

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 58 OF 2020

In the matter of application of proper tariff category

M/s. Jain Farm Fresh Foods Ltd. Appellant

V/s

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

Appearances

For Appellant : 1. T. N. Agrawal, Representative
2. Satish Shah, Representative

For Respondent : 1. Ravindra F. Pawar, Dy. Ex. Engineer, Jalgaon
2. Nilesh Mulay, Asst. Accountant

Coram: Deepak Lad


Date of Hearing: 4th September 2020


Date of Order : 16th September 2020

ORDER

This Representation is filed on 28th July 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 3rd June 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL, Jalgaon Zone (the Forum).

2. The Forum, by its Order dated 3rd June 2020 has dismissed the grievance of the Appellant in Case No. 18/2019-20.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



3. Aggrieved by the order of the Forum dated 03.06.2020, the Appellant has filed this Representation stating in brief as below: -

(a) Preamble:

- (i) The Appellant is a 33 kV HT consumer (No. 110019004163) from 25.11.1995 having Contract Demand (CD) of 7900 KVA and connected load of 18439 KW as of now, at Jain Valley, Shirsolli, Jalgaon. Presently, the name of consumer is Jain Farm Fresh Foods Ltd. after change of name.
- (ii) The Appellant has opted a separate 33 KV Express Feeder for power supply to its two group of companies. The Respondent has sanctioned electricity connection vide letter No. 64013 dated 04.05.1995 under Out Rate Contribution (ORC) scheme at the estimated cost of Rs.31,46,500/-. The work of the feeder was carried out by paying 15% supervision charges to the Respondent. The length of the feeder is 10.95 KM and it is known as Jain Valley Feeder.
- (iii) The change of name took place from Jain Plastics & Chemicals Ltd. to Jain Irrigation Systems Ltd. to Jain Farm Fresh Foods Ltd. with the concurrence of the Respondent.
- (iv) Due to major flashover at 132 / 33 KV old MIDC S/S, Jalgaon, the Respondent, as a temporary arrangement, connected load of 33 KV Mahawad S/S and 33 KV Mhasawad S/S on 33 KV Jain Valley Feeder prior to the year 2004. The Appellant, however, did not raise any objection with the understanding that it was being a temporary arrangement to help in critical situation of the Respondent. The then MSEB officials assured to remove the tapping from its express feeder within a reasonable time, say 1 to 2 months maximum. However, despite its repeated reminders and follow up, the Respondent did not remove the said tapping. Finally, Respondent removed/ diverted load of 33 KV Mahawad S/S in the year August 2007 on newly erected feeder but added load of 33 KV Wavadada Substation. Again, the load of 33 KV Mhasawad and 33 KV Wavadada S/S remained tapped on express/dedicated 33 KV Jain Valley Feeder resulting frequent interruptions and voltage fluctuations to the Appellant.
- (v) The Appellant put on record various correspondence with Respondent continuously for removing the said tapping.
- (vi) The Appellant had pursued the matter with the Respondent at various levels i.e. SE (O&M), SE(Infra), CE (O&M), CE (Comm.), Director (Operation) and Crompton Greaves Ltd. (CGL) which was the franchisee of the Respondent. Finally, the tapping

of 33 KV Mhasawad S/S and 33 KV Wavadada S/S was removed on 30.07.2015. Thereafter, the Appellant could avail uninterrupted power supply on its express/dedicated 33 KV Jain Valley Feeder.

- (vii) During this period, the Respondent failed to provide continuous supply due to tapping of other feeders on the said dedicated/express feeder. Hence, during this period, the feeder status became non-express feeder but the Respondent continued to charge at continuous tariff category. The level of interruptions and voltage fluctuations had increased substantially. The Appellant has requested vide its letter dated 21.04.2016 to refund tariff difference from Continuous to Non-continuous tariff category for the period from August 2009 to July 2015 amounting to Rs.882.59 lakh which was not settled by the Respondent till date.

(b) Grounds in support of the Grievance:

- (i) The Appellant opted for separate 33 KV feeder laid from 132 KV S/S to its premises at its cost with an intention to get better quality of supply through Dedicated Distribution Facility (DDF).
- (ii) Any action of the Respondent, giving connection/tapping from this dedicated feeder amounts to violation of norms set by the Maharashtra Electricity Regulatory Commission (the Commission) for express/dedicated feeder.
- (iii) As per Regulation 2.1(g) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) for Dedicated Distribution feeder reads as:

“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”. **(Emphasis added)**

- (iv) The work was executed by the Appellant as a DDF to avail an uninterrupted and quality supply.
- (v) The Appellant was billed under continuous tariff category. Due to tapping of other feeders by Respondent on dedicated feeder, the said feeder became non-express feeder. The tapping lead to frequent interruptions and low voltage complaints. Therefore, the Appellant failed to avail continuous power supply from Respondent during the period from August 2009 to July 2015.

- (vi) As per Section 45(2)(a) of the Electricity Act, 2003 (the Act), the charges for the electricity supplied by Dist. Licensee shall be “fixed in accordance with the methods and the principles as may be specified by the concerned state commission”. As the MSEDCL failed to provide Continuous supply, the Appellant is entitled to claim for refund of tariff difference from continuous to non-continuous tariff category for the billing period August 2009 to July 2015.
- (vii) 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.
- (viii) The Appellant was levied continuous tariff category on non-express feeder. This was pointed out by letter dated 18.06.2018 to the, Superintending Engineer O&M Circle Jalgaon of the Respondent. The 33 KV Jain Valley Feeder, supplying power to the Appellant, was also supplying power to few other consumers which are listed as below: -
- Jain Irrigation system, Bhambhori
 - Mukund Industries, Bambhori
 - TC park, Takarkheda
 - Low Tension consumers residing in Mahabal area of Jalgaon
 - Electricity supply given to Big Bazar from this feeder
- (ix) **Power Failure Details:** Statements of tripping of power from year 2009 to 2015 (upto June-2015) is kept on record and brief data is reproduced as below.

Year	Trippings (Nos.)	Planned Shutdowns (Nos.)
2009	148	15
2010	158	2
2011	136	5
2012	166	7
2013	309	10
2014	575	12
2015*	197	3

*Data of 2015 is up to April-15

Based upon the above table, average yearly tripping for the period from 2009 to 2015 is worked out as 267 Nos. i.e. 22 tripping every month.

- (x) The Appellant is in business of processing the food products and in view of perishable nature of their product, it is essential to have continuous uninterrupted power supply to

their plant. Any breakdown and tripping of power supply, the processing of food gets affected adversely which results to tremendous financial loss to the Appellant.

- (c) As MSEDCL did not resolve this issue, the Appellants filed grievance with Internal Grievance Redressal Cell (IGRC) on 20.09.2019 for refund of tariff difference from Continuous to Non-Continuous tariff Category for the period from August 2009 to July 2015 amounting to Rs.882.59 lakh. However, the IGRC vide its order dated 13.12.2019 has rejected their grievance saying that the application was not submitted for change of tariff category as per Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014). The observations of IGRC in its order are totally wrong.
- (d) The Appellants filed the grievance application in the Forum on 21.01.2020. The Forum, by its order dated 03.06.2020 has rejected the grievance application on the ground that the claim of tariff difference is not proved. The Forum failed to understand the basic data of interruptions on 33 KV Jain Valley Feeder submitted to the Forum. The Appellant had furnished complete month wise power interruptions data and all related correspondence in the Forum. This data is in record of MSEDCL sub-station, the MSEDCL did not deny for this interruption data in their single correspondence made with them. On this issue, the Forum passed remark as gossip truth which is incorrect. The claim of the Appellant is accepted by the Forum on the ground of limitation. No limitation is provided to approach the IGRC, the complainant has filed this claim within the period of limitation.
- (e) **Regulatory Provisions:**
- (i) The Appellant referred the order of the Commission dated 16.07.2013 in Case No. 88/2012 of Kalika Steels & Alloys Pvt. Ltd. (& other 16 consumers) in support to its grievance and for failure of MSEDCL to supply continuous power to the consumers connected on express feeder. The Commission accepted the Petitioners' prayer regarding classification of the supply during the period as falling under non-continuous category. The MSEDCL should not have charged tariff applicable to continuous industry on Express Feeder for consumers in the month in which they have not supplied continuous supply. The tariff during the period in question which should have been applied is non-continuous tariff applicable to industrial category. The Commission issued order to reimburse tariff differential amount between Continuous and Non-continuous tariff along with interest thereon.

(ii) In the above order, the Commission opined that, it is MSEDCL's duty to provide an interruption free supply to the continuous supply category consumers. It cannot hide its responsibility of maintaining a fault free and breakdown free network under the pretext that breakdowns and faults are beyond its control. It is MSEDCL's duty to maintain its network in such a fashion that breakdowns and faults do not occur. Though it is understandable that breakdowns can still happen under unforeseen circumstances, it cannot happen at an unreasonable frequency.

(iii) Claim for tariff difference arose due to failure of Respondent to provide continuous power supply due to tapping of other feeders on its dedicated/express feeder.

(iv) In the Order dated 18.05.2007 in Case No. 65 of 2006 the Commission ruled as under:

"The tariff categories have been simplified in the case of industries, and only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry."

As per this order, its feeder once tapped by other feeder should have been deemed as HT non-continuous industry and accordingly charges of non-continuous tariff must have been charged.

(v) The Commission in the order dated 16.07.2013 in Case No. 88 of 2012 observed that there is no specific provision in regard to the frequency of occurrences, either in the SOP Regulations or in the definition of applicability of Tariff, which will qualify as unacceptable for a continuous category of consumer. Obviously, the intent and purport of the SOP Regulations and the design of the Tariff under the "continuous category" of supply was to provide the consumer with a "continuous supply" in the literal meaning of the expression. Therefore, it cannot be ruled out that MSEDCL failed to provide the required quality of supply for which it has charged the Consumers Continuous category tariff without providing the required service level.

(vi) Section 1.11 of Supply Code Regulations reads as

"Dedicated Distribution Facilities means such facilities, not including a service line, forming a part of the distribution system of the MSEDCL, 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."

However, the MSEDCL had tapped dedicated feeder with other sub-station loads at different locations and number of consumers. Therefore, as per the Supply Code

Regulations, 33 KV Feeder cannot be termed as DDF or Express feeder for billing premium/Continuous tariff category.

- (f) The Appellant prays that the Respondent be directed:-
- (i) to refund the tariff difference from Continuous to Non-Continuous tariff Category for the period from August 2009 to July 2015 amounting to Rs.882.59 lakh along with the accrued interest as per the Act.
 - (ii) to Compensate Rs.1,00,000/- towards mental agony, manpower lost for follow up, travelling expenses etc. as per Section 8.2 (c) of the CGRF Regulations.
4. The Respondent MSEDCL, by its letter dated 13.08.2020 stating in brief as under: -
- (i) The Appellant is a 33 kV HT consumer (No. 110019004163) from 25.11.1995 having presently Contract Demand (CD) of 7900 KVA and connected load of 18439 KW, at Jain Valley, Shirsol, Jalgaon. Presently, the name of the consumer is Jain Farm Fresh Foods Ltd.
 - (ii) The power supply of the Appellant is on 33 KV Express feeder namely Jain Valley Feeder. The Appellant has raised the issue of tapping of 33 KV Jain Valley Feeder and extending the load to 33 KV Mahabal S/S and 33 KV Wavadada Feeder due to major flashover at 132 KV old MIDC S/S.
 - (iii) The supply of the Appellant is on 33 KV feeder which is normally healthy feeder. Tapping of 33 KV supply from 33 KV Jain Valley Feeder for source to 33 KV substations does not increase interruptions in normal condition in general. There is a continuous power supply to the Appellant on 33 KV Jain Valley Feeder except minor interruptions due to environmental condition.
 - (iv) The Commission through its tariff order in Case No. 48 of 2016 dated 03.11.2016 has merged continuous and non-continuous tariff categories from 01.11.2016.
 - (v) The Appellant has never applied for change of tariff category from continuous and non-continuous tariff category as per Regulation 4.13 (b) [referring to repealed Regulation 9.2 of the SOP Regulations 2005] of the SOP Regulations, 2014, change of tariff category is to be implemented within the second billing cycle from the receipt of application. Hence, the issue of retrospective refund of tariff difference between continuous and non-continuous tariff category considering alleged express and non-express feeder does not arise for the period August 2009 to July 2015.


- (vi) The Appellant has filed complaint with MSEDCL for the first time in April 2016 for retrospective refund of tariff difference between express and non-express feeder for the period October 2006 to July 2015 initially, whereas as per Regulation 6.6 of the CGRF Regulations, the consumer needs to file case with the Forum within two years from the cause of action. The Appellant approached the Forum on 20.01.2020. The alleged cause of action is prior to 20.01.2018 is time barred as per Regulation 6.6 of the CGRF Regulations.
- (vii) In addition, there is no merit in this representation as the Appellant was fed with continuous power supply.
- (viii) Therefore, the Respondent prays that the representation of the Appellant be dismissed.


5. Due to the COVID-19 epidemic in India and subsequent situations arising out of it, the hearing was held through video conferencing on 04.09.2020.

6. During the hearing, the Appellant argued in line with their written submission. The Appellant argued that it had furnished complete month wise power interruptions data and all related correspondence. The MSEDCL did not deny the interruption data in their single correspondence made with them. The Appellant, by its letter dated 21.04.2016 has requested to refund tariff difference from Continuous to Non-continuous tariff category for the period from August 2009 to July 2015 amounting to Rs.882.59 lakhs. The issue was followed up with the Respondent vide letters dated 07.11.2016, 30.03.2017, 13.09.2017, 12.02.2018, and 13.02.2019 which was not settled by it till date. Then afterwards, the Appellant approached the grievance redressal mechanism. There is a continuous process for follow-up and hence the claim of refund of tariff difference is not time barred. The Appellant referred the Judgement dated 11.03.2011 in Appeal No. 197 of 2009 of the Appellate Tribunal for Electricity (ATE) in which it has confirmed that the Electricity Act is a complete code. In this judgment of ATE, there is mention of decision of Hon. Supreme Court in Madras Port Trust V/s Himanshu International. In this decision Hon. Supreme Court have mentioned that it is unfortunate that a public authority like Port Trust should, in all morality and justice, take up such a plea (Barred by limitation under Section 10 of Madras Port Act) to defeat a just claim of citizen. Thus, even the Hon. Supreme Court, Hon. High Court and Hon. ATE in their orders have not considered the time limitation for giving refund to consumer of any amount wrongly charged by the authorities. Considering the matrix of power supply interruptions and the order of the Commission

dated 16.07.2013 in Case No. 88/2012 of Kalika Steels & Alloys Pvt. Ltd. the Appellant prays that the Respondent be directed to refund the tariff difference from Continuous to Non-Continuous tariff category for the period from August 2009 to July 2015 amounting of Rs.882.59 lakh along with the accrued interest as per the Act.

7. The Respondent argued in line with its written submission. There was no DDF scheme in existence prior to the Electricity Act, 2003 and formation of the Regulatory mechanism. Hence, the Appellant's claim for DDF feeder is not correct. The Estimate under ORC scheme of 33 KV feeder is a part and parcel for releasing the connections to the Appellant. The Respondent has maintained a continuous power supply by coordinating shut down period as the Appellant is load wise a major consumer. Tapping of supply on 33 KV Jain Valley Feeder for 33 KV incomer feeders to the Sub-stations do not adversely affect the breakdown, as the said feeder is maintained in good condition by doing proper maintenance. The said feeder was not overloaded due to tapping. There are many other environmental reasons for transient tripping/breakdown of 33 KV Feeder. There is an almost continuous power supply to the Appellant for the period from August 2009 to July 2015. Hence, there is no merit in the grievance. The Respondent argued that the Appellant has never applied for change of tariff category from continuous and non-continuous tariff category as per Regulation 4.13 (b) of the SOP Regulations, 2014 and hence the question of billing of non-continuous tariff category does not arise. The judgements referred by the Appellant for reliance are not applicable. The Respondent is duty bound to maintain power supply of the Appellant. Crompton Greaves Ltd. has been awarded a contract as franchisee for power distribution in area of Jalgaon Circle for the period 01.11.2011 to 12.08.2015. There was an acute shortage of power supply in the State due to gap in demand and supply of power resulting in planned and forced load shedding. There was planned load shedding for entire area of MSEDCL. This feeder was never subjected to load shedding and supply was of continuous nature. The Appellant enjoyed uninterrupted power supply and load shedding free power supply. The claim does not stand on ethical and merit ground. The Respondent argued that the alleged claim for refund of tariff category is time barred as the Appellant approached the Forum on 20.01.2020. The case squarely falls under Regulation 6.6 of the CGRF Regulations. The cause of action is prior to 20.01.2018 is time barred as per Regulation 6.6 of the CGRF Regulations. In the circumstances, the Respondent prays that the representation of the Appellant be dismissed.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Analysis and Ruling

8. Heard the parties and perused the documents on record. The basic issue in this case is that the Appellant was having a separate 33 KV feeder for supply to its factory. MSEDCL tapped this feeder as there was flashover at 132 / 33 KV old MIDC S/S, Jalgaon and the supply was to be resumed to the affected area. It emerges from the submission of both the parties that this tapping was with due approval of the Appellant. This arrangement continued for some time. The Appellant claimed that from the date of tapping (2004) till the removal of tapping (July 2015), it suffered interruptions on this feeder which affected its supply and in turn its processes in the factory. The Appellant further claimed that it issued letters to the authorities of the Respondent to remove the tapping. However, it was not removed until July 2015. It is important to note that the Appellant did nothing except writing letters to the Respondent.

9. During the hearing, the Respondent was directed to submit the interruptions suffered by the Appellant for the period during which the refund has been sought. The Respondent through email dated 10.09.2020 has furnished the required information which is as below:

Year	Transient Tripping		Breakdown		Planned Shutdown	
	No.	Duration in Hr.	No.	Duration Hr.	No.	Duration Hr.
2007 (from Aug)	57	8.18	3	7.2	1	7.3
2008	162	21.04	16	46.15	13	32.35
2009	124	16.52	15	45.21	5	12.27
2010	139	15.42	17	37.17	13	39.36
2011	97	9.08	13	17.41	2	11.42
2012	66	7.38	24	42	6	14.5
2013	78	12.08	11	18.25	9	42.36
2104	76	10.3	8	51.4	9	33.3
2015	51	9.14	0	0	6	14.33
2016	94	19.36	19	32.39	10	27.29

The data given by the Appellant and the Respondent varies.

10. Though the feeder was tapped somewhere in the year 2004, the Appellant claimed for refund of tariff difference between continuous and non-continuous tariff category from August 2009 probably due to the Commission's Tariff Order dated 17.08.2009 in Case No. 116 of 2008 which

provides for continuous and non-continuous tariff category as it was billed under continuous tariff category.

11. The record shows that the Appellant did not approach grievance redressal mechanism for removal of tapping if it was with the understanding that the tapping would be only for a very limited period, say 1 or 2 months, as submitted by the Appellant.


12. It is an admitted fact that the Appellant did not claim any compensation for interruptions it suffered due to tapping even after notification of SOP Regulations 2005. Thus, it could have gone for appropriate relief including removal of tapping from its 33 KV feeder under the said regulations.


13. It was only on 21.04.2016, the Appellant issued a letter to the SE Jalgaon, the Respondent, requesting to pay back the tariff difference between express and non-express feeder from October 2006 to July 2015 followed by a reminder dated 07.11.2016 in which it claimed the period of refund as August 2009 to July 2015 on account of the interruptions it suffered due to tapping to its 33 KV feeder. The Appellant in its submission has said that it was his understanding that this tapping is for a very short period of 1 or 2 months and it was too generous to extend courtesy in allowing the tapping of its feeder in the event of major flashover in EHV S/S which resulted in major interruptions in other areas. When the things did not turn as expected by the Appellant, it was possibly for him to have approached the appropriate mechanism set up under the law for issue of directions to the Respondent to remove the tapping but it did not do so for the reasons best known to it.

14. The Appellant approached the IGRC on 20.09.2019. Then approached the Forum on 20.01.2020 wherein it has prayed for refund of tariff difference between continuous and non-continuous tariff category for the period starting from August 2009 to July 2015. It means it approached the grievance redressal mechanism almost after 15 years from the cause of action which was initiated in the year 2004. He had many occasions to have approached the grievance redressal mechanism during this entire period of 15 years.

15. Therefore, the instant case does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations 2006 which stipulates that :

“The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen.”


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



16. I noted that there is no dispute that the Appellant is connected on 33 kV which is the highest distribution voltage in Maharashtra for distribution licensee. The interruptions on this voltage level are much less compared to that on 11 kV and LT voltage.

17. The Appellant has cited the ATE Judgement in Appeal No. 197 of 2009 in which there are some observations made that the limitation will not apply to the quasi-judicial authorities like State Commission. The Hon. ATE on the facts therein held that Limitation Act was not applicable to the State Commission in their regular activities of fixation of tariff. However, once the tariff is fixed by the State Commission and if any consumer finds discrepancy in application of appropriate tariff by the distribution licensee then that consumer has to take up his grievance with the grievance redressal mechanism available under the Act. It cannot incessantly go on simply writing to the distribution licensee. The instant case is with respect to individual grievance. The grievance redressal mechanism is as per the provisions of the Electricity Act, 2003 under Section 42 (5) and in exercise of the powers conferred on the Commission 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 has notified regulations in this behalf to 2003 and then in 2006. It was, therefore, incumbent upon the Appellant to have resorted to this mechanism for redressal of its grievance. Therefore, the ATE Judgement is not relevant in the instant case.

18. The Appellant has also cited order dated 16.07.2013 in Case No. 88/2012 of Kalika Steels & Alloys Pvt. Ltd. (& other 16 consumers). This is not the order in rem but a case specific order for obvious reasons. Assuming the contention of the Appellant that this order is applicable to it, it should have approached the grievance redressal mechanism within a time limit provided under the Regulations. This point of view is substantiated in the Commission's order dated 15.02.2017 in Case No. 86 of 2015 of Century Rayon Ltd. V/s. MSEDCL wherein Kalika Steel order was also referred to. Therefore, the order cited by the Appellant in Case No.88/2012 of Kalika Steels & Alloys Pvt. Ltd. (& other 16 consumers) is not at all applicable in the instant representation.

19. Therefore, in view of the above, all the citations made by the Appellant are not relevant to the instant representation. Therefore, the provision under Regulation 6.6 remains valid. It is expected that the consumer should approach the IGRC in a reasonable period from the cause of action though there is no such limit provided under the Regulations. This needs to be harmoniously read with

Regulation 6.6 which ultimately puts two years limitation period for the Forum to admit the case from the cause of action. This principle, and logic is upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon. Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the judgment is quoted below: -


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

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

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

.....
.....
42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



44. *Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.*

45. *As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.*

46. *As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”*


20. The Hon'ble Supreme Court in Civil Appeal No.2960 of 2019 dated 13.03.2019 has laid down that the plaint can be rejected if suit is clearly barred by limitation. 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.

21. Therefore, the 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 time 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 elapsed, no decision can be made in the Regulatory Framework. The provision of Regulation 6.6 will be frustrated and there will be complete chaos. In view of the above discussions, it is clear, that the case of the Appellant in the instant representation is time barred.

22. The Forum has grossly erred in not appreciating the issues in the case properly. It has also not examined the entire case on various orders passed by the undersigned and as well by the Commission. I, therefore, do not agree with the Forum that the case before him was within limitation. The finding of the Forum to this extent is highly perverse. The same is therefore set aside.

23. In view of the above discussions, the representation is rejected as being time barred.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

