

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 11, 12 & 13 of 2023

In the matter of Refund of Infrastructure Cost

Sr.No.	Name of Appellant	Consumer No.	Rep.No.
I	Kamlesh Synthetics	250499008400	11 of 2023
II	Aashish International	250499008410	12 of 2023
III	Prachi Creation	250499008390	13 of 2023

.....Appellants

V/s.

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

Appearances:

Appellant: 1. Pratap Hogade, Representative
2. Rajendra Ghangute, Representative

Respondent: 1. P. T. Rathi, Executive Engineer, Ichalkaranji
2. N. D. Ahuja, Addl. Executive Engineer


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

Date of hearing : 2nd May 2023

Date of Order : 21st June 2023

ORDER

These three Representations were filed on 8th February 2023 individually as per Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Common Order dated 2nd December 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 02.12.2022 has rejected these three grievance applications.


3. The subject matter in these 3 representations is common in nature; hence they are clubbed together for the purpose of a common order. The e-hearing was held on 02.05.2023 through Video Conference. All the parties were heard at length. The written submissions and arguments of the Appellants are stated in brief as below:-

- (i) The Appellants are LT-V A-II Industrial–Power loom Consumers of the Respondent from 16.12.2005 having Sanctioned Load, Contract Demand, Activity, etc., as below:

Rep. No.	Appellant	Consumer No.	Sanctioned Load (HP)	Activity	Address	Remarks
11 of 2023	Kamlesh Synthetics	250499008400	50	Power loom	Gat No. 755, 756, A/P. - Tardal, Tal. Hatkanangale, Dist. Kolhapur	
12 of 2023	Aashish International	250499008410	55			
13 of 2023	Prachi Creation	250499008390	50			
NA	Khushbu Synthetics	250499008370	55			PD in 2018
NA	Ambika Synthetics	250499008380	50			

This was a multiparty group of five power loom consumers who initially applied for fresh power supply under “Low Tension Multiparty Power loom Group Scheme” for Connected Load 50/55 HP on 14.07.2005.

- (ii) The then SE, MSEDCL, Kolhapur Circle sanctioned the estimate of Rs.8,28,800/- of all five consumers on 21.10.2005 vide letters No. KPC/Tech/HT/ AE(T)/4022 to 4026 under Out-Rate Contribution (Private) [ORC(P)] Scheme and directed then complete the work as per this estimate issued by Dy. E.E., MSEDCL, Ichalkaranji Rural Subdivision for 11 KV HT Line, all the concerned infrastructure work and HT & LT metering work.
- (iii) The Appellants paid 1.3% Supervision Charges of Rs. 2,365/- & 2,150/- in each case on 21.10.2005. The Appellants completed all the Infrastructure & Metering work as per



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estimate. Thereafter the load was released on 16.12.2005. A copy of the Single Line Diagram of the concerned Feeder No.1 is on record.

- (iv) Out of these five power loom consumers, Khushbu Synthetics, and Ambika Synthetics were permanently disconnected (PD) consumers from 2018. Their consent letters for refund are on record. The Appellants are the remaining three LT Industrial Power loom Consumers in the Multi Party group.
- (v) The issue of refund of Infrastructure Cost was pending due to Stay given by the Hon'ble Supreme Court in the Civil Appeal (CA) No. 4305/2007 filed by MSEDCL. The Hon'ble Supreme Court dismissed the CA and then it became clear that the Appellants can claim the refund of all the expenses done for Non DDF Infrastructure Works and/or Metering Works.
- (vi) After the Final Decision of the Hon'ble Supreme Court in CA No. 4305/2007 dated 10.11.2016 regarding refund of such charges, MSEDCL issued its first Refund Circular on 12.10.2017, and Amendment Circular on 29.12.2017. The Appellants submitted complaints and applications for refund with interest before the Internal Grievance Redressal Cell (IGRC) on 10.10.2019. However, the IGRC rejected it.
- (vii) Thereafter, the Appellants approached the Forum on 24.02.2020, which also rejected their grievance on 02.12.2022. Hence the Appellants have submitted this common representation before the Electricity Ombudsman, Mumbai. This denial of refund is totally wrong, illegal and against the orders of the Maharashtra Electricity Regulatory Commission (the Commission), the Hon'ble Supreme Court and MSEDCL circulars.
- (viii) The detailed submissions are as follows.
 - (1) Work Done - The work done as per the estimate of MSEDCL is the extension of the existing HT 11 KV line up to their premises. The scope of the work was laying of 11 KV line and all the concerned infrastructure work and HT/LT Metering work. The copy of the Single line diagram is kept on record for easy understanding of the feeder and extension work.

In case of Meter/Metering Cubicle, as per the Commission's Order regarding "Schedule of Charges" dated 08.09.2006 in Case No. 70 of 2005 and the corresponding MSEDCL Circular No.43 dated 27.09.2006, meters are to be installed


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by the licensees. Also if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars. Copies of concerned Circulars No. 21560 dated 09.05.2007 and No. 34307 dated 03.09.2007 are on record.

- (2) Feeder Details - The name of the feeder is 11 KV Feeder No.1, which emanates from 33/11 KV PIE, Yadrav Substation. Feeder from MSEDCL Substation was pre-existing and the Appellants have only extended the existing feeder.
- (3) Other Consumers - There are many other HT & LT consumers getting power supply from the same 11 KV Feeder No.1,
- (4) MERC Order dated 16.02.2008 in Case No. 56 of 2007 - Only the extension 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, in its order in Case No. 56 of 2007.
- (5) Work is Non DDF - It is clear from the definition of DDF in the regulations & clarifications given by the Commission that their feeder and the work done by them is clearly Non DDF. Also, sanction/estimate of this work is clearly ORC-P which is a part or type of ORC. Hence, the Appellants are fully eligible for the refund of the said amount i.e. Rs. 8,28,800/- as per MSEDCL's own office estimate.
- (6) MERC Order dated 17.05.2007 in Case No. 82 of 2006 – The Commission has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts along with the interest thereon.

A few Extracts of this Order are as below.

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.*"


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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."*

- (7) MERC Order dated 21.08.2007 in Case No. 82 of 2006 - The Commission has issued a 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 17th May 2007.

A few important extracts of this order are as below,


Para 7 - *"Public Utilities such as MSEDCL are those industries who are affected with public interest and as such are subjected to regulatory Control and cannot be permitted to claim charges beyond what the legislature regards as legal."*

Para 9 - *"The directions of the Commissions 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. MSEDCL cannot argue that the amounts spent towards creating infrastructure must be replenished at the cost of those consumers at whose cost MSEDCL has enriched unjustly. What is sought to be prevented is unjust enrichment or unjust benefit derived by MSEDCL from its consumers."*

- (8) DDF Clarifications - Again Case No. 56 of 2007 was filed by the same petitioner before the Commission for the compliance of the directions issued on 17.05.2007 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, the Commission has clarified the concept and issued detailed clarification of "DDF" on the request of MSEDCL itself.

A few important extracts of this order are as below,

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."*


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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 - *"Also Dedicated Distribution Facility can not 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 Sector 43 of E. Act 2003 read with SoP regulations."*


(9) Provisions of S.62 (6) of the Electricity Act 2003 (the Act) -

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

"If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

(10) MSEDCL Circular 20.05.2008 - After this order dated 16.02.2008, MSEDCL issued circular on 20th May 2008 as Guidelines for release of new connections on the basis of the above-mentioned Commission orders. The circular itself clarifies that all Non DDF connections are refundable. MSEDCL has issued this circular only for LT connections. Actually, the Commission's order is applicable for both LT & HT connections. It is clearly stated in this circular that in case of all LT industrial individual or group consumers, all the infrastructure will be created by MSEDCL and only SCC will be recovered.

(11) MSEDCL Circular 21.12.2009 - MSEDCL has issued another Circular bearing no. DIST/D-III/Refund/Circular No.39206 on 21.12.2009 regarding refund of infrastructure cost. This circular is applicable to all HT/LT eligible consumers, and states that the work may get executed under DDF & the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.


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- (12) MSEDCL Refund Period Amendment Circular dated 29.12.2017 - In its 1st refund circular dated 12.10.2017 MSEDCL stated the refund period as 20.01.2005 to 30.04.2007. Then it issued an Amendment Circular as per Board resolution on 29.12.2017. The refund period was revised from 20.01.2005 up to 20.05.2008. Their estimate & work done period is from 21.10.2005 up to 16.12.2005. Hence these amounts are eligible for refund as per MSEDCL's own refund circulars.
- (13) In the circular dated 12.10.2017, MSEDCL denied refund in DDF cases. This 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 it is merely named as ORC-P by MSEDCL for its own convenience or in order to avoid any refund, then in such cases, the Infrastructure Cost imposed on consumers is nothing but ORC & is refundable as per the Commission's orders and MSEDCL's own circular dated 20.05.2008. Hence such Consumers are eligible to get the refund along with interest.

At many places, Consumers had asked for refund of Infrastructure expenses. But MSEDCL always took a stand before various forums & courts that "*the issue of refund of Infrastructure Cost is pending before Honourable Supreme Court.*"

- (14) Supply Code Regulations - After the Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of 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. Actually using the phrase DDF and imposing cost on consumers is totally illegal & against the orders of the Commission. Such an imposed condition & imposed cost is nothing but ORC, which is against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

"Any terms & 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


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Regulations, shall be deemed to be invalid from the date on which these Regulations come into force."

- (15) Actually, the expenditure of the Appellants on the concerned work is more than the estimate of MSEDCL. But logically and reasonably, the Appellants are claiming the estimate amount only. Hence, on the basis of all above mentioned grounds, the Appellants are eligible to get the refund of estimate amount Rs. 8,28,800/- along with the interest thereon at bank rate from 16.12.2005 up to the actual date of repayment.
- (16) Compensation – The Appellants' complaint is a complaint 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.*" The Appellants filed their complaints in October 2019. Thus, it is necessary & binding on MSEDCL to resolve it in the subsequent billing cycle, i.e. maximum up to the end of November 2019. Hence, the Appellants are eligible for SOP Compensation of Rs.100/- per week or part thereof from 01.12.2019.
- (17) Consumers Consent, Agreement, No Protest etc. -

MSEDCL always takes a stand that the concerned consumer/s have given consent, have signed an agreement and have not protested, hence they are not eligible for refund. This stand is totally wrong, illegal, and hence null & void. A provision is clearly given in Reg. No. 19.1 of the Supply Code Regulations that all terms & conditions of the licensee which are inconsistent with the regulations shall be deemed to be invalid.

Also, MSEDCL is the only licensee all over Maharashtra except Mumbai. MSEDCL has monopoly. Consumers have no other option. Consumers can not insist on any relief. On the contrary, MSEDCL insists on illegal conditions imposes infrastructure cost on the consumers against regulations & orders. Consumers have no other option but to give consent or sign or accept such illegal conditions, under pressure.


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Any such consent or agreement which is not in consonance with the law or statutory regulations or orders of MERC has no binding effect in law. MSEDCL cannot impose conditions which would defeat the regulations or orders. This verdict is given by the Hon'ble Supreme Court & by the various High Courts in many cases. One such order dated 18.01.2017 of the Hon'ble High Court, Mumbai in W.P. No. 2798 of 2015 is on record.

MSEDCL's stand/submissions are against the order dated 08.09.2006 of the Commission in Case No. 70 of 2005 known as "Schedule of Charges". Infrastructure cost recovery is clearly prohibited and disallowed in this order. MSEDCL's stand/submission are against its own Commercial Circular No. 43 dated 27.09.2006 Para 5 & Para 6 clearly state that Meter Cost & Infrastructure Cost shall not be recovered from consumers.

- (18) SLC, ORC, ORC-P & DDF/DDS all are Infrastructure Charges under Different Names - All these are 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 of Charges. DDF is allowed from 20.01.2005, but only where the connection is actually DDF. In these cases, the connection is ORC-P and totally Non DDF. Hence the Appellants are fully eligible for refund.
- (19) LIMITATION - IGRC and the Forum have held that the complaints of the Appellants are beyond the period of limitation of 2 years. This observation is totally wrong & illegal.

This issue was before the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 filed by MSEDCL itself. Hon'ble Supreme Court by issued final order on 10.11.2016, and on that date the stay on refund was vacated. Then MSEDCL HO itself issued circulars for refund on 12.10.2017, 07.11.2017 and 29.12.2017. The Appellants have started the work in October 2005 and completed the infrastructure work in December 2005. Load release letter is dated 16.12.2005. **The cause of action has arose on 29.12.2017 after the issue of the above refund circular by MSEDCL.** Thereafter, the Appellants submitted their application to IGRC on


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10.10.2019 for refund. Thus, the refund demand is well within the limitation period of 2 years. Hence there is no issue of any limitation, and the orders of the IGRC & the Forum are totally wrong, illegal and need to be quashed and set aside.

(ix) The Appellant's prayers are as below,

- a. The connections should be declared as Non DDF connections on the basis of Supply Code Regulations and Concerned Orders of the Commission and concerned MSEDCL own Circulars.
- b. The expenditure as per MSEDCL ORC-P estimate of Rs. 8,28,800/- should be refunded along with the interest at bank rate from 16.12.2005 till the date of repayment, or alternatively the total amount should be credited in the further bills of the Appellants.
- c. SOP Compensation, for delay in Complaint Resolution, at the rate of Rs. 100 per week from 01.12.2019 should be awarded.

4. The Respondent filed its reply dated 12th April 2023. Its submission and arguments are as under:

- (i) The Appellants are LT-V A-II Industrial –Power loom Consumers of the Respondent from 10.02.2006 having Sanctioned Load, Contract Demand as captured in Para 4(i).
- (ii) The grievance is not maintainable as per Regulation 6.6 / 7.8 of CGRF& EO Regulations 2006 / 2020, wherein 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 Appellants filed the case on 24.02.2020 with the Forum, **while the cause of action occurred on 21.10.2005 when the Appellants paid the supervision charges to the Respondent.** On the same ground of limitation, the Forum as well as the Electricity Ombudsman has dismissed various cases.
- (iii) The Hon'ble Bombay High Court, Aurangabad Bench has also passed Judgment dated 21.08.2018 in W.P No. 6859, 6860, 6861 & 6862 of 2017 regarding limitation and has ruled that:-



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“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.”

- (iv) The Respondent referred to the order of Electricity Ombudsman in Rep. No. 189 and 190 of 2018 in case of Bombay Rayon Fashions V/s MSEDCL regarding refund of infrastructure cost. The Electricity Ombudsman has rejected the refund of infrastructure cost.
- (v) In Case No 5 of 2020 in M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others V/s MSEDCL, the Commission in its order has cited the Judgment of the Hon’ble Supreme Court in case 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 .Supreme 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, Page 16 of 35 31, 32 & 33 of 2020 Refund of Infrastructure (Mahalaxmi & Renuka, Suyog and Ankur) (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 Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.”


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- (vi) The consumer's date of payment is 21.10.2005 prior to schedule of charges case no 70 dated 8.09.2006. This matter was discussed by Hon'ble Ombudsman in case no 17 of 2021 MSEDCL Vs M/S Ramayya Textiles in the matter of refund of infrastructure cost and the Electricity Ombudsman has findings on same ground has ruled as 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 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


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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'b/e Supreme Court and the respective orders of the Commission in this context.

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

The finding of the Electricity Ombudsman is squarely applicable to these cases.

The details of the multiparty group are captured in Para 3 (i). The consumers applied for Fresh load for 5 LT consumers under one roof with a total load of 260 HP at 11KV level. These applications and sanction orders are under the multi-Party Group Agreement and governed by Commercial Circular No. 6 dated 01.09.2005. As per Clause 5.3(ii) of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations 2014 (SOP Regulations 2014)

"the LT connections 230V/440V is to be given for load upto 150KW/ 187 KVA i.e upto 201 HP".


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However, the load in the above single premises is 260 HP, hence the above consumers are actually eligible only for HT connection. It is only because of this special multiparty agreement, that the consumers are enjoying the benefits of LT connections, including lower tariff.

(vii) The work involved in this case is


- 1) DP structure
- 2) 315 KVA Transformer
- 3) 1 HT cubicle
- 4) 5 LT meters

The 315 KVA transformer is dedicated to the Appellants / consumers and Respondent MSEDCL cannot use this, since it is in consumers' premises as per multiparty agreement. Now the consumers have shifted from 11 KV level to 33 KV level, forming a new group of consumers, and the old transformers of 315 KVA, HT cubicle, load break switch, etc have been taken by the consumers and not by MSEDCL. It is stated in the conditions of Supply based on MERC Regulation 2005.

Regulation 3.4.3 provides 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*".

As per this provision, each consumer is required to take a separate supply. However, a special common sanction has been given for the said consumers based on circular No.6 dated 01.09.2005. Therefore, the demand of these consumers to refund the cost of infrastructure is liable to be dismissed. In short, the consumer enjoyed the benefits under the multiparty scheme and now they are demanding refund of infrastructure cost against the principle of equity. The connection is in use for 17 years.

(viii) The consumers are governed by the then prevailing commercial circular no. 6 dated 01.09.2005. The connections were sanctioned vide no KPC/Tech/HT /AE (T) vide no 4022 to 4026 dated 21.10.2005. The Appellants paid the charges for connection on 21.10.2005 abiding with the terms and conditions of sanction. The consumers had, paid the amount without any protest or grievance, and done the work under ORC (P) scheme, which is also in line with Supply Code Conditions Regulations (2005). The Appellants paid only 1.3% supervision charges and no other ORC /SLC or any amount was recovered. However, the


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Hon'ble Supreme Court has directed in Appeal No. 4305/2005 to refund the collected amount of SLC, ORC, and Meter charges to consumers collected from 8.09.2006 to 30.04.2007. As the amount is not recovered under ORC, SLC or consumer meter cost is not recovered, the case of refund does not arise in this particular case.

The details of the premises: -

- (ix) Under the normal course, there should be physical and defined separation of premises for providing any connections. However, it is only because of multiparty connections that the parties are taking this liberty of common premises. Regulation 3.4.3 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 states that
“Unless otherwise specified all HT and LT charges refer to 1 point of supply, and each separate establishment shall be given a separate point of supply”.
- (x) The word “separate establishment” is very important. MERC SOP Regulations have increased the limit to 600 KVA, in view of multiple connections with specified demarking and physical separation, which is misinterpreted by the Appellants. Connections of Multiplex and malls can be incorporated in this provision, as all establishments are separate and have physical separation or identity.
- (xi) In the above case all establishments are not separate and are in one shed without physical separation. However, they are given different point of supply, which signifies the violation of MERC Condition of Supply Regulation 3.4.3, hence is clearly governed by Commercial Circular No 6. The purpose of all connections is for power looms. The connections are to be physically separated for the provision of SOP Regulations amended Regulation 5.3. MERC in Conditions of Supply Code Regulations, 2005 under clause 3.3.8 read as
“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 sha// 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.”

Clause 3.3.3 read as


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“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.”


Also further in clause 3.3.5 read as

"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"

- (xii) The Ombudsman, in Representation No.71, 72 73,74, 75 & 76 of 2022 in respect of Multiparty Group of Suyash Yantramag Audyogik Sahakari Sanstha Maryadit and 5 others, Representation No .77, 78, 79, 80, 81 & 82 of 2022 in Sangram Textiles and 5 others and Representation No 83 & 84 of 2022 has analysed the benefits to both the Appellants and the Respondent. In fact, the benefits of consumers are rather more than MSEDCL.
- (xiii) In view of the aforesaid facts, it is requested to dismiss the present application.

Analysis and Ruling

5. Heard the parties and perused the documents on record.
6. This Representation was filed on 08.02.2023 against the Forum's order dated 02.12.2022. As per Regulation 19.1 of the CGRF & EO Regulations, the Representation was supposed to be filed on or before 02.02.2023, considering the prescribed 60 days' period as per Regulation 19.1 of CGRF & EO Regulations 2020. This Representation has been filed with a delay of about 6 days, which is condoned.


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7. The details of load sanctioned, estimate amount, supervision charges paid, work done, etc., of the Appellants are tabulated below:

Rep. No.	Appellant	Consumer No.	Address	Sanctioned Load (HP)	Sanctioned Estimate Amount / (Rs.)	Details of work done	Supervision charges (Amount & Paid on)	Date of Connection	Activity	Remarks
11 of 2023	Kamlesh Synthetics	250499008400	Gat No. 755, 756, A/P. - Tardal, Tal. Hatkanangale, Dist. Kolhapur	50	8,28,800	11 KV HT Line, all the concerned infrastructure work and HT & LT metering work	2,365/- & 2,150/- on 21.10.2005	16.12.2005	Power loom	
12 of 2023	Aashish International	250499008410		55						
13 of 2023	Prachi Creation	250499008390		50						
NA	Khushbu Synthetics	250499008370		55						PD in 2018
NA	Ambika Synthetics	250499008380		50						

8. Various relevant orders of the Commission, Judgments of Tribunal and Courts with respect to the Schedule of Charges are summarised below:


(i) 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 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)]."

(ii) ATE judgment dated 14.05.2007 in Appeal No. 22 of 2007 filed by MSEDCL against the Commission order in Case No. 70/2005 dated 08.09.2006. The relevant portion of the order is reproduced 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."

(iii) The Commission's order dated 17.05.2007 in Case No. 82 of 2006:


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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).

(iv) 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.

(v) Hon'ble. 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. 14th September, 2007".

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

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

(vi) 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


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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 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.


(vii) 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 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.*** (Emphasis added)

(viii) The Commission's order dated 08.12.2014 in Case No. 105 of 2014:


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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 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 Page 32 of 40 129,132,133&134 of 2022 Vinayak/fabrics 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.”

(ix) 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.”

(x) Letter dated 20.07.2017 from the Commission to MSEDCL for compliance of Commission’s directives regarding refund of amount recovered other than approved schedule of charges after judgment dated 10.11.2016 of Supreme Court dismissing Civil Appeal No. 4305 of 2007.


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9. 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 (for Dedicated Distribution Facilities). The Commission in its order dated 17.05.2007 in Case No. 82 of 2006 has stipulated the 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.

10. Considering the various submissions, arguments, judgments, and orders referred to by the Appellants and the Respondent, this Authority has framed the following issue to consider the maintainability as well as merit of these Representations.

Issue : Whether grievances submitted before the Forum are maintainable as per the Regulations 6.2 / 6.3 of the CGRF Regulations 2003 / Regulations 6.6 of the CGRF Regulations 2006?

Issue : Initially, five Appellants had applied for Power Supply at LT side to their Industrial Units for connected load of 50/55/50/55/50 HP respectively vide their applications on 14.07.2005. The Respondent approved the applications and issued an estimate under common group of consumers on 21.10.2005 with an estimate amount of Rs. 8,28,800/- for 11 KV HT Line, all the concerned infrastructure work and HT & LT metering work. The Appellants paid 1.3% Supervision Charges in each case to MSEDCL on 21.10.2005 and completed all the infrastructure work. Thereafter, the supply was released on 16.12.2005. While the Appellants contend that the cause of action arose on 29.12.17 as discussed in para 3 (vi) and para 3 (ix) (21), the Respondent contends that the cause of action arose on 21.10.2005. It is notable that the Appellant could have raised their grievance any time from October 2005 to September 2006, when there was no stay in operation. However, they did not do so. Even when the Supreme Court's stay order came into operation on 31.08.2007, it was not applicable to the Appellants, because the stay was applicable only to cases where infrastructure cost was recovered from consumers between 08.09.2006 to 30.04.2007. The cause of action arose on 21.10.2005 when the Appellant paid the supervision charges. All these consumers were sanctioned LT power supply with purpose as power loom. In view of the above discussion, the


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works under these Representations do not fall in the bracket of the period **08.09.2006 to 30.04.2007** as contemplated under the orders of the Commission.

11. In exercise of the powers conferred on it by sub-sections (r) and (s) of Section 181 read with sub-sections (5) to (7) of Section 42 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, the Commission notified the CGRF & EO Regulations 2003. If the Respondent had failed to take cognizance of the consumer's complaints / grievances, the consumer had the opportunity to approach the Grievance Redressal Mechanism framed under the Act, and the Regulations made thereunder.

12. At that time, the Appellants had an opportunity to approach the internal redressal system of the Respondent with their grievances within a period of two (2) months. If no remedy had been provided within this period from the date of intimation, the Appellants could have submitted their Grievances to the Forum within twelve (12) months from the date of original intimation to the Distribution Licensee as per Consumer Grievance Redressal Forum and Ombudsman Regulations, 2003. However, they did not do so. The said Regulation 6.2 /6.3 of CGRF Regulations 2003 is reproduced below:-


“6.2 Any Consumer with a Grievance shall intimate the Distribution Licensee of such Grievance in the form and manner and within the time frame specified by the Distribution Licensee in its rules and procedures for redressal of Grievances.

*6.3 Unless a shorter period is provided in the Act, in the event that a **Consumer is not satisfied with the remedy provided by the internal redressal system of the Distribution Licensee to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the Consumer may submit the Grievance to the Forum.***

Provided that the Consumer shall submit his Grievance to the Forum no later than twelve (12) months from the date of original intimation to the Distribution Licensee.” (Emphasis added)

CGRF & EO Regulations 2006 came into force from 20th April 2006. 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.”*

13. We have already held that the cause of action of the current grievance arose on 21.10.2005 when the supervision charges were paid. The Appellants filed their grievance applications with the


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Forum on 24.02.2020 while the cause of action arose in 2005. The Appellants ought to have approached the grievance redressal mechanism as per the CGRF Regulations 2003 which was in force at that time. The grievance redressal mechanism could have entertained the grievance if filed within one year from the cause of action. We have already observed that the stay order of the Hon'ble Supreme Court came into force only on 31.08.2007. Thus, the Appellants had time from October 2005 to September 2006 to file their grievances. However, the Appellants approached the Forum only on 24.02.2020. Again, after the Commission's order dated 08.12.2014, in Case No. 105 of 2014, the consumers had another opportunity to file their grievance. They did not do so.

14. The power supply to the Appellant was released on 16.12.2005. The Appellant has contended that the issue of refund of Infrastructure Cost was pending due to Stay given by the Hon'ble Supreme Court in the Civil Appeal No. 4305/2007 filed by MSEDCL, which was finally dismissed on 10.11.2016 and only after that could consumers claim the refund of expenses done for Non DDF Infrastructure Works and/or Metering Works. The Refund Circular was issued by the Respondent on 12.10.2017 and the amendment circular on 29.12.2017. Thus, the cause of action arose only on 29.12.2017 after the issue of the above refund circulars of the Respondent.

Even if the above contention is assumed but not admitted, the Appellant still had to approach the Forum on or before 29.12.2019 as per CGRF & EO Regulations 2006, but the Appellant approached the Forum only on 24.02.2020 which is also time barred beyond two years as per Regulation 6.6. This delay cannot be condoned by the EO as no power is vested in this authority to do so as per the CGRF & EO Regulations. In fact, the Appellant has mistakenly contended that he had to approach the IGRC within two years, but actually he had to approach the Forum within two years from the cause of action.

15. 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 into 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 Regulation 6.2/6.3 and/or 6.6 of CGRF & EO Regulations 2003/ 2006 respectively. Issue A is answered as NEGATIVE.

16. 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


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

"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."

17. Considering the above facts, the Appellants' Representations are time barred. The Forum, by its Common Order dated 02.12.2022 has rightly analysed the grievance. Hence, the order of the Forum is upheld.

18. The Representations are rejected and disposed of accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

