

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 14 OF 2023

In the matter of refund of infrastructure cost

Ankur Polypack Industries Appellant

V/s.

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

Appearances:

Appellants : 1. Mukund Mali, Representative
2. Rajendra Ghankute, Representative

Respondent : 1. G.B. Varpe, Executive Engineer, Sangli
2. Mahesh Patil, Dy. Executive Engineer, Sangli


Coram: Vandana Krishna [I.A.S. (Retd.)]

Date of hearing: 18th April 2023

Date of Order : 20th April 2023

ORDER

This Representation was filed on 8th February 2023 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 14th December 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum).



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



2. The Forum, by its Order dated 14th December 2022 rejected this grievance application in Case No. 20 of 2020.

3. Aggrieved by the order dated 14th December 2022 of the Forum, the Appellant has filed this representation. The e-hearing was held on 18th April 2023 through video conference. Both the parties were heard at length. The Appellant's written submissions and arguments are stated in brief as below:


- (i) The Appellant made an application for a new industrial connection at 11 KV level on 24.04.2017 for load of 480 KW and Contract Demand of 430 KVA at Plot No- B-12, MIDC Miraj, Tal-Miraj, Dist-Sangli.
- (ii) Accordingly, the Respondent by its letter SE/Sangli/Dy EE HT/ 5171 dated 23.05.2017 sanctioned an estimate of Rs. 2,48,160/- under Dedicated Distribution Facility (DDF) scheme for tapping of the existing 11 KV Feeder. The work involved was tapping of the existing 11 KV Feeder by a 200-meter 11 KV HT cable, a metering cubicle and associated infrastructure work.
- (iii) The Appellant paid 1.3 % supervision charges on 30.05.2017, and completed the infrastructure work. After submission of work completion report on 21.08.2017, the supply was released on 06.09.2017.
- (iv) The Appellant was directed to carry out the infrastructure work, and gave an Undertaking for availing HT connection under DDF scheme. But in fact it was non-DDF work as per various orders of the Commission. The MSEDCL sanctioned a Non DDF connection in the name of DDF in order to avoid the repayment of infrastructure cost incurred by the consumer. With the use of the words 'DDF', MSEDCL imposed the condition on the consumer that infrastructure work should be carried out by the concerned consumer at their own cost. Actually using the phrase DDF and imposing the cost on consumers is totally illegal and against the orders of the Maharashtra Electricity Regulatory Commission (the Commission). Such an imposed condition and imposed costs are nothing but harassment to the Appellant. Hence, the Appellant claimed for


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



refund of the infrastructure and metering cost. However, the Respondent refused to do so.

- (v) The Appellant filed a grievance application in the Internal Grievance Redressal Cell (IGRC) after 2 years (two years and 7 months) on 27.12.2019 for refund of infrastructure cost. The IGRC by its order dated 26.02.2020 rejected the grievance application. The Appellant approached the Forum on 01.07.2020. The Forum, by its Order dated 14th December 2022 has rejected this grievance application. The IGRC and the Forum failed to understand that the work carried out was not DDF but non-DDF.
- (vi) MSEDCL has violated the following provision of the Act, the Regulations & the MERC orders listed below,
- Section 43 of the Act - Universal Supply Obligation Cast on MSEDCL - Duty to supply on request.
 - Regulation 3.3.3 of Supply Code Regulations 2005 - Infrastructure cost can be recovered only in DDF cases.
 - MERC Order dated 08.09.2006 in Case No. 70 of 2005 Schedule of Charges - No recovery of infrastructure cost and Meter cost is permitted. It is to be claimed in ARR. Only Service Connection Charges & Processing Fees are allowed.
 - MERC Order dated 17.05.2007 in Case No. 82 of 2006 - All over charged amounts must be refunded.
 - MERC order dated 21.08.2007 in Case No. 82 of 2006
 - MERC order dated 16.02.2008 in Case No. 56 of 2007 - DDF cannot be imposed.
 - MSEDCL's Own Circular No. 43 dated 27.09.2006 - No infrastructure cost recovery from the consumers is clearly mentioned.
 - MSEDCL's Own Circular No. 22197 dated 20.05.2008 - Sr. No. 1 – “*All the infrastructure will be created by MSEDCL*” is clearly mentioned.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (vii) The Appellant referred to the Judgment dated 17.01.2020 of Hon'ble High Court Bombay, Bench Nagpur in W.P. No. 5892/2010 in Case of MSEDCL V/s Ram, Prop. Red Brick Company Akola in support of its argument. The High Court refunded the infrastructure cost. The Appellant also referred the Respondent's letter dated 12.10.2017 in the matter of refund of infrastructure cost.
- (viii) The Appellant filed a complaint after two years with the Respondent and after 3 years with the Forum. The Appellant hereby apologizes for the delay and prays to the Hon'ble Ombudsman to condone the delay and oblige. There were various issues faced by the Appellant during the startup period.
- (ix) The Appellant prays that the Respondent be directed to refund the infrastructure cost of Rs. 2,48,160/-incurred by the Appellant along with interest as per bank rate.

4. The Respondent MSEDCL Sangli by its letter dated 08.03.2023 filed its reply. The Respondent's written submissions and arguments are stated in brief as below:

- (i) The Appellant is a HT consumer (No 279019010330) from 06.09.2017 having sanctioned load of 480 KW and Contract Demand of 430 KVA at Plot No- B-12, MIDC Miraj, Tal-Miraj, Dist.-Sangli.
- (ii) Initially, the Appellant applied for a new connection under DDF scheme on 24.04.2017. There was an urgency for power supply to the Appellant. Hence, the Appellant opted to carry out infrastructure work to get a faster connection under DDF Scheme. An undertaking was submitted by the Appellant (on Rs.100/- Stamp paper No-560925 dated 22.03.2017) regarding availing HT connection by erecting the required infrastructure at its own cost under DDF scheme. The Appellant also agreed not to claim the cost of material used or any other monetary claim in future.
- (iii) Accordingly, the competent authority by its letter SE/Sangli/Dy EE HT/ 5171 dated 23.05.2017 sanctioned an estimate of Rs. 2,48,160/- under DDF scheme for tapping of the existing 11 KV Feeder on 23.05.2017. The work involved was tapping of the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




existing 11 KV Feeder by a 200 Meter 11 KV, 95 square meter HT Cable and allied infrastructure work. This work was totally dedicated to the Appellant.

- (iv) The Appellant paid 1.3% supervision charges on 30.05.2017, and completed the infrastructure work. After submission of the work completion report on 21.08.2017, the supply was released on 06.09.2017.
- (v) The Appellant agreed and accepted to develop the required infrastructure by tapping the existing 11 KV Feeder. This tapping is specially dedicated to the consumer and no other consumers use this extended infrastructure from the point of tapping. The estimated cost of materials was Rs.1,38,011/-. Only 1.3% Supervision Charges were recovered from the Appellant.
- (vi) The Appellant filed a grievance application in IGRC on 27.12.2019 after 2 years for refund of infrastructure cost incurred by him. The IGRC by its order dated 26.02.2020 rejected the grievance application.
- (vii) The Appellant approached the Forum on 01.07.2020. The Forum, by its Order dated 14th December 2022 has rightly rejected this grievance application. The charges are recovered as per provisions of Conditions of Supply based on the Maharashtra Electricity Regularity Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 Regulation 4.2.4 and 4.2.8.
- (viii) The Appellant carried out the work through a Licensed Electrical Contractor as per his request undertaking. In view of the above, the Representation of the Appellant be rejected.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant had originally applied for fresh power supply to his industrial unit for load of 480 KW and Contract Demand of 430 KVA vide application dated 24.04.2017. Accordingly, the Respondent by its letter SE/Sangli/Dy EE HT/ 5171 dated 23.05.2017 sanctioned an estimate of Rs. 2,48,160/- under Dedicated Distribution Facility scheme for tapping of the existing 11 KV Feeder. The work involved was tapping of the existing 11 KV Feeder by a 200 meter, 11 KV HT cable and


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



associated infrastructure work. The Appellant paid 1.3 % supervision charges on 30.05.2017. The work was completed on 21.08.2017. The supply was released on 06.09.2017.

6. The following issue is framed for deciding the case.

Issue: Whether the grievance submitted before the Forum is maintainable as per Regulation 6.6 of the CGRF Regulations 2006?


The Appellant had applied for a fresh connection to his industrial unit vide application dated 24.04.2017. He paid 1.3% supervision charges on 30.05.2017. The work was completed on 21.08.2017. The supply was released on 06.09.2017. **The cause of action arose when the Appellant paid the supervision charges i.e. on 30.05.2017**, thereby committing to carry out the work.

If the Respondent fails to take cognizance of a consumer's complaint / grievance, the consumer can approach the Grievance Redressal Mechanism framed under the Act, and the Regulations made thereunder. The Regulation 6.6 of CGRF& EO Regulations 2006 states 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.”

In the instant case, the Appellant filed a grievance application in IGRC on 27.12.2019, while the cause of action arose on 30.05.2017. The IGRC, by its order dated 26.02.2020, rejected the grievance. The Appellant approached the Forum on 01.07.2020 i.e. about 3 years and 1 month from the cause of action. This exceeds the prescribed period of two years, and therefore, this case does not fit into the regulatory matrix relating to the limitation period stipulated under Regulation 6.6 of the CGRF Regulations 2006.

7. The Hon'ble Supreme Court in its judgment dated 13.03.2019 in Civil Appeal No. 2960 of 2019 has laid down that there is no necessity to go on merits, and a plaint can be rejected, if it is clearly barred by limitation. Considering the above statutes, the case is time barred as per



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Regulation 6.6 of CGRF & EO Regulations 2006 and the present Regulation 7.8 of CGRF & EO Regulations 2020. **The issue is answered as NEGATIVE.**

8. The instant Representation is therefore rejected and disposed of accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

