

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 129, 132, 133 & 134 OF 2022

In the matter of Refund of Infrastructure Cost

Sr. No.	Name of Appellant	Consumer No.	Rep. No.
I	Vinayak Fabrics	250499008640	129/2022
II	Sachin Fabrics	250499008650	132/2022
III	Sagar Ashok Fase	250499008660	133/2022
IV	Prashant Ashok Fase	250499008670	134/2022

.....Appellants

V/s.

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

Appearances:

Appellant : 1. Pratap Hogade, Representative
2. Mukund Mali, Representative

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


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

Date of hearing: 13th March 2023

Date of Order : 12th April 2023

ORDER

These three Representations were filed on 24th August 2022 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 16th June 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 16th June 2022 has rejected these three grievance applications.


3. The subject is common in nature; hence, all these four representations are clubbed together for the purpose of common order.

4. Aggrieved by the order dated 16th June 2022 of the Forum, the Appellants have filed these representations. The physical hearing was held on 13th March 2023. Both 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 10.02.2006 having Sanctioned Load, Contract Demand, activity as below: -

Rep.No.	Appellant	Consumer No.	Sanctioned Load (KW)	Contract Demand (KVA)	Activity	Address
129/2022	Vinayak Fabrics	250499008640	56	47	Powerloom	Gat No. 1249/B, Rui, Tal.Hatka nangale, Dist Kolhapur
132/2022	Sachin Fabrics	250499008650	51	42		
133/2022	Sagar Ashok Fase	250499008660	26	22		
134/2022	Prashant Ashok Fase	250499008670	26	22		


- (ii) It is a multiparty group of four power loom consumers who had applied for Fresh Low Tension Power Supply under “Multiparty Power loom Group Scheme” for Connected Load 56/51/46/50 HP respectively on 08/02/2005. Thereafter, the Appellants in Rep. No. 133 & 134 of 2022 reduced their loads which is tabulated as above. The then SE, MSEDCL, Kolhapur Circle sanctioned the scheme on 20/10/2005 vide letters bearing Nos. KPC/Tech/HT/ AE(T)/3973 to 3976 under “Out Right Contribution (Private)” [ORC(P)] Scheme and directed to complete the work as per estimate issued by Dy. E.E., MSEDCL, Ichalkaranji Rural


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Subdivision with estimate amount of Rs.2,86,900/- for 11 KV HT Line reconductoring, all the concerned infrastructure work and HT and LT metering work.

- (iii) The Appellants paid Service Line Charges (SLC) and Supervision Charges in each case on 11/11/2005. The Appellants completed all the HT Line Infrastructure & Metering work as per estimate. Thereafter the load was released on 10/02/2006.
- (iv) The above-mentioned expenditure of Rs. 2,86,900/- for 11 KV line, concerned work & HT/LT metering was done by the Main Consumer, Vinayak Fabrics. Hence the other three consumers have given their consent for refund to the Main Consumer, Vinayak Fabrics.
- (v) The issue of refund of Infrastructure Cost was pending due to Stay given by the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 (CA) filed by MSEDCL. The Hon'ble Supreme Court dismissed this CA and thereafter, the Appellants can claim for refund of all the expenses incurred for Non DDF Infrastructure Works and/or Metering Works.
- (vi) After the Final Decision of the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 on 10.11.2016 regarding refund of such charges, MSEDCL issued its first Refund Circular on 12.10.2017 and then the Amendment Circular on 29.12.2017. Thereafter, the Appellants applied to the EE, MSEDCL, Ichalkaranji Division for the Refund of the estimate amount Rs.2,86,900/- along with the interest thereon.
- (vii) The Appellants submitted their refund applications on 12/12/2017 and then again on 09/10/2019. SLC refund was received, but ORC-P expenditure incurred by the Appellants on Infrastructure was not received. The Appellants applied to IGRC on 23/10/2019 but IGRC, by its order dated 11.12.2019 rejected their complaints. Thereafter, the Appellants submitted their grievance before the Forum on 18/02/2020. However, the Forum by its order dated 16.06.2022 has also rejected their grievance. Hence on the basis of all concerned Regulations, MERC orders, Supreme Court Order & MSEDCL's own Circulars, the Appellants are submitting these representations for refund of ORC-P


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Infrastructure Cost with interest before the Electricity Ombudsman, Mumbai.


(viii) **Submissions/Grounds in Support of the Representation -**

The Appellants had applied to the SE, MSEDCL, Kolhapur on 12/12/2017 and on 03/09/2019 for refund of Infrastructure Cost incurred & SLC Charges paid to MSEDCL. MSEDCL has refunded SLC Charges Rs.1500/- per HP paid by the Appellants but has not given any response to their demand of refund of expenditure incurred on infrastructure cost on the basis of the Order of the Hon'ble Supreme Court and the concerned MERC Orders and MSEDCL circulars. Also, the IGRC has rejected their complaints on 11/12/2019 and thereafter, the Forum has rejected their grievances on 16/06/2022. This denial of refund is totally wrong, illegal and against the orders of the Hon'ble Supreme Court, the Commission and MSEDCL Circulars itself. The detailed submissions in this regard are given in the following paragraphs.

- 1) **Work Done** - The work done by Appellants as per estimate of MSEDCL is the reconductoring of the existing HT 11 KV line for 1 km length up to their premises, all the concerned infrastructure work and HT/LT Metering work. The copy of the Single line diagram is kept on record.

In case of Meter/Metering Cubical, as per MERC Order regarding "Schedule of Charges" dated 08/09/2006 in Case No. 70/2005 and corresponding MSEDCL Circular No. 43 dated 27/09/2006, meters are to be installed by the licensees. Also, if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars.

- 2) **Feeder Details** - The name of the feeder is 11 KV Chandur II Feeder, which is emanating from 33/11 KV Chandur Substation. Feeder from MSEDCL Substation was existing and Appellants have done only the reconductoring & concerned work of the existing feeder. This can be clearly understood from the enclosed single line diagram also.


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- 3) **Other Consumers** - There are many other HT & LT consumers getting power supply from the same 11 KV Chandur II Feeder, which can be clearly seen and understood from the Single Line Diagram.
- 4) **MERC Order dated 16/02/2008** - Only the reconductoring & concerned 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 MERC, on the demand of MSEDCL itself, in its order in Case No. 56 of 2007 dated 16/02/2008.
- 5) **Work Non DDF** - It is clear from the definition of DDF in the regulations & clarifications given by MERC in detail in the above-mentioned order, their feeder and the work done by them is clearly Non DDF.
- 6) **MERC Order 17/05/2007** – The Commission in its Order dated 17/05/2007 in Case No. 82 of 2006 has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts along with the interest thereon, that have been collected towards ORC, ORC-P or such other head-based charges which are not allowed in Electricity Supply Code Regulations 2005 and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dated 08/09/2006.

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** - Again the Commission has issued 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 17/05/2007.


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 on "DDF" on request of MSEDCL itself. 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 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 Sector 43 of E. Act 2003 read with SoP regulations."


- 9) **Provisions of S.62 (6) of the Electricity Act, 2003** - It is very much clear from the directions of the Commission above that *"the directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally"*. Also, it is clear from the directions that *"consumers should not be burdened with infrastructure costs which are the liability of MSEDCL"*.

Also S.62 (6) of the E Act 2003 reads as below,

S.62(6) - "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."

The directions of the Commission clearly state that *"the collection towards infrastructure cost is totally illegal and consumers should not be burdened with infrastructure costs."* Also, Section 62(6) clearly states that excess recovered amount must be refunded to the concerned person along with the interest thereon. Hence Appellants are clearly eligible to get the refund of infrastructure cost along with the interest thereon.

- 10) **MSEDCL Circular dated 20/05/2008** - After this order dated 16/02/2008, MSEDCL has issued circular on 20/05/2008 as Guidelines for release of new connections on the basis of above-mentioned Commission orders. The circular itself clarifies that all the



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Non DDF connections are refundable. MSEDCL has issued circular only for LT connections. Actually, MERC order is applicable for both LT & HT connections. It is clearly mentioned in the 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 from the concerned consumers.

MSEDCL Circular dated 21/12/2009 - MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21/12/2009 regarding refund of the infrastructure cost. This circular is applicable to all HT/LT eligible consumers. It is pertinent to note here that it is clearly stated in the circular 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.

- 11) **MSEDCL Civil Appeal in Supreme Court** - In the meanwhile MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007) in which the Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31/08/2007. Hence all the Refunds were stopped.
- 12) **Supreme Court Order dated 10/11/2016** - Finally the Civil Appeal filed by MSEDCL before the Hon'ble Supreme Court came for final hearing in the year 2016. Hon'ble Supreme Court heard the matter, issued final order on 10/11/2016 and dismissed the Civil Appeal in toto.
- 13) **MSEDCL Circular dated 12/10/2017** - After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement concerned MERC orders in letter & spirit. MSEDCL issued circular for refund of SLC, ORC & meter cost after 11 months vide its circular No. CE/Dist/D-IV/MERC No. 25079 on 12/10/2017.


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14) **MSEDCL Refund Period Amendment Circular dated 29/12/2017**

- In its first refund circular dated 12/10/2017 MSEDCL has stated the refund period from 20/01/2005 to 30/04/2007. Then after MSEDCL has issued Amendment Circular as per Board resolution on 29/12/2017. The refund period is revised from 20/01/2005 up to 20/05/2008. Their estimate & work done period is from 20/10/2005 up to 10/02/2006. Hence these amounts are eligible for refund as per MSEDCL's own refund circulars. In the circular dated 12/10/2017, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by MERC in its order dated 16/02/2008 on demand of MSEDCL itself. But if the connection is actually Non DDF and it is named as ORC-P by MSEDCL for its own convenience or in order to avoid any refund, then in such ORC-P cases, the Infrastructure Cost imposed on consumers is nothing but ORC & refundable as per MERC orders and MSEDCL's own circular dated 20/05/2008. ORC & ORC-P are one and the same. The only difference is that in ORC cases, MSEDCL recovers the expenses from the consumers & creates the infrastructure. In ORC-P cases consumer creates the infrastructure as per MSEDCL estimates & directions and hand overs the infrastructure to MSEDCL after completion of the work.

At many places, Consumers had asked for refund of Infrastructure Expenses. But MSEDCL always took stand before various forums & courts that "the issue of refund of Infrastructure Cost is pending before Hon'ble Supreme Court."

15) **Supply Code Regulations** - After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDS/DDF/ORC/ORC (P) in order to avoid the repayment of



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the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL use 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 or ORC-P and imposing cost on consumers is totally illegal & against the orders of the Commission. Such imposed condition & imposed cost is nothing but ORC. Actually, such act & such conditions of MSEDCL are against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

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

- 16) **Interest** - As per provisions of Section 62 (6) of the Electricity Act, 2003, it is binding on the licensee to refund the excess recovered amount to the concerned person/consumer along with interest equivalent to the bank rate.
- 17) Actually, their expenditure on the concerned work is more than the estimate of MSEDCL but logically and reasonably, the Appellants claimed the estimate amount only. Hence, on the basis of all above mentioned grounds, Appellants are eligible to get the refund of estimate amount of Rs. 2,86,900/- along with the interest thereon at bank rate from dated 10/02/2006 up to the actual date of repayment.
- 18) **Compensation** - Our 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 have filed our application on 12/12/2017 for refund. It is necessary & binding on MSEDCL to resolve it in subsequent billing


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cycle means maximum up to the end of January 2018. Hence the Appellants are eligible for SoP Compensation of Rs. 100 per Week or part thereof from 1st February 2018, if becomes applicable.


19) **Consumers Consent, Agreement, No Protest & Multiparty Circulars**

MSEDCL always takes a stand that the concerned consumer/s have given consent, have signed agreement and have not protested & hence they are not eligible for refund.

These stands/submissions are totally wrong, illegal and hence null & void. This provision is clearly given in the Supply Code Regulations Reg. No. 19.1. It is a clear provision that all the terms & conditions of the licensee, which are inconsistent with the regulations, shall be deemed to be invalid. Hence MSEDCL's stand is not legal. Multiparty Scheme &/or circulars are not approved by the Commission. Hence the inconsistent conditions in these circulars are ultra vires.

Also, MSEDCL is the only licensee all over Maharashtra except Mumbai. MSEDCL has monopoly. Consumers have no other option. Consumers cannot insist for any relief. On the contrary, MSEDCL insists illegal conditions on the consumers, imposes the infrastructure cost on the consumers against regulations & orders and without having any authority. Consumers have no other option but to give consent or sign or accept such illegal conditions.

Any such consent or agreement which is not in consonance with the law or statutory regulations or orders of the Commission has no binding effect in law. MSEDCL cannot impose the conditions which would defeat the regulations or orders. This verdict is given by the Hon'ble Supreme Court & by the various Hon'ble High Courts in many cases. Also, this case is with respect to similar issue of DDF &


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Non DDF. Also, the conditions in MSEDCL Multiparty Circulars Nos. 6 & 151, which are inconsistent with or against the Regulations & orders, are invalid and illegal.

MSEDCL's stand/submissions are against the order of the MERC dated 08/09/2006 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/submissions are against its own Commercial Circular No. 43 dated 27/09/2006 in compliance of above-mentioned order & also duly vetted by the Commission.

- 20) **SLC, ORC or ORC-P & DDF/DDS all are Infrastructure Charges under Different Names** - All these 3 types of charges are the charges towards Infrastructure Cost. ORC or ORC-P was allowed up to 20/01/2005 i.e., up to the date of Supply Code Regulations. At that time ORC was the scheme in existence. ORC-P was 1 type of the ORC scheme. ORC-P was not a separate scheme. Hence all MERC orders regarding ORC are equally applicable for ORC-P also. DDF is allowed from 20/01/2005, but in the cases only where the connection is actually DDF as per Supply Code Regulations & as per the Commission's Clarificatory Order dated 16/02/2008. In their case the connection is totally Non DDF and ORC-P as per MSEDCL's own estimate which is actually barred by MERC from 20/01/2005. Also, as per MERC regulations & orders, in the case of all ORC, ORC-P or Non DDF connections, Infrastructure Costs cannot be recovered from the consumers.

MSEDCL had used the word "ORC-P" in case of their "Non DDF" connection, intentionally in order to impose infrastructure cost on the Appellants and now again illegally denying the refund of "Non DDF" connection. MSEDCL has violated & violating the following


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provision of the Act, the Regulations & the MERC orders shortly listed as below,

- Section 43 of the E Act 2003 - Universal Supply Obligation Cast on MSEDCL - Duty to supply on request.
- Regulation 3.3.3 of Supply Code Regulations - Infrastructure cost can be recovered only in DDF cases.
- MERC Order dated 08/09/2006 in Case No. 70 of 2005 Schedule of Charges - No recovery of infrastructure cost and Meter cost. It is to be claimed in ARR. Only Service Connection Charges & Processing Fees are allowed.
- MERC Order dated 17/05/2007 in Case No. 82 of 2006 - All overcharged amounts must be refunded Order Para 4 Para 9 is reproduced in our submissions in Para 6 above. Overcharged amounts includes ORC & such other head-based charges also.
- MERC order dated 21/08/2007 in Case No. 82 of 2006 - Para 7 & para 9 of the order is reproduced in our submissions in Para 7 above.
- MERC order dated 16/02/2008 in Case No. 56 of 2007 - Para 9 & 12 - DDF cannot be imposed. Paras reproduced in our Submissions in Para 8 above.
- MSEDCL's Own Circular No. 43 dated 27/09/2006 - Para 6.2 - No infrastructure cost recovery from the consumers is clearly mentioned.
- MSEDCL's Own Circular No. 22197 dated 20/05/2008 - Sr. No. 1 - All the infrastructure that will be created by MSEDCL is clearly mentioned. Only SCC is allowed to be recovered.

21) **Limitation** – IGRC and the Forum has observed & noted that the complaints are beyond the period of limitation of 2 years. This observation is totally wrong & illegal.

This issue was before Hon'ble Supreme Court in Civil Appeal No. 4305/2007 filed by MSEDCL itself. Hon'ble Supreme Court has


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issued final order on 10/11/2016 and on that date the stay on refund is vacated. Then after MSEDCL HO itself has issued circulars for refund on 12/10/2017, and then after on 07/11/2017 & on 29/12/2017. The expenditure on infrastructure is well within the period 20/10/2005 to 10/02/2006 as mentioned in the circular. Hence, Appellants are eligible for refund as per MSEDCL's own circular. The cause of action has arisen on 12/10/2017 or on 29/12/2017 after the declaration of the stay and refund period by MSEDCL. Appellants had applied immediately for a refund to S.E. Kolhapur on 12/12/2017, again on 03/09/2019 & then after submitted application to IGR Cell on 23/10/2019 for refund. Refund demand is well within the limitation period of 2 years as per reg. 6.6. Also considering our earlier applications dated 12/12/2017 & 03/09/2019, it is a recurring cause of action till today. Hence there is no issue of any limitation. Hence the order of the IGR Cell and CGR Forum is totally wrong, illegal and it needs to be quashed and set aside.

Also, it should be noted that MSEDCL has itself represented before various Courts that the judgment towards refund of ORC is pending before Hon'ble Supreme Court, Delhi.

Also, it should be noted that any excess or illegal recovery is against the provisions of S.62 (6) and the licensee has no right to retain it with itself on any grounds. It must be refunded to the concerned person with interest. The licensee can recover these expenses through ARR as allowed by MERC in its various orders.

- 22) **Prayer for Condonation of Delay** - Appellants have filed our refund application in IGR Cell on 23/10/2019. If the cause of action date is considered as 29/12/2017, then there is no delay. If the cause of action date is considered as 12/10/2017, then there is a delay of 12 days only. Appellants hereby apologize for these 12 days delay and


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pray the Hon'ble Ombudsman to please condone this delay and oblige.

23) **Common Legal Say in Infrastructure Cost Refund Cases**

Common & legal important considerations necessary to be observed with respect to refund of Infrastructure Cost are as below.


- a) **Infrastructure Cost Recovery not allowed** - As per Supply Code regulations and as per Order in case of "Schedule of Charges" dated 08/09/2006 in Case No.70/2005 by MERC. This recovery is allowed only in DDF Cases on the basis of Supply Code Regulation No. 3.3.3 and as defined in the order dated 08/09/2006 and as clarified in the MERC Order dated 16/02/2008. Hence SLC/ORC/ORC-P/Actual Non DDF all recovered or imposed charges are refundable.
- b) **DDF** - Concept as per Regulation No. 3.3.3 of Supply Code Defined in Schedule of Charges Order dated 08/09/2006. Clarified in MERC Order dated 16/02/2008. Declared by MSEDCL Circular dated 20/05/2008. In the MSEDCL Comm. Circular No. 43 dated 27/09/2006 it is clearly stated that Infrastructure Cost cannot be recovered from the consumers except DDF. Hence in all Non DDF cases Infrastructure Cost is refundable.
- c) **Cost Recovered/Imposed** - In some cases the cost of infrastructure is recovered by MSEDCL, and the work is done by MSEDCL. In some cases, means in ORC-P and in so called DDF named cases, cost is imposed on the consumers. Here it is necessary to note that the principle is established by MERC and confirmed further by the Appellate Tribunal for Electricity (ATE) and further by Hon'ble Supreme Court that Infrastructure Cost cannot be recovered from Consumers. In many cases


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MSEDCL submits that cost is not recovered from consumers, hence they are not eligible for refund. But it is clear from the orders of MERC, ATE & SC that such recovery is not allowed. Hence to impose the cost on the consumers has no sanctity in the eyes of the law. Hence any action taken by MSEDCL imposing the cost is ab-initio void. All such estimates, directions or agreements or undertaking by the MSEDCL are illegal & ab-initio void and such illegal actions must be rejected. It clearly means that such imposed costs must be refunded to the concerned consumers.

- d) **Undertakings/Agreements/Affidavits of Consumers** - It is clear in Supply Code Regulation No. 19.1 that any terms & conditions of licensee and circulars, documents etc. which are inconsistent the regulations shall be deemed to be invalid. Hence all such papers are invalid and needs to be rejected or should not be considered. This principle is clearly mentioned in the High Court Mumbai Order dated 18/01/2017 and High Court Patna Order dated 12/08/2008. Also, it should be noted that fake bills & bogus demands by licensees are considered as Criminal offences by Allahabad High Court in its order dated 03/03/2022.
- e) **Limitation** - Hon'ble ATE has clearly stated in its order dated 11/03/2011 that limitation is not applicable in the tariff related process. It should be noted that the case was regarding a refund of SLC means the infrastructure cost. Hence the refund in such cases is not hit by limitation.
- f) **Specified period for refund** - MSEDCL in its own circular dated 29/12/2017 has declared on the basis of board resolution that the earlier refund period is revised and should be considered as from 20/01/2005 (date of Supply Code Regulations) up to 20/05/2008


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(Date of MSEDCL Circular) after due consideration of all concerned regulations, concerned MERC orders & directions and Hon. SC order. Hence this period cannot be curtailed by any other considerations.

g) **Cause of Action** - It is clear that all the refunds were stayed by Hon. S.C. order dated 31/08/2007. It is clearly mentioned by MERC in its order dated 16/02/2008 and also clearly mentioned by MSEDCL in its Circular dated 20/05/2008. **Hence for the earlier period refund (i.e., 20/01/2005 to 20/05/2008) cases, the cause of action arises on the dated 29/12/2017 i.e., the date of MSEDCL circular for refund specifying the concerned period. Hence in all such earlier period cases the cause of action raised should be considered as 29/12/2017 and not before that.**

h) **Other Important Issues & Concerned Documents -**


- **INFERENCE' legal meaning** - Inference of the concerned MERC Order is as below,

"Should not be recovered" itself means that if recovered it will be illegal. Such illegal recovery cannot be retained and must be refunded to the concerned persons with interest.

- **MERC Order dated 29/11/2010 in Case No. 24 of 2007**
Para 8 clearly states that the refund eligibility period starts from 20/01/2005 and not from 08/09/2006. It is also repeated in MERC directions to MSEDCL dated 20/07/2017.

- **H. C. Order dated 08/06/2021 in WP 7900/2017 -**

It is a copy of the Order of the Division Bench, Nagpur for the interpretation of the Regulation 6.6, Cause of Action & Limitation. It is a latest order dated 08/06/2021 of the Divisional Bench of the High Court & still not opposed by anybody. Hence it has attained finality. Summary of Interpretation is given in Para 17 of the order. **It clearly states that Consumers can approach IGRC within 2 years from the date of Cause of Action and further to**


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CGRF within 2 years from the date of order of the IGR Cell.


i) **Important And Latest High Court Order -**

Copy of the Allahabad High Court Order dated 03/03/2022 is kept on record. It is with respect to fake bills and bogus demands by discoms. Hon'ble Court has clearly stated that the Bogus demands of the discoms is a Criminal Act and punishable under Criminal Procedure Code. Also, Hon'ble High Court has stated that such acts of the discoms are violative of the fundamental rights of the consumers. Violation of fundamental rights means Violation of the Constitutional rights as per Article 14 & Article 21 of the Constitution. In such cases such violations cannot be and should not be allowed on any technical and/or procedural grounds. The same principle is applicable.

(ix) **Nature of Relief Sought from the Electricity Ombudsman -**

The Appellants pray that.

- i. Appellants' connections should be declared as Non DDF connections on the basis of Supreme Court Order, Supply Code Regulations, Concerned MERC Orders and Concerned MSEDCL's own circulars.
- ii. The expenditure amount as per MSEDCL's ORC(P) estimate of Rs. 2,86,900/- should be refunded to Appellants along with the interest thereon at bank rate from 10/02/2006 till the date of repayment, or alternatively the total amount should be credited in further bills of the Main Consumer M/s. Vinayak Fabrics.
- iii. SOP Compensation for delay in Complaint Resolution should be awarded at the rate of Rs. 100/- per week from 1st February 2018.


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iv. Any other orders may be passed by the Hon'ble Electricity Ombudsman, in the interest of justice, as it may think fit & proper.

5. The Appellant vide its email dated 17.03.2023 also submitted a rejoinder. The important issues are highlighted are as below:

➤ **Hon'ble Supreme Court Order in Madras Port Trust Vs Hymanshu International dated 3rd January 1979. –**

It is clearly stated that


"The plea of limitation based on this Section is one which the court always looks upon with dis favour and it is unfortunate that a public authority like the Port Trust should in all morality and justice take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens."

Also, it should be noted that these directions are of the Year 1979. Then after 44 years are passed. If government authorities like MSEDCL still takes same plea, then it should not be relied upon. We request Hon; able Ombudsman to adopt the view of the Apex authority.

➤ **Hon'ble Supreme Court Order dated 7th April 2017 in C. A. NO. 3883 OF 2007 National Insurance Co. Ltd. V/s Hindustan Safety Glass Works Ltd with C. A. No. 1156 Of 2008 National Insurance Co. Ltd. V/s Kanoria Chemicals & Industries Ltd.**

It is clearly stated in Para 18 that.

"In our opinion, in a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer's claim."


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- It should be noted that this is the case under the Consumer Protection Act. In this context, provisions in Electricity Act are as below,

Section 173. (Inconsistency in laws): Nothing contained in this Act, or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.

- Section 174. (Act to have overriding effect): Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.
- It is necessary to note that the provisions of the Consumer Protection Act have overriding effect considering Section 173 and Section 174 of the Electricity Act 2003. Hence it feels that these directions of Hon'ble Supreme Court are binding on all judicial and quasi-judicial authorities.

6. The Respondent, by its letter dated 15.11.2022 filed its reply and the hearing was held on 13.03.2023 at length. Its written submission and arguments in brief are as below:

- (i) The Appellants are LT-V A-II Industrial –Power loom Consumers of the Respondent from 10.02.2006 having Sanctioned Load, Contract Demand which is 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 18.02.2020 with the Forum, while the cause of action occurred on 11.11.2005 when the Appellants paid the supervision charges to the Respondent. On the same ground


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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.

“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 conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously”.

- (iv) The Appellant has referred the Bombay High Court, Nagpur Bench Order dated 08.06.2021 in W.P. No 7900/2017 wherein consumers can approach IGRC within 2 years from date of cause of action and further to the Forum within 2 years from date of order to IGRC . However this order is stayed by Hon'ble Supreme Court IA No. 13387/2021. Hence the above order has no relevance in this case.
- (v) 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 have rejected the refund of infrastructure cost.
- (vi) Further 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 para no.17 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, (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.”


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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.**” (Emphasis added)*


- (vii) From various citations, it is seen that the Appellants have approached this Authority beyond the time framework as prescribed in the regulations, and this cause of limitation was also held valid by various above said orders, and also by the Kolhapur Forum. Hence this case is not maintainable on limitation grounds, hence liable for dismissal.

Detailed Submission:

- (viii) It is pertinent to note that the consumer’s date of payment is **11.11.2005**- prior to the Schedule of Charges in Case No. 70 dated 08.09.2006. This matter was discussed by Hon’ble Ombudsman in Case No. 17 of 2021 MSEDCL Vs M/s. Ramayya Textiles (Pro. Sunil Ramayya Swami) in the matter of refund of infrastructure cost, and Hon’ble Ombudsman 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


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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 the Forum under CGRF Regulation 2006. However, it approached the Forum on 12.12.2019. It is very 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


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Judgment of the Hon'ble Supreme Court and the respective orders of the Commission in this context.

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

The Electricity Ombudsman (Mumbai) has rejected the said representations on the above ground, which are also applicable to the current representations.

The details of the case are as below :

(ix) The Multiparty Group consists of :

- 1) M/s Vinayak Fabrics, Pro.V A Munoli (con no 250499008640, 56 HP)
- 2) M/s Sachin Fabrics (Con no 250499008650), 51 HP load)
- 3) M/s Sagar Ashok Fase. (Con no 250499008660, 26 HP load)
- 4) M/s Prashant Ashok Fase. (Co no 25049008670, 26 HP load)

The consumers have applied for Fresh load for four LT consumers under one roof with a total load of 159 HP at 11KV level. Further these applications and sanction orders are under the multi-Party Group Agreement and governed by Commercial Circular No. 6 dated 01.09.2005.


The entire load of the above 4 connections in a single premises is 107 HP, hence in the normal course, the above said consumer is eligible for HT connection only. It is only because of this special provision of multiparty agreement that the consumers are enjoying the benefits of LT connections.

The work involved in this case is,

- 1) 11 KV reconductoring of 1 Km HT Line
- 2) 11 KV 3.5 Sq.MM XLPE cable
- 3) 4 LT meters

The work was dedicated to these consumers, and MSEDCL cannot use this infrastructure since it is in the consumers premises and covered under the Multiparty Agreement.

(x) It is pertinent to note that as per MERC SoP Regulations 2014 clause 5.3(ii) *“LT connections 230V/440V is to be given for load up to 150KW/187 KVA i.e up to 201 HP”*,


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- (xi) The consumer is benefiting much more in terms of lower (LT) tariff than the actual cost of infrastructure, by being LT consumers. If the consumer now wants to back off from this multi-party agreement by expecting refund of infrastructure costs, he should also be ready to give up the benefit of LT connection and lower tariff, and should be willing to pay the tariff difference between LT and HT for all these years.

The details of the premises: -


- (xii) 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”

The MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations 2014 and further notification dated 18.09.2017 state that the limit of multiple connections’ load in a single building / premises is up to 600 KVA; however, in MERC Supply Code Regulations 2005, it is clear that

“each separate establishment shall be given a separate point of supply”

- (xiii) The word “separate establishment” is very important to understand that 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.
- (xiv) In the above case all the 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,


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and 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.

- (xv) MSEDCL has filed W.P. No 3386/2013 challenging the order dated 27.09.2012 passed by CGRF Kolhapur in Case No 35 to 135 of 2012-13 whereby MSEDCL was directed to refund the cost of meter to multiparty consumers. In the said writ petition Hon'ble High Court passed the interim order on 18.07.2013 and granted stay to the order of CGRF Kolhapur. The facts and law points involved in the said writ petition and the present case are identical & similar. Therefore, the present case is liable to be dismissed or liable for stay till the decision of the Hon'ble High Court.

In short, the consumers first enjoyed the benefits under the multiparty scheme and afterwards they have demanded refund of infrastructure cost against the principle of equity.

- (xvi) An amount which is not accounted for in the books of MSEDCL cannot be incurred in ARR. The benefits of LT connection are already availed by this group of consumers, and the same also must be withdrawn as per SOP regulation. The cost of infrastructure cannot be burdened to some other class of consumers.
- (xvii) The consumers are governed by then prevailing commercial circular no 6 dt. 01.09.2005. The connection is sanctioned vide no SE/KPC/HT /AE (T) vide no 3973to 3976 dt 20.10.2005. The consumer accepted the sanction and had paid the charges for connection on 11.11.2005 abiding with the terms and conditions of sanction. The consumer had paid the amount without any protest or grievance and done the work under DDF scheme, which is also in line with MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005.
- (xviii) The Appellants had paid only 1.3% supervision charges, and no other ORC /SLC or any amount was recovered. However, Hon'ble Supreme Court has directed in Civil Appeal No. 4305/2007 to refund the collected amount of SLC, ORC, and Meter charges to the consumers collected from 08.09.2006 to


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30.04.2007. As the amount under ORC, SLC or consumer meter cost were not recovered, the question of refund does not arise in this particular case.

- (xix) MERC (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 under clause 3.3.8 read as

“3.3.8 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 shall 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 labor that would have been employed by the Distribution Licensee in carrying out such works.”

Clause 3.3.3 read as


“3.3.3 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

“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”

Further, the review petition in this regard in Case No. 201 of 2020 is also dismissed by the Commission.

- (xx) 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 in


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Mahalaxmi Textiles and other, has analysed the benefits to both Appellant and the Respondent. In fact, the benefits of consumers are rather more than MSEDCL.

(xxi) In view of the aforesaid facts, it is requested to dismiss the present application.

Analysis and Ruling

7. Heard the parties and perused the documents on record. The details of load sanctioned, estimate amount, supervision charges paid, work done, etc., of the four Appellants under “LT Multi Party Power Loom Group” are tabulated below:


Rep.No.	Appellant	Consumer No.	Address	Sanctioned Load (KW)	Contract Demand (KVA)	Estimate Amount (Rs.)	Details of work done	Supervision charges paid(Amount & date)	Date of connection	Activity
129/2022	Vinayak Fabrics	250499008640	Gat No. 1249/B, Rui, Tal. Hatka nangale, Dist. Kolhapur	56	47	2,86,900/-	Reconducting of 11 KV HT line(one KM), other concerned infrastructure work, HT & LT metering	11.11.2005	10.02.2006	Powerloom
132/2022	Sachin Fabrics	250499008650		51	42					
133/2022	Sagar Ashok Fase	250499008660		26	22					
134/2022	Prashant Ashok Fase	250499008670		26	22					

8. Various concerned orders of the Commission, Judgment of the Tribunal, and Court with respect to the Schedule of Charges are summarised as 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)].”


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- (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 as 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:

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: -


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“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 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.


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(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:

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*


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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.

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


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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 issues to consider the maintainability as well as merit of these Representations.


Issue A: 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 B: Whether the Appellants are eligible for refund of infrastructure cost in view of work carried out under “LT Multi-Party Power Looms Group” Scheme?

Issue A:

11. All these four Appellants had applied for Power Supply at LT side under “LT Multi Party Power Looms Group” to their Industrial Units for connected load of 56/51/46/50 HP respectively vide their applications on 08.02.2005. The Respondent approved the applications and issued an estimate under LT Multi Party Power Loom Group Scheme on 20.10.2005 with an estimate amount of Rs. 2,86,900/- for 1 km reconductoring of 11 KV HT Line, HT Cubicle including LT Metering work. The Appellants paid 1.3% Supervision Charges in each case to MSEDCL on 11.11.2005 and completed all the infrastructure work. Thereafter, the supply was released on 10/02/2006. **The cause of action arose on 11.11.2005 when the Appellant paid the supervision charges.** In view of above discussion considering the various orders of the Commission, the Judgments of ATE and then the Hon’ble Supreme Court and subsequent developments, the 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.

12. 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.


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If the Respondent 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.

13. 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 as 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)

The Regulation 6.6 of CGRF Regulation, 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.”

14. We have already held that the cause of action of the current grievance arose on 11.11.2005 when the supervision charges were paid. The Appellants have filed their grievance applications with the Forum on 18.02.2020 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 December 2005 to November 2006 to file their grievances. However, the Appellants approached the Forum only on 18.02.2020.


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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.

15. The Appellants cited the order dated 08.06.2021 of the Hon'ble Bombay High Court, Nagpur Bench in Civil Writ Petition No. 7900 of 2017 regarding limitation. However, this order was stayed by the Hon'ble Supreme Court vide order dated 08.09.2022 in SLP No. 13387/2021 in its operation and future effect.

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


Considering the above statutes, the case is time barred as per Regulation 6.2/6.3 and/or 6.6 of CGRF & EO Regulations 2003/ 2006 respectively. Issue A is answered as NEGATIVE.

Issue B:

16. The Appellants have opted for "Multi- Party Group connections" wherein the Appellants have to incur the expenditure on infrastructure on their own, as they are the beneficiaries of the scheme under which, as a special case, all connections of power looms are given in one "premises" without any separation. The Respondent issued a Commercial Circular No.6 of 2005 dated 01.09. 2005 in the subject matter of "*Power supply to individual entrepreneurs coming under one premise to establish Power- Looms*". The Respondent further issued a Commercial Circular No. 151 dated 25.11.2011 for re-delegation of power to field offices for sanctioning of load which were assigned in Head Office as per circular No.6 of 2005.

The preamble of Circular No. 151 is reproduced below:

"In view of upward trend for cloth in market, various power loom consumers under one premises/shed are coming up in our State at different locations. The individual entrepreneurs coming under one premises/shed to establish power loom generally needs power supply at Low Tension. As such, all the individual entrepreneurs have to take High tension power supply, which most of the times becomes difficult due to space constraint. It would also not be possible to insist on all individual entrepreneurs to


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install their own transformers, metering KIOSKS etc which would occupy considerable space in such common premises/sheds.”

The Respondent issued following guidelines for multi-party consumers as per Commercial Circular No. 06 of 2005 dated 01.09. 2005:

- “1. It is proposed to limit this facility only in respect of power loom consumer where there is a severe space constraint. This is applicable in respect of industrial complex building/shed.*
- 2. An individual entrepreneur having load requirement up to 107 HP/201 HP form a group of max. 10/5 entrepreneurs situated in the same industrial complex building shed having total load of a Group shall be less than 500 KVA.*
- 3. All these entrepreneurs can install a common transformer of appropriate capacity equivalent or more than the aggregate load requirement of all the entrepreneurs in the respective group.*
- 4. All the individual entrepreneurs in the respective groups having load requirement up to 107HP/201 HP shall be Low Tension consumers of the Board. They will have to opt for M.D. base tariff.*


Additional guidelines are given under Commercial Circular No. 06 of 2005 dated 01.09. 2005 which are reworded in Commercial Circular No. 151 of 2011. The same are reproduced below:

- 1. The main consumer shall install & maintain the transformer of requisite capacity.*
- 2. All the expenditure as may be required for release of Multi-Partite Connection will be borne by the consumer/consumers.*
- 3. All these consumers billed on LOT. side must opt for LT-MD tariff and LT-TOD meters to be installed for all these consumers in case of LT connections.*
- 4. The multi — Partite consumers shall be billed energy charges as per the energy actually consumed & recorded by the respective energy meters and shall be billed Demand Charges as per Billing Demand of the individual consumer, to be determined in accordance with the prescribed guidelines, tri partite agreement. Main consumer shall be billed on HT side metering.*


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5. As compared to the above, the Main consumer shall be billed energy charges on the basis of energy actually & collectively consumed by all the consumers & recorded in the meter installed on High Tension side less energy billed to the multi — Partite consumers.
6. Similarly, the Demand registered / consumed by the Main Consumer shall be equivalent to the Demand registered in the meter on High Tension side less aggregate of the 75% of the Demand recorded by the individual multi • — Partite consumer and based on derived Demand, the Billing Demand of the Main Consumer shall be determined. However, in case the derived Demand of the Main Consumer happens to be more than the Contract Demand, the Main Consumer shall be liable for penalty for exceeding Contract Demand.
7. All other NOCs, permissions, if any, will have to be obtained by the consumer before release of supply.
8. It will be mandatory for the main consumer of the group to ensure that the transformer is installed in a closed room and is accessible only to MSEDCL'S authorized personnel. Further a cable will have to be laid through duct in the adjoining closed room for distributing the said connections. The cable and meter room will also be under the control of the company and only company's authorized personnel will have access to the same. All the meters will be placed in the distribution room. Further the secondary side of transformer will also be sealed, and necessary arrangement will have to be made for the sealing by the consumer.
9. The MSEDCL shall not be responsible for any loss that may be caused to any of the individual consumer from a particular group due to failure of the said transformer or the company shall not be liable for any alternate arrangement of maintaining the power supply in such circumstances.
10. All the individual consumer from the respective groups shall have to execute tripartite/multipartite agreement with the company and in case there happens to be agencies sponsoring such group of consumers then such agency shall also be a party to tripartite/multipartite agreement,
11. All the consumers availing power supply by such arrangement shall be billed as per the provisions of the tariff prevailing from time to time and shall also be liable for all such incentives/disincentives as may be applicable.


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12. *In addition to the above-mentioned multipartite agreement, all the consumers will also have to execute a separate agreement with the MSEDC Ltd.*

13. *Whenever a group of entrepreneurs is given power supply from a common transformer, these entrepreneurs shall also pay to the company the cost of installation of Metering on High Tension side of the said transformer.*


14. *In case the sum of the units consumed by the group of consumers are less than the units rerecorded in H.T. meter, then the difference will be distributed proportionately among the group of consumers as an assessed units. However, no benefit will be extended to consumers in case the meter on HT side records less reading than the reading of combined group of consumers.*

15. *In case of default in payment of energy bill by any one of the consumers from the said group and/or breach of the provisions of the tariff/conditions of supply, the disconnection of power supply to be effected at the main point of supply, which will automatically results in disconnection of power supply of all the consumer at the same time."*

17. Under the above multi-party agreement, it is seen that the Appellants as well as the Respondent were benefitted. In other words, this scheme got a good response precisely because it was a win-win situation for both parties.

The Appellants were benefitted in the following ways:

- a) Got supply for power looms under the lower LT tariff category as a special case with more Government subsidy than HT tariff category.
- b) Space constraint issue was solved for individual consumers, by providing supply to multiple consumers in one premises.
- c) Common infrastructure including distribution transformer, metering kiosk etc were developed by these multiple consumers in one premises resulting into reduction of cost.
- d) Less power interruption as the transformer and LT lines were dedicated to only these consumers.
- e) LT meters are installed in control panels in limited / compact space instead of separate CT meter box.


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The Respondent was benefitted as below:


- a) Common infrastructure was provided by these multiple consumers thereby there was no burden on the Respondent to provide infrastructure, and hence, no budgetary provision was required to be made in its Annual Revenue Requirement.
- b) Common energy audit meter was installed in addition to the individual meters so that if there was any considerable difference in the energy consumption, the loss in consumption units was proportionately imposed on them. Hence the energy consumed was automatically audited.
- c) 100% recovery against energy consumption was ensured, as supply of all would be disconnected even if one consumer defaulted.

18. This scheme was initiated by the Respondent for multiparty power loom consumers in a common premises, through an agreement under certain terms and conditions as highlighted in para 8 of this order. This was an internal arrangement by the Respondent for the welfare of the power loom industry in the State of Maharashtra to avoid its migration to other states. Even though the power looms set up in common premises were eligible to get a common HT connection with higher tariff, the govt, as a special case, applied concessional LT tariff with accompanying subsidy.

19. 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 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


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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.”
(Emphasis added)*

Considering the above facts, the Appellants are not eligible for refund of infrastructure cost in view of work carried out under “LT Multiparty Power Looms Group” Scheme. The Representations do not stand on merit. “Hence Issue B” is answered as NEGATIVE.

20. The Appellants referred to various orders of the Commission, and the Judgment dated 10.11.2016 in Civil Appeal of 4305 of 2007 of Hon’ble Supreme Court based on the order dated 08.09.2006 in the matter of Schedule of Charges in Case No. 70 of 2005 of the Commission. However, the Appellant voluntarily opted to take benefits of multiparty group connections. Hence all these orders / judgements do not support the Appellants’ claim. In addition, the Appellants also cited various judgments and orders which are not applicable in these instant cases.

21. The Appellants pointed out that the Multiparty Power Loom scheme is not approved by the Commission, though it is in existence from the year 2005. The Respondent is advised to approach the Commission for appraisal of the Multiparty Scheme.

22. Considering the above facts, the Appellants’ Representations are time barred and also do not stand on merit. The Forum, by its Common Order dated 16th June 2022 has rightly analysed the grievance. Hence, order of the Forum is upheld. The Representations are rejected and disposed of accordingly.

Sd/-

(Vandana Krishna)

Electricity Ombudsman (Mumbai)

(Dilip Dumbre)
Secretary

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