

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

Representation Nos. 152, 153, 154 & 160 of 2019

In the matter of refund of infrastructure cost

- | | | |
|---|---------------------|------------|
| 1. Hi-Tech Balancing and Engineering Industries | (152 of 2019) | |
| 2. Preci Tech Engineers | (153 of 2019) | |
| 3. Arundhati Colour Cartons | (154 of 2019) | |
| 4. Hi-Cast Industries | (160 of 2019) | Appellants |

V/s.

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

Appearances: -

For Appellant : Pratap Hogade, Representative


For Respondent : 1. S.L. Koli, Executive Engineer, Ichalkaranji
2. S.D. Akidate, Dy. Ex. Engineer

Coram: Mr. Deepak Lad

Date of Order: 8th January 2020

ORDER

All these four Representations are filed on 13th August 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 10th June 2019 in Representation No.154 of 2019 and common order dated 11th June 2019 in respect


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of Representations No.152, 153 & 160 of 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum).

2. The Forum, in its orders dated 10th June 2019 (154 of 2019) and 11th June 2019 (152,153 & 160 of 2019) has rejected the grievance applications in Case No. 81/2018-19 and Case No. 80/2018-19 respectively.


3. Aggrieved by the orders of the Forum, the Appellants have filed these four representations separately. The facts in all these representations are similar in nature, and common grounds are raised. Therefore, for the purpose of this order, these four representations are clubbed together. The Appellants stated in brief as below: -

- (i) The Appellants are LT-V B II Industrial Consumers under Ichalkaranji Rural subdivision of the Respondent.

S.No	Appellants	Address	Consumer No.
A	Hi-Tech Balancing & Engr. Inds	Plot No. 57-58 Shri Laxmi Co-op. Industrial Estate, at Tilwani, Tal. Hatkanangale, Dist. Kolhapur	250490190054
B	Preci Tech Engineers	Plot No. 56-59 Shri Laxmi Co-op. Industrial Estate, at Tilwani, Tal. Hatkanangale, Dist. Kolhapur	250490193827
C	Hi-Cast Industries	Plot No. 53 Shri Laxmi Co-op. Industrial Estate, at Tilwani, Tal. Hatkanangale, Dist. Kolhapur	250490197105 (Old LT cancelled) 250499051230 (New HT No. from 05.08.2010)
D	Arundhati Colour Cartons	Plot No.60 – 68, Sector C, Phase II, Parvati Co-op. Industrial Estate, At Post. Yadrav, Tal.- Shirol, Dist. Kolhapur	250600010952

(All above three representations (A), (B) & (C) are denoted & abbreviated as Group A)

- (ii) The Appellants in Group A are situated on Plot No.57-58, 56-59, 53 respectively in Shri Laxmi Co-op. Industrial Estate, at Tilwani, Tal. Hatkanangale, Dist. Kolhapur and Appellant in Representation 154 of 2019 is situated at Plot No.60 – 68 at Sector C, Phase II, Parvati Co-op. Industrial Estate, At Post. Yadrav,


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Tal.-Shirol, Dist. Kolhapur. The Hi-Cast Industries is previously connected on LT and then switched over to HT Industrial from 05.08.2010.

- (iii) For Group A, the Respondent, Superintending Engineer Kolhapur had granted administrative approval vide its letter dated 04.04.2007 for common estimate of Rs.3,19,500/- for augmentation of distribution transformer from 100 KVA to 200 KVA under DDS Scheme. The load applied is tabulated for the three consumers as below: -


Consumer	Sanctioned load (HP)	Additional Load (HP)	Total Load (HP)
Hi-Tech Balancing & Engr. Inds	40	32	*72
Preci Tech Engineers	50	18	68
Hi-Cast	-	-	30(new)

* the load is further enhanced to 102 HP

- (iv) In Representation 154 of 2019, the Respondent, Superintending Engineer Kolhapur had granted administrative approval vide its letter dated 16.09.2006 for estimate of Rs.2,77,400/- for augmentation of distribution transformer from 63 KVA to 100 KVA under ORC (PVT) Scheme. The load applied is tabulated as below: -

Consumer	Sanctioned load (HP)	Additional Load (HP)	Total Load (HP)
Arundhati Colour Cartons	50	105	155


- (v) The Appellants in Group A paid supervision charges at the rate of 1.3% and completed the infrastructure works in January 2008 as per the estimate, directions and handed over the infrastructure to MSEDCL and thereafter the load was released in January 2008.
- (vi) The Appellant in Representation No. 154 of 2019 paid supervision charges at the rate of 1.3% and completed the infrastructure works as per the estimate,


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directions and handed over the infrastructure to MSEDCL and thereafter the load was released in April 2008.

- (vii) The issue of refund of infrastructure cost was pending due to Civil Appeal No.4305 of 2007 filed by MSEDCL in the Hon'ble Supreme Court of India. There was a stay for refund. Finally, the Hon'ble Supreme Court dismissed the Civil Appeal on 10.11.2016. Thereafter, it became clear that the Appellants are eligible to claim for the refund of all expenses done for the infrastructure works.
- (viii) The Respondent MSEDCL issued Circular on 12.10.2017 for refund of infrastructure charges. The Appellants in Group A filed grievance with Internal Grievance Redressal Cell (IGRC) on 13.09.2018 for refund of infrastructure charges. However, the IGRC rejected their complaints on 14.11.2018. Observations of IGRC in its order are totally wrong. In cases where the infrastructure work does not constitute DDF as per Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) then infrastructure cost incurred by the consumers should be refunded. The Appellants' cases squarely fall in this matrix.
- (ix) The Appellants filed the grievance application in the Forum on 08.01.2019 in all these cases. The Forum by its order dated 11.06.2019 has rejected the grievance in Representations No.152, 153 and 160 of 2019 on the ground of limitation of 2 years. The Forum has failed to understand the basic issue that limitation of two years is not applicable here. This observation is totally wrong and illegal.
- (x) The Appellant in Representation No.154 of 2019 filed grievance with IGRC on 10.09.2018, however, its complaint was rejected on 14.11.2018. Then it filed the grievance application with the Forum on 08.01.2019 and the Forum, by its order dated 10.06.2019 has rejected the grievance.


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- (xi) As per Order of the Maharashtra Electricity Regulatory Commission (the Commission) dated 08.09.2006 in Case No.70 of 2005 regarding Schedule of Charges, (followed by 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 the circulars of MSEDCL.
- (xii) As per the order of the Commission dated 16.02.2008 in Case No.56 of 2007, it was observed that mere transformer augmentation cannot be treated as DDF. In these cases, only transformer augmentation works were done by the Appellant and many other consumers are getting supply from the same feeders. It is clear from the definition of DDF in the regulations and clarifications given by the Commission in the said order that the works done by the Appellant are clearly Non-DDF. Hence, the Appellant is eligible for the refund of all the said amounts which are as per MSEDCL's own estimates along with interest.
- (xiii) The Commission, in its Order dated 17.05.2007 in Case No.82 of 2006 of Maharashtra Rajya Veej Grahak Sanghatna (MRVGS) V/s. MSEDCL has given clear directions that MSEDCL shall refund the consumers, the overcharged amounts along with the interest thereon, that have been collected towards ORC, ORC-P or such other head based charges which are not allowed in Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) and also Service Line Charges (SLC), Cost of Meter which are at variance from the Order of the Schedule of Charges dated 08.09.2006.

The relevant portion of the said Order is as below: -

"4 At the hearing held on.....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.

5 On being enquired by the.....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..... future energy bills.

9 Having consideredWhile 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..... ensure sufficient cooperation."


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- (xiv) On a complaint filed by the said petitioner for non-compliance, the Commission has issued further Order dated 21.08.2007 in Case No.82 of 2006 imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL to comply with the direction issued in the Order dated 17.05.2007. The Respondent did not comply the directions. The Commission issued order dated 16.02.2008 in Case No.56 of 2007 on the petition filed by MRVGS. In this case, issues of ORC, DDF and Non-DDF were fully discussed by the Commission. In this order, the Commission has clarified the concept and issued detailed clarification on DDF on request of MSEDCL itself.

Few relevant facts of this order (56 of 2007) are as below: -

"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.....to provide supply.


12 Having heard.....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.....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.....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 the EA 2003 read with Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for giving supply and Determination of Compensation)Regulations, 2005....."

- (xv) As per Section 62 (6) of the Act, refund is to be given with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.
- (xvi) MSEDCL issued a Circular dated 20.05.2008 giving guidelines for release of new connections based on the Commission's order in Case No.56 of 2007 dated 16.02.2008. The circular itself clarifies that refund is to be made in all Non-DDF connections. MSEDCL has issued circular only for LT connections. However, the Commission's order is for both LT and HT connections.


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- (xvii) MSEDCL has issued further Circular bearing No. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of the infrastructure cost. The refund will be by way of adjusting 50% of the monthly bill till adjustment of the total expenditure.
- (xviii) In the meanwhile, MSEDCL had impleaded this issue of refund in its Civil Appeal No.4305/2007 (earlier stamp No.20340/2007), in which the Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31.08.2007. Hence all the Refunds were stopped.
- (xix) 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 10.11.2016 and dismissed the Civil Appeal in toto.
- (xx) After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement the Commission's concerned orders 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, 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. But if the connection is actually Non-DDF and is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then in such Non-DDF cases, consumer is eligible to get the refund along with the interest thereon.
- (xxi) After Supply Code Regulations till date, MSEDCL has sanctioned many Non-DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', 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. Imposition of such conditions by MSEDCL are against the Supply Code Regulations. Relevant Regulation 19.1 of the Supply Code Regulations reads as below: -


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"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."

(xxii) The Respondent's Corporate Office have issued circulars for refund of SLC, ORC and Meter Cost to consumers on 12.10.2017, 07.11.2017 and 29.12.2017. The Appellants in Group A had applied for refund to the Respondent on 13.09.2018, hence, there is no issue of any limitation. Thus, the order of the Forum is totally wrong, illegal and it needs to be revised.

(xxiii) The Respondent's Corporate Office have issued circulars for refund of SLC, ORC and Meter Cost to consumers on 12.10.2017, 07.11.2017 and 29.12.2017. The Appellant in Representation No.154 of 2019 had applied for refund to the Respondent on 10.09.2018, hence, there is no issue of any limitation. Thus, the order of the Forum is totally wrong, illegal and it needs to be revised.

(xxiv) The Appellant has brought out following orders / issues for interpretation of limitation: -


(i) Schedule of Charges is part of tariff.

Determination of tariff is absolute Respondent's responsibility and authority of Regulatory Commission as per the provisions of the Act. Schedule of charges is part of tariff to be determined by the Regulatory Commission as per the provision of Section 45, 62 and 64 of the Act. It clearly means that schedule of charges are determined under the provisions of the substantive law.

(ii) Tariff is a continuous process.

The Appellate Tribunal for Electricity (ATE) order in Appeal No.197 of 2009 dt. 11.03.2011 has clearly stated that

"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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There are many evidences of such adjusted and recovered or paid charges e.g. RLC refund, Mula Pravara refund, C/NC difference refund, SLC/RAC refund/recovery etc.

(iii) Illegal recovery must be refunded.

Metering cost recovery is illegal, hence, refundable.

In the same manner, infrastructure cost recovery of Non-DDF works in the name of DDF is also illegal, hence, refundable.

(xxv) The Appellant prayed that

(a) All three connections should be declared as Non-DDF connections given in the specified refund period on the basis of Supply Code Regulations, concerned orders of the Commission and concerned MSEDCL Circulars.


(b) The expenditure amount of Rs.3,19,500/- be refunded along with interest at bank rate from January 2008 up to the date of repayment or adjusted in the bill.

(c) Compensation as per SOP for delay in resolution of the complaint at the rate of Rs.100/- per week from 01.11.2018 till date.

4. The Respondent MSEDCL, by its letter dated 19th September 2019 states as under: -

(i) The Appellants in Group A are LT-V B II Industrial Consumers under Ichalkaranji Rural sub-division of the Respondent namely (a) Hi-Tech Balancing and Engineering (No.250490190054) (b) Preci Tech Engineers (No.250490193827) (c) Hi-Cast Industries (No.250490197105) at Plot No.57-58, 56-59, 53 respectively in Shri Laxmi Co-op. Industrial Estate, at Tilwani, Tal. Hatkanangale, Dist. Kolhapur. Out of these three consumers, the Hi-Cast Industries is converted from LT to HT Industrial (C.No.250499051230) from 05.08.2010.

(ii) Estimate in respect of above three Appellants was sanctioned pursuant to their application and undertaking that the work of infrastructure will be carried out by them at their own cost.


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- (iii) This estimate was sanctioned vide letter No. EE/ICH/DDS/08/07 - 08/086 dated 10.04.2007 for Rs.3,19,500/-. After completion of work envisaged in the estimate, the electric connection was released to the Appellant. The estimate envisaged augmentation of distribution transformer centre from 100 kVA to 200 kVA. The said estimate was sanctioned under DDS scheme hence the amount is not refundable to the Appellant. The said work was done by the Appellant through a licensed Electrical Contractor as per Regulation 3.3.8 of the Supply Code Regulations. It is also to be noted that electric supply is given from the said transformer to Preci Tech Engineers and Hi-Cast Industries besides the Appellant and no other consumers are connected on this transformer. The Appellants paid only 1.3% supervision charges of the amount of estimate to the Respondent.
- (iv) The said Appellants have paid the following amounts to the Respondent in accordance with their receipt numbers 6080546, 6080547 & 6082653 respectively.

S.N.	Appellant	SLC	DTC Metering Charges	Security Deposit	Capacitor Testing Fee	Processing Fee	1.3% Supervision Charges	Total
1	Hi-Tech Balancing and Engineering Industries	650/-	-	32000/-	240/-	50/-	-	32940/-
2	Preci Tech Engineers	650/-	-	18000/-	230/-	50/-	-	18930/-
3	Hi-Cast Industries	650/-	19000/-	30000/-	-	100/-	4100/-	53850/-

Statement showing the status of the Appellants in respect of their total load: -

Rep. No. of 2019	Name of the Appellant	Consumer No.	Existing Sanctioned Load (HP)	Addl. Load (HP)	Total Load (HP)	Month of Release
152	Hi-Tech Balancing and Engineering Industries	250490190054	40	32	72	January 2008
153	Preci Tech Engineers	250490193827	50	18	68	
160	Hi-Cast Industries	250490198420	00	30 (New)	30	

- (v) The Appellant in Representation No.154 of 2019 LT-V B II Industrial Consumer (No.250600010952) under Ichalkaranji Rural subdivision of the Respondent at Plot No.60-68 at Yadrav, Tal. Shirol, Dist. Kolhapur.


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- (vi) This estimate was sanctioned vide letter No. EE/ICH/ORC(P)/132/06-07/3623 dated 20.09.2006 for Rs.2,88,400/-. After completion of work envisaged in the estimate, the electric connection was released to the Appellant. The estimate envisaged augmentation of distribution transformer centre from 63 kVA to 100 kVA. The said estimate was sanctioned under ORC (P) scheme hence the amount is not refundable to the Appellant. The said work was done by the Appellant through a licensed Electrical Contractor as per Regulation 3.3.8 of the Supply Code Regulations. The Appellant paid supervision charges to the Respondent and executed the work by himself as per the consent submitted by it initially as it needed supply immediately. Supply from the newly erected transformer is exclusively for the Appellant.
- (vii) The Commission in its order in Case No.82 of 2006 has dealt the issue of ORC only. It does not say about the infrastructure cost. The estimates are sanctioned in accordance with the applications and consents submitted by the Appellants.
- (viii) Similarly, the Electricity Ombudsman (Mumbai) has given order for refund of SLC, ORC and Meter Cost whereas infrastructure cost was rejected as being time barred in Representation No.189 and 190 of 2018.
- (ix) The Hon'ble Supreme Court in its order passed in Appeal No.4305 / 2005 and Circular 25079 dated 22.12.2017 also states that only SLC, ORC and Meter Cost which has been collected with MSEDCL for the period from 20.01.2005 to 20.05.2008 will be refunded. The demand of the Appellants in the instant case is different therefore, cannot be accepted.
- (x) Regulation 3.3.4 of the Supply Code Regulations states as under:

“3.3.4 Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred on such works as the load applied for bears to the incremental capacity that will be created by augmentation of the distribution system.

Provided that where the load applied for does not exceed 25 per cent of the capacity that will be created by augmentation of the distribution system, the Distribution Licensee shall not be entitled to recover any expenses under this Regulation 3.3.4.”

In all these cases, the increase in load barring a new connection is more than 25 percent of the existing capacity of the transformer which necessitated


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augmentation of the same. Therefore, as per Regulation 3.3.4 of Supply Code Regulations, the cost is to be borne by the Appellants. Hence, the Appellants are not entitled to claim refund of any expenses under this Regulation 3.3.4.

- (xi) The representations in Group A pertain to the year 2007-08 and Representation 154 of 2019 pertains to 2006-07 which is beyond the period of limitation of two years hence it is time barred as per Regulation 6.6 of the CGRF Regulations.


“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.”

Therefore, the representation is liable to be rejected.

Analysis & Ruling

5. During the hearing, all the parties argued in line with their respective written submissions and reiterated their says. The Appellant argued that the work under the estimate is Non-DDF and the Respondent ought to refund the amount illegally recovered by it. The case is not time barred as claimed by the Respondent as the actual cause of action started after issuing of Judgment by the Apex Court and circulars issued by the Respondent subsequently.

6. On the contrary, the Respondent argued that estimate is common for Representations in Group A and they have tendered their consents for execution of work by themselves without any grievance whatever. Similarly, in Representation No.154 of 2019, the Appellant tendered consent for execution of work at its own cost. The Appellants paid necessary supervision charges of the estimated amount to the Respondent. The augmentation work is only for the Appellants and no one else. Therefore, going back on their written consent, after executing the work by themselves and after enjoying the benefits of release of connections is totally misconceived and cannot be allowed. Moreover, the case of the Appellants pertains to January 2008 and April 2008 which are the months for release of all three connections in Group A and in Representation No.154 of 2019 respectively. Much before January 2008, the order of the Commission in Case No.82 of 2006 was issued on 17.05.2007. Had the Appellants any grievance with respect to the expenditure on infrastructure and other works, they ought to have raised it through grievance redressal mechanism at appropriate time before release of


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connections. But they chose to raise it by filing grievance applications with IGRC on 13.09.2018 in Group A and on 10.09.2018 in Representation No.154 of 2019. Further, in all the cases, the Appellant approached the Forum on 08.01.2019 which is almost after 10 years i.e. much beyond the time of limitation prescribed under Regulation 6.6 of the CGRF Regulations. Therefore, the representations are not maintainable on the ground of limitations and needs to be dismissed.

7. After having heard the parties and perusing the records, I note that: -

- (i) MSEDCL issued a Circular dated 20.05.2008 giving guidelines for release of new connections based on the Commission's order in Case No.56 of 2007 dated 16.02.2008. The circular itself clarifies that refund is to be made in all Non-DDF connections. MSEDCL has issued circular only for LT connections. However, the Commission's order is for both LT and HT connections.
- (ii) MSEDCL has issued further Circular bearing No. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of the infrastructure cost. The refund will be by way of adjusting 50% of the monthly bill till adjustment of the total expenditure.
- (iii) In the meanwhile, MSEDCL had impleaded this issue of refund in its Civil Appeal No.4305/2007 (earlier stamp No.20340/2007), in which the Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31.08.2007. Hence all the Refunds were stopped.
- (iv) 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 10.11.2016 and dismissed the Civil Appeal in toto.

8. The Appellant approached the Forum after two years limitation period prescribed under Regulation 6.6 of the CGRF Regulations. They ought to have approached IGRC first, and then the Forum which could have entertained the grievance if filed within two years from the cause of action. Therefore, the limiting date for the Forum to have admitted the case of the Appellant would have been within two years from the cause of action. On the contrary, the Appellants approached the Forum on 08.01.2019 in all these cases with a delay of almost 10 years in all these representations which is much beyond the period of two years limitation period. The


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Appellants at least could have approached the Forum after the order of the Commission dated 01.09.2010 in Case No.93 of 2008 when the matter became crystal clear through directions of the Commission to approach the Forum if consumers have any issue with respect to the refund. The relevant portion of 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 is reproduced below: -


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 newspapers 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 & 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.

9. The Appellants also argued that their cases being a tariff case, the law of limitation does not apply. In support of this argument, it cited ATE judgment dated 11.03.2011 in Appeal No. 197 of 2009.

"Hon. ATE has clearly stated that "The tariff fixation is a continuous process and is to be adjusted from time to time."

The above ATE case is with respect to tariff fixation under the provision of the Act. Obviously, there is no question of any limitation in this regard. The Hon. ATE on the facts therein held that Limitation Act is not applicable to the State Commission in their regular activities of fixation of tariff. This judgment cited by the Appellant is not relevant to the instant representation because once the tariff / order of the Commission such as Schedule of Charges, etc. is issued, distribution licensee applies it to the respective consumers across the board. Once it is applied and if consumer has any grievance about its application, then it falls under the individual case of the consumer. Therefore, plea of the Appellant that being the tariff fixation


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case, does not hold good. As a matter of fact, at this stage, the mechanism for grievance redressal needs to be invoked by the consumer suffered.


10. Even the judgment of the Bombay High Court, Nagpur Bench in W.P. No.1650 of 2012 dated 10th July 2013, and Bombay High Court, Bench at Aurangabad judgment in W.P. No.6859, 6860, 6861 and 6862 of 2017 dated 21.08.2018 has explicitly upheld the provision under Regulation 6.6 of the CGRF Regulations. In view of these judgments, Regulation 6.6 remains valid and untouched.

11. In a recent judgment, the Hon'ble 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.

12. Therefore, this provision of Regulation 6.6 is a settled position in law. I, therefore, do not find it necessary to delve into the other aspects of the case because 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. If the issues are allowed to be exhumed and dissected on the basis of hindsight and that too with no bar on time is elapsed, no decision can be made in Regulatory Framework. The provision of Regulation 6.6 will be frustrated and there will be complete chaos.

13. It is settled position in law that if the matter is decided on limitation, there is no need to go into the merits of the case. Therefore, the Appellant should have raised the issues at least immediately after the Respondent issued a Circular dated 20.05.2008 giving guidelines for release of new connections based on the Commission's order in Case No.56 of 2007 dated 16.02.2008. The circular itself clarifies that refund is to be made in all Non-DDF connections. But the Appellant chose to remain silent on this issue. There was no bar whatever on the Appellants to have approached the Forum within limitation notwithstanding the Civil Appeal then pending in the Apex Court, so that the matter regarding its work whether it is DDF or Non-DDF and whether they are entitled for any refund, could have been decided.

14. In view of the above discussions, it is clear, that the cases of the Appellants in the instant representations are time barred and the Forum has rightly decided the cases, in light, of the


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Regulation 6.6 of the CGRF Regulations. I do not find it necessary to interfere with the order of the Forum in all these representations. I have already decided similar cases in common order dated 16.08.2019 in Representations No.68,69 and 71 of 2019 on the same lines.

15. Representations are therefore rejected and disposed of accordingly, with no order as to cost.

16. The instant representations were filed in this office on 13.08.2019. As per Regulation 16.9 of the CGRF Regulations, I should have passed the order by 13.10.2019, however, delay is on account of heavy in rush of other representations filed by the other Appellants. Moreover, the instant representations required lot of due diligence and perusal of voluminous records.

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