCL to refund the cost of infrastructure of 0.4 km H.T. line to M/s Mahamaya Agro Industries Ltd.

21. It is notable that the Appellants have never agitated for refund of infrastructure costs from June 2006. The Appellants are now permanently disconnected since 2015.

22. Nagpur High Court Judgement in Writ Petition No. 1588 of 2019: - The relevant extract of the Hon'ble Bombay High Court, at Nagpur bench Order is reproduced below:

  
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*“28 I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter storeroom and then turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate.*

29....

*30. In view of the above, the first Petition No.1588/2019 filed by the company is allowed in terms of prayer clause (1). The impugned order dated 17.10.2018 shall stand quashed and set aside to the extent of the challenge and the conclusions arrived at by the forum by its order dated 25.06.2018 are sustained.” .....  
(Emphasis added)*

23. Considering the above facts, the Appellants’ Representations are time barred and do not stand on merit. Hence, the Representations are rejected.

Sd/-  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

