# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REVIEW APPLICATION NO.3 OF 2020

IN

REVIEW OF ORDER IN REPRESENTATION NOS. 152, 153, 154 & 160 OF 2019

In the matter of refund of infrastructure cost

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

V/s.

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

Appearances

For the Appellants : Pratap Hogade

For the Respondent : 1. S.L. Koli, Executive Engineer, Ichalkaranji
2. S.D. Akiwate, Dy. Executive Engineer

**Coram: Deepak Lad**

Date of Hearing: 18th June 2020

Date of Order : 8th September 2020

ORDER

This Review Application is filed on 11th February 2020 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &

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Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) for review of the common Order dated 8th January 2020 passed in Representations No. 152, 153,154 & 160 of 2020.

2. The Electricity Ombudsman, Mumbai abbreviated as EO (M) and used further in this order, vide its common order dated 08.01.2020 has rejected and disposed of all the four representations

(a) Hi-Tech Balancing and Engineering Industries (152 of 2019),

(b) Preci Tech Engineers (153 of 2019),

(c) Arundhati Colour Cartons (154 of 2019)

(d) Hi-Cast Industries (160 of 2019).

The EO (M) observed that the cases of the Applicants in the instant representations are time barred and the Forum has rightly decided the cases, in light, of the Regulation 6.6 of the CGRF Regulations.

3. Aggrieved by this order, the said Applicants have filed this Review Application stating their reasons as below: -

(i) The EO(M)'s Order Para No.8:-

The EO (M) has analyzed and ruled that the complaints of the Applicants are beyond the period of limitation of 2 years and also quoted the order of Maharashtra Electricity Regulatory Commission (the Commission) in Case No. 93 of 2008 dated 01.09.2010.

The observation and ruling is clearly wrong and controversial to the said Commission's order which has been clearly stated in its Para 19 (iii) which is reproduced by EO (M) in the order as below: -

*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.*

The period which was stayed by the Hon. Supreme Court (old Civil Appeal No. 20340 of 2007) is now vacated as per the Judgment dated 10.11.2016. The Respondent MSEDCL clarified in its Amendment circular dated 29.12.2017 that the period for refund is from 20.01.2005 up to 20.05.2008. The refund of infrastructure cost borne

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by the Applicants is within this period only. Hence, there is an error apparent on the face of the record.

(ii) The EO(M) Order Para No.9:-

The EO(M) has observed that the Appellate Tribunal for Electricity (ATE)'s Judgment dated 11.03.2011 in Appeal No. 197 of 2009 is not relevant and the case was with respect to tariff fixation under the provisions of the Act.

This observation is wrong. The ATE judgment was regarding the Service Line Charges (SLC) which was recovered in excess by MSEDCL in the period from 22.10.1999 to 27.06.2000. The SLC was the recovery of the infrastructure cost. SLC, ORC and Non DDF are the different names of DDF used by the MSEDCL for the recovery of the infrastructure cost from the consumers. MSEDCL had raised the issue of limitation which the ATE had rejected it. Hence, this is a mistake of error in the observations of the EO(M) in the said order.

(iii) EO(M) Order Para No.10 and 11 states as below: -

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

*11.In a recent judgment, the Hon'ble Supreme Court in Civil Appeal No.2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if suit is clearly barred by limitation.*

All the refund demand and representations are for the works done by the Applicants within the stay period accepted and clarified by MSEDCL vide its circular dated 29.12.2017. Hence, the judgments mentioned in these paragraphs are not applicable to the Applicants' cases. Hence, the judgments cannot be linked or made applicable to them.

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(iv) EO(M) Order Para No.12:-

The EO(M) has observed that provisions of Regulation 6.6 is a settled position of law. This regulation is not challenged by the Applicants. The cases of the Applicants fall within the Stay period. Hence, the date of the cause of action is 29.12.2017 on which date, the MSEDCL has issued Amendment Circular clarifying the refund period. After the date of circular, the Applicants approached the Internal Grievance Redressal Cell (IGRC) on 19.09.2018 and 13.09.2018 and before the Forum on 08.01.2019. Hence, all the cases of the Applicants are within the 2 years period from the date of cause of action as provided in Regulation 6.6 and hence, the Applicants are fully eligible for refund.

(v) EO(M) Order Para No. 13: -

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

The Applicants were not silent on this issue. The circular dated 20.05.2008 issued by MSEDCL itself clearly states that "it is subject to the decision of the Hon. Supreme Court in the Civil Appeal No. 20340 of 2007." After the order of the Hon. Supreme Court, MSEDCL issued circulars after the directions of the Commission and refunded ORC, SLC amounts to the consumers, who have applied for refund within the particular stay period i.e. from 20.01.2005 up to 20.05.2008. The Applicants had also

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applied but the Respondent, MSEDCL rejected it. The Applicants are eligible as their connections are Non-DDF as clarified in various Commission orders and also accepted by EO (M).

The Applicants came to know all the above-mentioned issues only after getting the order of the Hon. EO(M). Hence, these issues were not known to them before the order.

(vi) Request for Condonation of Delay: -

The EO (M) passed the common order on 08.01.2020 and the Applicants are submitting this application for review on 10.02.2020 with 2/3 days of delay, hence delay in submitting this application. It happened due to the Applicants getting busy in MSEDCL MYT petition dated 15.01.2020, its detailed submissions and hearing hence the Applicants have requested and prayed to please condone the delay and oblige.

4. The Respondent MSEDCL filed its reply by letter dated 12.03.2020 stating as under: -

(i) Estimate in respect of above three Applicants i.e. Hi-Tech Balancing and Engineering Industries (152 of 2019), Preci Tech Engineers (153 of 2019) and Hi-Cast Industries (160 of 2019) was sanctioned pursuant to their application and undertaking that the work of infrastructure would be carried out by them at their own cost.

(ii) This estimate was sanctioned on 10.04.2007 for Rs.3,19,500/-. After completion of work envisaged in the estimate, the electric connection was released to the Applicants. The estimate envisaged augmentation of distribution transformer centre from 100 kVA to 200 kVA. The said estimate was sanctioned under DDS scheme hence the amount is not refundable to them. The said work was done through a licensed Electrical Contractor as per Regulation 3.3.8 of the Supply Code Regulations. The Appellants paid only 1.3% supervision charges of the amount of estimate to the Respondent.

(iii) The electric supply is given from the said transformer to only these three consumers and no other consumers are connected on this transformer.

(iv) In this respect, it is to be stated that the said scheme is of DDS which is DDF and the said scheme was only for the above applicants and was used for them only. *DDF means such facilities, not including a service line, forming part of the distribution system of*

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*the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or group of consumers on the same premises or contiguous premises.* The said definition applies to the present consumers.

(v) The said Applicants have paid the following amounts to the Respondent in accordance with their receipt numbers 6080546, 6080547 & 6082653 respectively

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

(vi) The enhancement of load / new connection is tabulated as below:-

| S.N | Consumer's Name | Consumer's No. | Sanctioned Load (HP) | Addl. Load (HP) | Total Load (HP) |
|---|---|---|---|---|---|
| 1 | Hi-Tech Balancing and Engineering Industries | 250490190054 | 40 | 32 | 72 |
| 2 | Preci Tech Engineers | 250490193827 | 50 | 18 | 68 |
| 3 | Hi-Cast Industries | 250490198420 | 00 | 30 | 30 |

(vii) In all these cases, the increase in load barring a new connection is more than 25 percent of the existing capacity of the transformer which necessitated augmentation of the same. Therefore, as per Regulation 3.3.4 of Supply Code Regulations, the cost is to be borne by the Applicants. Hence, the Applicants are not entitled to claim refund of any expenses under this Regulation which is quoted as under:

*"3.3.4 Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred on such works as the load*

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*applied for bears to the incremental capacity that will be created by augmentation of the distribution system.*

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

The first two consumers' load of 50 HP and the third consumer's load 30 HP, altogether 80 HP as per their application, the augmentation of the existing transformer of 100 kVA to 200 kVA was proposed to cater to the increase in load.

(viii) M/s. Arundhati Color Cartons (154 of 2019) Plot No. 60 to 68, Yadrav, Tal. Shirol was sanctioned estimate under ORC (P) scheme vide letter No. EE/ICH/ORC(P)/132/06-07/3623 dated 20.09.2006 for Rs.2,88,400/-. After completion of work envisaged in the estimate, the electric connection was released to the Applicant. The estimate envisaged augmentation of distribution transformer centre from 63 kVA to 100 kVA. The said estimate was sanctioned under ORC (P) scheme hence the amount is not refundable to the Applicant. The said work was done by the Applicant through a licensed Electrical Contractor as per Regulation 3.3.8 of the Supply Code Regulations. The Applicant paid supervision charges to the Respondent and executed the work by himself as per the consent submitted by it initially as it needed supply immediately. Supply from the newly erected transformer is exclusively for the Applicant. As per the application of increase of 55 HP load of Appellant, M/s. Arundhati Colors Carton making total load as 105 HP, 63 kVA transformer was increased to 100 kVA capacity, this increase was more than 25%, hence as per Regulation 3.3.4 of the Supply Code Regulations, refund of infrastructure cost cannot be levied to the Applicant.

(ix) The Commission, in its order in Case No.82 of 2006 has dealt the issue of ORC only. It does not say about the infrastructure cost. The estimates are sanctioned in accordance with the applications and consents submitted by the Applicants.

(x) Similarly, the EO (M has given order for refund of SLC, ORC and Meter Cost whereas infrastructure cost was rejected as being time barred in Representation No.189 and 190 of 2018.

(xi) The Hon'ble Supreme Court, by its Judgment dated 10.11.2016 in C.A. No. No.4305/ 2007 has rejected the appeal of MSEDCL. Accordingly, the Respondent's Head

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Office vide its circulars dated 12.10.2017 and 22.12.2017 has decided to refund only SLC, ORC and Meter Cost which has been collected with MSEDCL for the period from 20.01.2005 to 20.05.2008. The demand of the Applicants in the instant cases are different and therefore, cannot be accepted. The Applicants have developed infrastructure works under DDF scheme and hence cannot be refunded.

(xii) The grievances of the Applicants were for the period 2007-08 and as per Regulation 6.6 of the CGRF Regulations, one needs to have approached the grievance mechanism within two years from the date of cause of action. Hence, the said grievance is time barred. Similarly, the Bombay High Court, Nagpur Bench in 21.01.2020 in WP No. 1588 /2019 against the order of Electricity Ombudsman (Nagpur) have rejected the applicant's demand for refund of infrastructure cost being time barred.

5. The Respondent MSEDCL have filed its additional reply by email dated 17th June 2020 stating as under:

(i) The Respondent has put the single line diagram of the location of the three consumers (a) Hi-Tech Balancing and Engineering (152/2019), (b) Shri Preci Tech Engineers (153/2019) and (c) M/s. Hi-Cast Industries (160/2019) on record. As seen from this diagram, it is observed that the Plot No. 57, 58, and Plot No. 56, 59, and Plot No.60, are the 5 plots altogether with one main gate. In that it has two sheds with three connections without any partition. The statement regarding electricity load of these three consumers is as below:

| S.N. | Consumer's Name | Consumer No. | Plot No. | Sanctioned Load |
|---|---|---|---|---|
| 1 | M/s. Hi-Tech Balancing and Engineering (152/2019) | 250490190054 | 57, 58 | 102 HP / 85 kVA |
| 2 | Preci Tech Engineers (153/2019) | 250490193827 | 56, 59 | 68 HP /56 kVA |
| 3 | M/s. Hi-Cast Industries (Sau. Anjali Anil Kudache) | 250490009759 | 60 | 100 HP /93 kVA |

(ii) M/s. Hi-Cast Industries, which is presently under review, has its connection permanently disconnected prior to August 2010 and in its place another HT consumer of 620 kVA M/s. Hi-Cast Industries is there.

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(iii) On perusal of the said diagram, it is seen that all these consumers are from one family and they are operating in the name of engineering works and are using different separate electricity connections. This means that in the representation, the Applicants have submitted false information regarding separate connections with separate ownership. This proves that instead of taking HT connections, they are taking the benefit of LT connections. It is necessary to club all these LT connections which will be done once the lockdown period is over.

6. Hearings, in general, could not be conducted due to onset of Covid-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence of the parties. The hearing in the instant case was scheduled on 18.06.2020 on e-platform after the consent from the parties. The parties were also asked to submit their points of arguments by email for sake of clarity.

7. During the hearing, the representative of the Applicants argued as below: -

(i) The Hon. Electricity Ombudsman (M) has assumed the cause of action happened in January 2008 or April 2008 which are the dates of release of supply to the Applicants but according to the Applicants the actual date of cause of action is 14.11.2018. This is due to the fact that the Commission had issued orders for refund of infrastructure cost and metering cost vide orders dated 17.05.2007 and 21.08.2007 which was immediately impleaded by MSEDCL before the Hon. Supreme Court in Civil Appeal No. 20340 of 2007. The Hon. Supreme Court issued stay on 31.08.2007. This stay was operative at the time of connections of the Appellants in January 2008 and April 2008. The stay was vacated after the final decision of the Hon. Supreme Court. The gates for application of refund by the consumers was opened by MSEDCL by issuing a circular on 29.12.2017 stating the period from 20.01.2005 to 20.05.2008 and asked the consumers to submit their applications along with the documents for demand of refund. This date of MSEDCL circular can be the earliest cause of action. Further, the Appellants applied to the IGRC in September 2018 i.e. within 8 months from the date from when the gates were opened to demand refund. The IGRC rejected all the

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four applications on 14.11.2018. Hence, it is clear that the cause of action is 14.11.2018 i.e. well within two years of the limitation period of Regulation 6.6 of the CGRF Regulations.

(ii) In view of the Hon. Supreme Court stay, the Commission in its order dated 16.02.2008 in Case No. 56 of 2007 has mentioned at Para 12 (3) which reads as

*"With reference to the prayers of the Petitioners to direct refund of ORC and such other head based charges, …… In view of the admittedly overlapping nature of these charges with Service Line Charges which is sub-judice before the Hon'ble Supreme Court, the Commission declines to order refund as stipulated under its Order dated May 17, 2007."*

(iii) MSEDCL Circular No.22197 dated 20.05.2008 at Para 1 mentions that

*"In order that field engineers follow uniform practice throughout the State and to avoid hardship to prospective consumer and to remove difficulties in release of new connections, the following guidelines are issued which shall be subject to the final decision in the proceedings pending before the Hon'ble Supreme Court & MERC."*

(iv) MERC order dated 01.09.2010 in Case No. 93 of 2008 at Para 19 (iii) end of the para reads as

*"This directive of refund of excess 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."*

(v) MERC directions to MSEDCL dated 20.07.2017

Para 6 of these directions reads

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

Para 4 of these direction reads

*"The Commission vide its Order dated 29 November 2010, has clarified that period of refund referred in its Order dated 17 May 2007 is from the date of notification of Supply Code Regulations i.e. from 20 Jan.2005. The relevant part of Order is reproduced below,*

*(a) Review of Order dated May 17,2007 in Case No. 82 of 2006*

*The ground on which--------the following directions:-*

*9. ----While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge items which is not defined under the Supply Code and / or the Order dated September 8,2006.*

*-------There shall be directions to MSEDCL in terms of the above."*

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(vi) MSEDCL Refund Circular dated 12.10.2017

After the directions from Commission, MSEDCL issued its first refund circular in 12.10.2017 but the stay and refund period was stated from 20.01.2005 to 30.04.2007.

(vii) MSEDCL Amendment Circular dated 29.12.2017

MSEDCL issued Amendment to Circular dated 12.10.2017 and revised the refund period.

The 3rd para read

*"As per resolution No.1085 in the Board Meeting convened on dt.21 Nov.2017, period of refund of SLC, ORC Charges & meter cost recovered from all consumers as per MERC's directions issued in Order dt.17 May 2007 & 21 Aug.2007 of Case No.82/2006 along with interest shall be from 20.01.2005 to 20.05.2008 instead of 20 Jan 2005 to 30 April 2007."*

(viii) Clarification regarding the issues raised by the MSEDCL vide its submission dated 12.03.2020 and 17.06.2020.

(a) MSEDCL has stated that Hi-Tech and other 3 consumers are on the same /one transformer and hence it is similar to DDF

– This statement is totally wrong and false. There are two transformers on road having 3 and 5 total 8 connections. Also, the Applicants' firms are different, premises are different, and connections are different. Hence, it is non DDF.

(b) MSEDCL has stated that the Applicants have given consent to do the infrastructure work at their own cost.

-Any illegal consent taken by MSEDCL is invalid as per the Regulation 19.1 of the Supply Code Regulations. The High Court has also issued orders on the same issue and stated that illegal consent is not binding and non DDF is refundable. The copy of the High Court Judgment in WP No.2798 of 2015 dated 18.01.2017 is enclosed.

(c) MSEDCL stated that SC Order is different, and DDS is different.

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- The Commission has clarified in its order dated 08.09.2006 Schedule of Charges and 16.02.2008 at para 9 that the consumers should not burdened with infrastructure cost since this cost is the liability of the MSEDCL. MSEDCL may seek recovery of this from the annual revenue requirement. Infrastructure cost includes the ORC, SLC, ORC (P), DDF and also DDS. Only different nomenclatures are used by MSEDCL at their own convenience to impose cost on the consumers.

(d) MSEDCL stated in Arundhati case that it is under ORC (P) and hence no refund is applicable

– Same as above. ORC (P) is not any separate scheme of MSEDCL but part of ORC. Hence, MERC has clearly directed to refund ORC in its various orders.

(e) MSEDCL has stated that supply has been only given to Arundhati from the transformer and not to any other consumer

– This statement is totally wrong. The transformer is on the road and owned by MSEDCL. The Appellant had never taken any objection for other connections. In fact, MSEDCL has issued another connection from the same transformer. The copy of bill of that consumer is enclosed.

(f) MSEDCL has stated that the EO(M) has rejected the refund in Rep. 189 and 190 of 2018.

- Those are Menon and Soktas cases. The issues were different. Basically, the expenditure on infrastructure was done in these cases after 20.05.2008 which were not within the specified period as per the circular of the MSEDCL.

(g) MSEDCL has stated in its additional say that Hi-Tech and the other consumers are one consumer, hence, clubbing of connections is to be done by MSEDCL

- This issue is not related to the review hence it is irrelevant. The Appellants have noted here that MSEDCL's own letter states that the consumers are different, premises are different and connections. The supply was released on the basis of observing all formalities and the documents submitted. MSEDCL

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can take action if anything is wrong but they cannot link the issue to this review application.

8. The MSEDCL argued in line with its submissions. The said works were done under DDF scheme, hence the Applicants (Rep. Nos. 152,153 and 160) are not liable for refund of the amount mentioned in the estimate. The Applicants were in immediate need of electricity, therefore, the work of infrastructure was carried out by them at their own cost. The first two consumers' load of 50 HP and the third consumer's load 30 HP, altogether 80 HP as per their application was envisaged from 100 kVA distribution transformer to 200 kVA transformer as well as increase and new load was given. As per Regulation 3.3.4 of the Supply Code Regulations, the said consumers have exceeded their load more than 25% of the load capacity, hence they cannot be given the cost of augmentation of distribution system. As per the terms and conditions of supply of electricity mentioned at point No. 3.3.8, the said work was carried out by the Licensed Electrical Contractor. Similarly, the Applicant in Rep. No.154 of 2019 is also not liable for refund of amount mentioned in the estimate. It had also demanded an increase from 63 to 100 kVA capacity of distribution transformer. For that a letter was given to the Applicant for payment of 15% supervision charges followed by an estimate of Rs.2,88,400/- of work to be done thereafter the supply was released. The said estimate was released to the Applicant under the ORC (P) scheme which is also approved as per the terms and condition of point No.3.3.8 hence the Applicant is not liable for any amount to be refunded to it. Out of the three Applicants, namely Hi-Cast was permanently disconnected before 2010 and presently, new HT consumer Hi-Cast is connected there. The said applications of these consumers were of 2007-08 and as per Regulation 6.6 of the CGRF Regulations, one needs to have approached the grievance mechanism within two years from the date of cause of action. Hence, the said grievance is time barred. Similarly, the Bombay High Court, Nagpur Bench in 21.01.2020 in WP No. 1588 /2019 against the order of Electricity Ombudsman (Nagpur) have rejected the applicant's demand for refund of infrastructure cost being time barred.

9. The Appellants filed rejoinder in token of its arguments on 22.06.2020. The Appellants in this rejoinder has submitted that during e-hearing on 18.06.2020, the Appellants have explained all their grounds of review and the details with respect to Hon. Ombudsman Order dt. 08.01.2020.

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However, for the sake of clarity, the Appellants wish to bring few important points to the notice of the Hon. Ombudsman such as

(a) How cause of action taken by the EO (M) is incorrect?

(b) ORC (P) is a new nomenclature found by the Respondent and is nothing but ORC. Infrastructure Cost includes the cost recovered in the name SLC, ORC, ORC(P) & also DDF, DDS if actually Non DDF

(c) MSEDCL circular clarified that the stay period is from 20.01.2005 to 20.05.2008 and asked applications from the consumers along with documents for demand of refund. Hence, the Appellants had applied in IGRC in Sept. 2018 i.e. within 8 months.

(d) The say of the Respondent that the work is DDF is incorrect.

(e) The Respondent being monopoly utility, it is in dominant position and whatever it instructed to submit, the Appellant had to follow. Therefore, the consent is not a free consent.

(f) The Respondent submission that EO (M) has rejected the refund in Rep. No. 189 & 190 of 2018, however, the cases under these representations are different than the present one.

All the issues raised in this rejoinder are already summed up in the original representations and review application both. Therefore, they have not been elaborately recorded here to avoid repetition. However, the Review Applicants have replied to the new issue raked up the Respondent regarding clubbing the connections. The Appellant said that this new issue cannot be a subject matter of this review application.

**Analysis and Ruling**

10. Heard both the parties and perused the documents on record. I condone the delay in filing the review application. The scope of the review is very limited as per Regulation 19 of the CGRF Regulations which is quoted below:-

> *"19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent from the face of the record, may apply*

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*for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.*

*19.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.*

*19.3 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application. Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.*

*19.4 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for."*

11. All the matters raised in the Review Application and its arguments were part of the original representation. The order issued by the undersigned is reasoned and speaking order. The Review Applicants racked up the issue of limitation and argued that limitation is not applicable to it. The issue with respect to limitation has been elaborately covered in the original order, at paragraph 9, of which review has been sought. The Applicants have not raised any issue which they were not aware of at the time of the proceedings in the original representation. Not only this, they have not pointed out any error on the face of the record in the order except saying that the undersigned has wrongly interpreted ATE Judgment dated 11.03.2011 in Appeal No. 197 of 2009. On the contrary, why this ATE Judgment is not applicable in these representations has also been clearly spelt out in the original order.

12. Consumers in Rep. No.152, 153 & 160 of 2019 is categorised in one group as they are in the same premises. Consumers in Rep. No. 152, 153 have applied for enhancement of their existing load whereas consumer in Rep. No. 160 of 2019 was then a new consumer with a demand of 30 HP. However, this consumer namely Hi-Cast Industries, which is presently under review, has its connection permanently disconnected prior to August 2010 as it is switched to HT consumer

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having CD of 620 kVA in the same name. The amount of estimate in respect of this Group jointly put together is informed by the Respondent as Rs.3,19,500/-. This estimate includes infrastructure cost, labour charges, and supervision charges. The date of payment of supervision charges in respect of these three consumers is as follows.

| Rep. No | Particulars | Date of payment of supervision Charges |
|---|---|---|
| 152 of 2019 | Hi-Tech Balancing and Engineering Industries | 18.04.2007 |
| 153 of 2019 | Preci Tech Engineers | 18.04.2007 |
| 160 of 2019 | Hi-Cast Industries | 30.04.2007 |

13. Out of these three consumers, Hi-Cast Industries (160 of 2019) is a new consumer whereas other two were existing and enhancement of load was applied for by them. This incremental rise in the load (32 + 18 HP) by both these consumers satisfies the condition in Regulation 3.3.4 of the Supply Code Regulations as it is more than 25% of the incremental capacity that is created by way of augmentation of the distribution infrastructure. In view of this, Hi-Tech Balancing and Engineering Industries (152 of 2019), and Preci Tech Engineers (153 of 2019) squarely falls in the matrix under Regulation 3.3.4 of the Supply Code Regulations. However, in case of Hi-Cast Industries (160 of 2019) this Regulation cannot be applied. It, therefore, follows that if the infrastructure cost is to be refunded, it can only be refunded to Hi-Cast Industries (160 of 2019) and not the other two.

14. Now, it is to be examined that as to whether Hi-Cast Industries (160 of 2019) fully qualify for award of dispensation that has become available by virtue of Hon. Supreme Court Judgment in C.A. 4305 of 2007. Perusing the order of the Commission dated 08.09.2006 in Case No. 70 of 2005 and its subsequent legal travel right up to Hon. Supreme Court and the Commission's order dated 17.05.2007 in Case No. 82 of 2006, refund of amount collected by the Respondent towards SLC, ORC and meter cost during the period 08.09.2006 to 30.04.2007 becomes evident.

15. In case of Hi-Cast Industries (160 of 2019), payment of supervision charges is made on 30.04.2007. This date can be conveniently and hypothetically assumed to be the payment of infrastructure cost though the infrastructure work is done by the consumer at its own cost. The logic behind this hypothesis is that had the work been done by the Respondent, the consumer would have paid required charges on a certain date. It can also be said that if the Respondent had

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done the work under ORC, the consumer would have paid those charges on the date when he paid the supervision charges. Therefore, this consumer squarely falls within the period of 08.09.2006 to 30.04.2007 as per the Commission's order in Case No 82 of 2006 and is therefore entitled for refund of infrastructure cost. For payment outside this period, option of grievance redressal mechanism was available.

16. Now the question is, what is the share of this consumer in the total kitty of expenditure done jointly by these three consumers on the infrastructure as no individual details are available either from the Respondent or the Review Applicants. Therefore, it would be most logical to divide the total expenditure on infrastructure in the ratio of 80 HP to 30 HP as the total load for enhancement, and new connection is (32+18+30) 80 HP.

17. The amount of the estimate as informed by the Respondent is Rs.3,19,500/-. If the work completion report (WCR) is finalised by the Respondent, then the amount whichever is less, between the estimated and WCR needs to be considered. This minimum of the two needs to be proportionately divided in the ratio of 3/8 (3 divided by 8) and the amount so calculated shall be refunded to Hi-Cast Industries (160 of 2019) without interest. This refund shall be adjusted in the ensuing bill/s of now existing HT consumer provided owner of the previous LT consumer and the existing HT consumer is same. Otherwise, it shall directly be paid to the then LT consumer namely Hi-Cast Industries (160 of 2019). The onus to check this squarely falls on the Respondent.

The issue with respect to these three consumers is therefore disposed of accordingly.

18. Now, the Representation No. 154 of 2019 of Arundhati Colour Cartons is decided as below.

Following the logic as explained above with respect of the Commission's order dated 08.09.2006 in Case No. 70 of 2005 and subsequent legal travel right up to Hon. Supreme Court and the Commission's order dated 17.05.2007 in Case No. 82 of 2006, the date of payment of Arundhati Colour Cartons in Representation No. 154 of 2019 being 31.01.2008 does not fall within the period of 08.09.2006 to 30.04.2007 and therefore it is not entitled for refund of infrastructure cost. This consumer was having an option to have gone to the grievance redressal mechanism available under the law.

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Therefore, this issue is disposed of accordingly.

19. However, with regard to prayer for refund of cost with interest, it is noted that by virtue of its own option to get its work done by payment of supervision charges, it has incurred the expenditure on infrastructure and got the connection immediately which otherwise would have taken a long time. Therefore, he reaped the benefits of getting the connection immediately and therefore, there is no sound justification for grant of interest on amount of refund.

20. In view of the above discussions, there is an error apparent on the face of the record in Representation No. 160 of 2019 of Hi-Cast Industries and the review as explained above is allowed in it only. However, review in Representation Nos.152, 153 and 154 of 2019 is rejected.

21. The Respondent is therefore directed in Representation No. 160 of 2019:

(i) To refund the proportionate amount of infrastructure cost in the ratio of 3/8.

(ii) This refund shall be calculated on minimum of, the cost of the estimate for infrastructure only and the cost finalized under the WCR irrespective of the expenditure incurred by it.

(iii) If any amount is refunded on account of this, the same shall be adjusted.

(iv) This refund shall be without any interest.

22. The Respondent is directed to submit the compliance within a period of 2 months from the date of issue of this order. The Review Application is disposed of accordingly.

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

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai