

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 20, 21 & 22 of 2023

In the matter of Refund of Infrastructure Cost

Sr.No.	Name of Appellant	Consumer No.	Rep.No.
I	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage I	251349007900	20 of 2023
II	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage II	251349007910	21 of 2023
III	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage III	251349007920	22 of 2023

..... Appellants

V/s.

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

Appearances:

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

Respondent: 1. Anil Patankar, Dy. Executive, Dy. Ex. Engineer  
2. N.P. Nalavade, Jr. Law Officer


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

Date of hearing: 2<sup>nd</sup> May 2023

Date of Order: 26<sup>th</sup> June 2023

## ORDER

These three Representations were filed on 24<sup>th</sup> February 2023 individually as per Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations

  
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2020) against the Common Order dated 15<sup>th</sup> December 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum).


2. The Forum, by its Common Order dated 15.12.2022 has rejected these three grievance applications.

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

- (i) The Appellants are HT-V A, HT - Agricultural Consumers of the Respondent from 08.02.2008 (all 3 connections) having Sanctioned Load, Contract Demand, activity, etc., as below:

Rep. No.	Appellant	Consumer No.	Sanctioned Load (HP)	Contract Demand (KVA)	Activity	Address
I	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage I	251349007900	540	462	Agricultural	Gat No. 581, Ekondi, Tal. Kagal
II	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage II	251349007910	570	529		Gat No. 58, Daryache Vadgaon
III	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage III	251349007920	600	517		Gat No. 27, Vadda Wadi, Girgaon

- (ii) The Appellant (Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Maryadit) is a registered society under the Co-op. Societies Act, having 391 members & a total area of 401 Acres for Lift Irrigation Scheme of 3 stages namely Stage I, II & III. The Appellant is HT-Agricultural Consumer of MSEDCL having 3 connections. The Appellant applied to MSEDCL, Kolhapur Circle for Fresh Power Supply for a Lift Irrigation Scheme in 3 stages for Connected Load of 540/570/600 HP on 06.11.2006. The then SE, MSEDCL, Kolhapur Circle issued the Sanction Letters on 07.09.2007 along with the condition that work should be carried by the


  
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Appellant, and directed to complete the work as per estimate of Rs. 45,96,000/- for 33 KV HT Line and the concerned infrastructure work and HT metering work. MSEDCL had not used the words "DDF" or "ORC" or "ORC-P", but imposed the condition that the infrastructure work should be done by the Appellant.

**The Appellant paid 1.3% Supervision Charges of Rs. 21,750/- in each case on 12.09.2007** and completed all the Infrastructure & Metering work as per the estimate. The connections were released on 08.02.2008.

- (iii) The issue of refund of Infrastructure Cost was pending due to Stay given by the Hon'ble Supreme Court in the Civil Appeal (CA) No. 4305/2007 filed by MSEDCL. The Hon'ble Supreme Court dismissed the CA in 2016 and then the Appellants could claim the refund of all expenses incurred for Non DDF Infrastructure Works and/or Metering Works.
- (iv) After the Final Decision of the Hon'ble Supreme Court in CA No. 4305/2007 dated 10.11.2016 regarding refund of such charges, MSEDCL issued its first Refund Circular on 12.10.2017, and an Amendment Circular on 29.12.2017. The Appellants submitted complaints and applications for refund with interest before the Internal Grievance Redressal Cell (IGRC) on 14.05.2020. However, the IGRC by its order dated 20.07.2020 rejected it.
- (v) Thereafter, the Appellants approached the Forum on 21.09.2020, which also rejected their grievance on 15.12.2022. Hence the Appellants have submitted this common representation before the Electricity Ombudsman, Mumbai. This denial of refund is illegal and against the orders of the Maharashtra Electricity Regulatory Commission (the Commission), the Hon'ble Supreme Court and MSEDCL circulars.
- (vi) The detailed submissions are as follows.
  - 1) **Work Done** - The work done as per the estimate of MSEDCL is the tapping & extension of the existing HT 33 KV line up to their 3 stage points. The scope of the work was laying of 33 KV HT Line of 9.68 Kms and all the


  
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concerned infrastructure work and HT Metering work. The copy of the Single line diagram is on record.

In case of Meter/Metering work, as per the Commission's Order dated 08.09.2006 in Case No. 70/2005 regarding "Schedule of Charges" and the 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 No. 21560 dt.09.05.2007 and No. 34307 dt. 03.09.2007.

- 2) **Feeder Details** - The name of the feeder is 33 KV Sidhnerli Feeder, which emanates from 110/33 KV, Gokul Shirgaon Substation. Feeder from MSEDCL Substation was pre-existing and the Appellants have only extended the existing feeder.
- 3) **Other Consumers** - There are many other HT & LT consumers getting power supply from the same 33 KV Sidhnerli Feeder.
- 4) **Order dated 16.02.2008 in Case No. 56 of 2007** - Only the tapping & further extension work was done by the Appellant and many other consumers are getting supply from the same feeder. **"Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)"** is the clarification given by the Commission, on the demand of MSEDCL itself.
- 5) **Work is Non DDF** - It is clear from the definition of DDF in the regulations & clarifications given by the Commission that their feeder and the work done by them is clearly Non DDF. Also, sanction/estimate of this work is clearly ORC-P which is a part or type of ORC. Hence the Appellant is fully eligible for the refund of the said amount i.e. Rs.45,96,000/- as per MSEDCL's own office estimate.

  
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- 6) **Order dated 17.05.2007 in Case No. 82 of 2006** – The Commission has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts along with the interest thereon.

A few Extracts of this Order are as below.

*Para 4 end - "MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the order dated September 8, 2006."*

*Para 5 end - "The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests."*


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

- 7) **MERC Order dated 21.08.2007 in Case No. 82 of 2006 :-** The Commission has issued another 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 of the Order dated 17.05.2007.

A few important extracts of this order are as below,

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

*Para 9 - "The directions of the Commissions to MSEDCL were to refund amounts that never belonged to them as they were collected illegally. It is well settled that interest shall also be leviable on such amounts."*

  
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*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** - Case No. 56 of 2007 was filed by the same petitioner before the Commission for the compliance of the directions issued in order dated 17.05.2007 in Case No. 82 of 2006. In this case issues of ORC, DDF and Non DDF were fully discussed by the Commission. In this order, the Commission has clarified the concept and issued detailed clarification of "DDF" on the request of MSEDCL itself.


A few important extracts of this order are as below,

*"Para 9 - "The Commission observed that consumers should not be burdened with infrastructure costs which are the liability of MSEDCL. .... MSEDCL may seek the recovery of the same as an annual revenue requirement."*

*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) Section 62 (6) of the Electricity Act, 2003 (the Act) reads as below,

  
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*"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."*

Hence the Appellant is 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 in Case No. 56 of 2007, MSEDCL issued circular on 20.05.2008 as Guidelines for release of new connections on the basis of the above-mentioned orders of the Commission. The circular itself clarifies that all Non DDF connections are refundable. MSEDCL issued this circular only for LT connections. Actually, the Commission's order is applicable for both LT & HT connections.

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

- 11) MSEDCL Refund Period Amendment Circular dated 29.12.2017 - In its 1st refund circular dated 12.10.2017 MSEDCL stated the refund period as 20.01.2005 to 30.04.2007. Then it issued an Amendment Circular as per Board resolution on 29.12.2017. The refund period was revised from 20.01.2005 up to 20.05.2008. The Appellants' estimate & work done period is from 21.10.2005 up to 16.12.2005. Hence these amounts are eligible for refund as per MSEDCL's own refund circulars.

  
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12) In the circular dated 12.10.2017, MSEDCL denied refund in DDF cases. This is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by the Commission in its order dated 16.02.2008. But if the connection is actually Non DDF and it is merely named as ORC-P by MSEDCL for its own convenience or in order to avoid any refund, then in such cases, the Infrastructure Cost imposed on consumers is nothing but ORC & is refundable. Hence such Consumers are eligible to get the refund along with interest.

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

13) Supply Code Regulations - After the Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually using the phrase DDF and imposing cost on consumers is totally illegal & against the orders of the Commission. Such an imposed condition & imposed cost is nothing but ORC, which is against the Supply Code Regulations 2005. Regulation No. 19.1 reads as below,

*"Any terms & conditions of the Distribution Licensee, whether contained in the terms and conditions of supply and/or in any circular, order, notification or any other document or communication, which are inconsistent with these Regulations, shall be deemed to be invalid from the date on which these Regulations come into force."*

  
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- 14) Actually, the expenditure of the Appellants on the concerned work is more than the estimate of MSEDCL. But logically and reasonably, the Appellants are claiming the estimate amount only. Hence, on the basis of all above mentioned grounds, the Appellants are eligible to get the refund of estimate amount Rs.45,96,000/- along with the interest thereon at bank rate from 16.12.2005 up to the actual date of repayment.
- 15) Compensation – The Appellants' complaint is a complaint other than bills. Hence as per SOP regulations 2014, Regulation No. 7.6, "*In other cases the complaint shall be resolved during subsequent billing cycle.*" The Appellants filed their complaints in May 2020 when the complaint was filed with IGRC. Thus, it is necessary & binding on MSEDCL to resolve it in the subsequent billing cycle, i.e. maximum up to the end of **June 2020**. Hence, the Appellants are eligible for SOP Compensation of Rs.100/- per week or part thereof from **01.07.2020**.

16) Consumers Consent, Agreement, No Protest etc. -

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

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

Any such consent or agreement which is not in consonance with the law or statutory regulations or orders of MERC has no binding effect in law.

  
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MSEDCL cannot impose conditions which would defeat the regulations or orders. This verdict is given by the Hon'ble Supreme Court & by the various High Courts in many cases. One such order dated 18.01.2017 of the Hon'ble High Court, Mumbai in W.P. No. 2798 of 2015 is on record.

MSEDCL's stand/submissions are against the order dated 08.09.2006 of the Commission in Case No. 70 of 2005 known as "Schedule of Charges". Infrastructure cost recovery is clearly prohibited and disallowed in this order.

- 17) SLC, ORC, ORC-P & DDF/DDS all are Infrastructure Charges under Different Names - All these are charges towards Infrastructure Cost. ORC was allowed up to 20.01.2005 i.e. up to the date of Supply Code Regulations. SLC was allowed up to 08.09.2006 i.e. up to the date of Schedule of Charges. DDF is allowed from 20.01.2005, but only where the connection is actually DDF. In these cases, the connection is ORC-P and totally Non DDF. Hence the Appellants are fully eligible for refund.
- 18) LIMITATION - IGRC and the Forum have held that the complaints of the Appellants are beyond the period of limitation of 2 years. This observation is totally wrong & illegal.

This issue was before the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 filed by MSEDCL itself. Hon'ble Supreme Court issued final order on 10.11.2016, and on that date the stay on refund was vacated. Then MSEDCL HO itself issued circulars for refund on 12.10.2017, 07.11.2017 and 29.12.2017. In the final MSEDCL circular dated 29.12.2017, MSEDCL itself has stated that the refund period is 20.01.2005 to 20.05.2008. The Appellant's expenditure is within the period 12.09.2007 to 08.02.2008, hence are fully eligible for the refund. The circular was issued by MSEDCL on 29.12.2017 and thereafter the Appellant applied to IGRC on 14.05.2020. The grievances were delayed for 5 months due to unavoidable reasons and hence the Appellant requested for condonation for

  
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delay. The Forum had allowed the delay but rejected the grievance on other grounds.


- 19) The Appellant opted for power supply on 33 KV level as there was heavy load shedding on normal 11 KV feeders. The Commission has given 16 hours working range to Lift Irrigation Schemes which was available only on 33 KV level. The Commission in its Multi Year Tariff order dated 18.05.2017 for the year 2007 to 2010 has observed that

*Agricultural Tariffs:*

*“As the severe load shedding of 12 to 15 hours for agriculture category will continue to prevail for some more time, the Commission has decided to retain the L T agriculture tariffs at the existing level. However, the tariff for lift irrigation Schemes have been increased slightly, to recover part of the increase in cost of supply, and considering that such schemes would at least get continuous supply of 16 hours at a stretch, as indicated by MSEDCL.”*

- 20) The Appellant’s prayers for condonation of delay:-

Considering MSEDCL circular dated 29.12.2017, it was necessary to apply within 2 years i.e. up to 29.12.2019. But in fact, the Appellants were unaware of these details till September 2019, as they are situated in a rural area of the district. Also, 2 natural disasters happened in this period. The first disaster was a heavy flood from 5<sup>th</sup> August 2019 in Kolhapur, Sangli area, due to which the Appellant society & all its members suffered heavily for 7/8 months i.e. up to March 2020. Then followed the Covid Pandemic due to which lockdown started from 22.03.2020 all over the State and it continued. Hence, the Appellants were unable to do any work in this period. Hence had apologized for the delay of 5 months from their end due to force majeure conditions, &

  
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prayed before the Forum to condone the delay. The Forum had discussed the delay but rejected the grievance on other limitation grounds.


The Forum, Kolhapur issued its order on 15.12.2022. It was necessary to file this representation before 15.02.2023. But the MSEDCL MTR petition was published on 26.01.2023, and the Representative was engaged for filing the necessary suggestions & objections for 21 days i.e. up to 15.02.2023. Hence, the Appellant is filing this representation late by 8 to 10 days, and request the Electricity Ombudsman to condone this delay.

(21) The Appellant's main prayers are as below:

- (1) These connections should be declared as Non DDF.
- (2) The infrastructure expenditure amount of Rs.45,96,000/- should be refunded to the Appellant along with the interest thereon at bank rate from 08.02.2008 till the date of actual repayment, or alternatively the total amount should be credited equally in the further bills of the concerned 3 connections.
- (3) SOP Compensation for delay in Complaint Resolution for an amount Rs. 100 per week from 01.07.2020 should be awarded.

4. The Respondent filed their replies in each Representations separately which are clubbed as below:


- (i) The Appellant is HT-V A, HT - Agricultural Consumers as captured in para 3(i).
- (ii) The Appellant has not filed the present appeal within 60 days as provided in the CGRF & EO Regulations 2020. The Forum passed its order on 15.12.2022 and the Appellant has filed these appeals on 24.02.2023. On this ground alone the present appeal is liable to be dismissed.
- (iii) **The Appellant approached the Forum on 21.09.2020 and the Forum, by its order dated 15.12.2022 rightly dismissed the case on the point of limitation.**

  
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**The Appellant ought to have filed the grievance within two years from the date of cause of action. The cause of action arose on 12.09.2007 i.e. the payment of the supervision charges. The grievance is filed after about 13 years; therefore, the present appeals are also liable to be dismissed.**

- (iv) The case laws submitted by the Appellant are not applicable to the facts of present case. The Appellant is trying to make unfruitful efforts to bring its case within limitation.
- (v) The Appellant is billed under agriculture tariff category for its lift irrigation scheme with Consumer No.251349007900, 251349007910 and 251349007920 respectively. The Appellant had applied on 06.11.2006 for three new connections on 33 KV Level (instead of 11 KV Level) and exercised the option to carry out the work through a licensed electrical contractor and paying only supervision charges to MSEDCL. The Appellant had never raised a dispute about the infrastructure work cost. This shows that the Appellant had willingly carried out the said infrastructure work without any protest, and the said connections were released on 08.02.2008.
- (vi) The Commission's orders in Case No. 82 of 2006 & 56 of 2007 were on the issue of refund of ORC, SLC etc. recovered during the period from 08.09.2006 to 30.04.2007. The matter before the Hon'ble Supreme Court in Civil Appeal No. 4305 of 2007, and the stay order is in respect of recovery of SLC charges during the above period only. In the present matter the Appellant is asking for cost of infrastructure which was not covered by the Hon'ble Supreme Court order. Therefore, the citing of pendency before Supreme Court for enhancement of limitation, and also ratio laid down in Supreme Court case cannot be squarely made applicable in the present matter. Both matters are distinguishable. The major points of differences between the two matters are
  - (a) The matter before Hon'ble Supreme Court was dealing with a specific period only. Stay order granted by Hon'ble Supreme Court was only for a specific period for refund of ORC, SLC etc.
  - (b) Refund of DDF infrastructure cost was not the subject matter before the Hon'ble Supreme Court.

  
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(vii) As per MERC Supply Code, 2005

### **3.3 Recovery of expenses for giving supply**

*3.3.1 The Distribution Licensee shall recover the expenses referred to in Regulation 3.2(a) above, in accordance with the principles contained in this Regulation 3.3 and based on the rates contained in the schedule of charges approved by the Commission under Regulation 18: Provided that the Distribution Licensee may, with the approval of the Commission, in case of any category of consumers, recover such expenses on the basis of an average or normative rate for providing the electric line or electrical plant for the purpose of giving supply.*

*3.3.2 Where the provision of supply to an applicant entails works of laying of service line from the distributing main to the applicant's premises, 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:*


*Provided that the Distribution Licensee shall be entitled to use such service-line to supply electricity to any other person, notwithstanding that all expenses reasonably incurred have been recovered in accordance with this Regulation 3.3.2, except if such supply is detrimental to the supply to the consumer already connected therewith.*

*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.*

*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 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:*

*Provided further that any dispute with regard to the need for and extent of augmentation of the distribution system under this Regulation 3.3.4 shall be*

  
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*determined in accordance with the procedure set out in the Consumer Grievance Redressal Regulations.*


**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 labour that would have been employed by the Distribution Licensee in carrying out such works.***

(viii) Appellant opted for supply on 33 KV level instead of 11 KV level:-

**Based on the load applied for, the Appellant was eligible for connection on 11 KV voltage as per SOP Regulation 2005. In the regular course, a consumer getting supply on 11 KV level for agricultural purpose would get supply for only 8 Hours. However to facilitate uninterrupted supply for the lift irrigation scheme and for getting supply continuously for 16 hours, the Appellant voluntarily opted for supply on 33 KV Level. So, it was essential to enhance the present infrastructure of 33 KV system for giving supply to them at 33 KV Level. This involves much higher infrastructure cost than at 11 KV level. MSEDCL was easily able to supply on the readily available 11 KV infrastructure, but this was not accepted by the Appellant, and they opted to erect the infrastructure required for 33 KV level supply on their own.**

(ix) The connections were released in the year 2007, therefore all papers are not available in the office records and some files/documents are damaged due to termite. MSEDCL produced a letter of the Appellant dated 25.01.2008 which clearly shows that the Appellant had demanded supply on 33 KV level to avoid load shedding and interruption. **The Appellant desired to have their 3 stages of lift irrigation scheme located at different remote places i.e Ekondi, Daryache Vadgaon & Vaddawadi on a single feeder, inspite of the availability of supply on nearby 11 KV network.** Therefore, the Appellant opted for supply on 33 KV feeder. Since the Appellant voluntarily opted to erect

  
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this infrastructure at their own cost, MSEDCL is not liable to refund the infrastructure cost.


- (x) The Commission in Case No.05/2020 & Review Case No.201/2020 filed by M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others V/s MSEDCL, Ltd for refund of infrastructure cost considered the same and vide its order dated 05.09.2020 & 27.03.2021 dismissed the case of the Petitioner.

**Limitation :**

- (xi) The Appellant was given sanction letter bearing No. 8010 dated 07.09.2007. The Appellant did not raise a single objection at the time of sanction or release of the said connection. The cause of action arose in 2008. Now after expiry of more than 13 years after the cause of action, the Appellant cannot claim refund as it is barred by Regulation 6.6 of Consumer Grievance Redressal Forum & Electricity Ombudsman Regulations, 2006, which clearly states that the complaint has to be filed within 2 years from the date on which the cause of action has arisen. Hence, the claim of the Appellant is time barred and beyond limitation.
- (xii) In support of the above-mentioned contentions on the point of limitation, MSEDCL relies on the Judgment dated 21.08.2018 passed in Writ Petitions No. 6859, 6860, 6861 & 6862 of 2018 (MSEDCL vs Jawahar Shetkari Sahkari Sut Girani Ltd) by High Court Bombay, Aurangabad Bench. The highlight of the said order is reproduced below:-

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

*43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render*

  
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*Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.”*

- (xiii) There is no relevance or connection between issue before the Supreme Court in Civil Appeal No. 4305/2007, and the issue of declaring the consumer under DDF/ Non DDF. Both issues are altogether different. The consumer was free to raise this issue earlier even before the Hon’ble Supreme Court’s decision in the above-mentioned Civil Appeal. The consumer ought to have taken recourse of the Grievance Forum.
- (xiv) A “Consumer Grievance” contemplated under the regulation is basically a complaint about a fault or inadequacy in the quality of performance of the licensee. The grievance raised by the Appellant does not fall within the definition of a grievance as defined in the regulation. Hon’ble Bombay High Court Nagpur bench in W.P. No. 2031/2011 (MSEDCL V/s. M/s. Kaygaon Paper Mills Ltd.) while dealing with this issue ‘as to refund of amount’ can be called grievance or not, has held that such a dispute between the parties is of civil nature, and would not be covered by the term “grievance”.
- (xv) Therefore, these representations be dismissed with cost.

### **Analysis and Ruling**

5. Heard the parties and perused the documents on record. This Representation was filed on 24.02.2023 against the Forum’s order dated 15.12.2022. As per Regulation 19.1 of the CGRF & EO Regulations, the Representation was supposed to be filed on or before 14.02.2023, considering the prescribed 60 days’ period. This Representation was filed with a delay of about 10 days which is condoned.

6. The details of load sanctioned, estimate amount, supervision charges paid, work done, etc., of the Appellant is tabulated below:

  
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Rep. No.	Appellant	Consumer No.	Sanctioned Load (HP)	Contract Demand (KVA)	Activity	Estimate Amount (Rs.)	Supervision Charges paid on	Work Done	Date of Connection
20/2023	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage I	251349007900	540	462	Lift Irrigation Scheme	45,96,500/-	Rs. 21750/- paid on 12.09.2007	33 KV HT Line 9.68 KM, all concerned infrastructure work & HT metering work	08.02.2008
21/2023	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage II	251349007910	570	529			Rs. 21750/- paid on 12.09.2007		
22/2023	Shri Chhatrapati Shahu Sahakari Pani Purvatha Sanstha Mydt. Stage III	251349007920	600	517			Rs. 21750/- paid on 12.09.2007		

7. Some of the quoted orders of the Commission, Judgment of the Tribunal, and Court with respect to the Schedule of Charges are summarised below:

- (i) The Commission's order dated 08.09.2006 in Case No. 70 of 2005 regarding Schedule of Charges: - The relevant portion of the order is reproduced below:


*"The Commission totally rejects MSEDCL proposal to recover Service Line Charges from the prospective consumers except in cases of consumers requiring dedicated distribution facilities. As per the provision of the Act, developing infrastructure is the responsibility of the licensee. The Commission therefore directs that the cost towards infrastructure from delivery point of transmission system to distribution mains should be borne by MSEDCL. The recurring expenses related to the capital investment on infrastructure shall be considered during ARR determination [for detail ruling refer Section – III (6)]."*

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

*"18. In view of the above, it is clear that the "Service Line Charges" as proposed by the Appellant is 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) 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".*

  
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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.”*


- (iv) 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. The relevant portion of the order (56 of 2007) is reproduced below: -

*“12. Having heard the parties and after considering the material placed on record, the Commission is of the view as under:*

*(1) Since, MSEDCL do not have a clear conception of Dedicated Distribution Facility and the levy of ORC in the EA 2003 regime, it is necessary to provide guidance on the same and issue necessary directions as under:*

*(i) At many places prospective consumers with an intention to get better quality of supply seek Dedicated Distribution Facility, though distribution network is available in nearby vicinity and it is possible to give supply by extending the existing network. Such consumers seeking Dedicated Distribution Facility will have to pay the cost incurred in providing the Dedicated Distribution Facility. As per Regulation 2(g) of the Supply Code:*

*“(g) “Dedicated distribution facilities” means such facilities, not including a Service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises;” It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as a facility solely or clearly dedicated for giving supply. Thus, in the 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*

  
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*(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.*

- (v) 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)*

- (vi) 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: -

  
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*“16. MSEDCL appears to have complied with the direction to ascertain if additional charges beyond the approved Schedule of Charges were recovered during the relevant period from consumers, or publicly appeal to affected consumers and refund the charges. Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response. However, MSEDCL should submit to the Commission, before the Technical Validation Page 32 of 40 129,132,133&134 of 2022 Vinayak/fabrics Session (TVS) in respect of its pending MYT Petition, the number of consumers identified, and additional charges refunded or pending for refund so far. 17. The Commission has noted MSEDCL’s submission regarding compliance of directions to review its Circulars and practices in the context of DDF, service connections, etc.*

*18. MSEDCL’s Reply in the present proceedings is silent on submission of a Schedule of Charges for DDF. While there may be complexities in such an exercise, the Commission directs MSEDCL to make its submission to the Commission on this matter before the TVS to be held on its pending MYT Petition, since the Schedule of Charges would also be addressed in those proceedings.*

*19. The Commission is of the view that, while there has been no breach of the provisions of law or the Commission’s Orders as contended in some matters, with regard to the remaining no useful purpose would be served by invoking Sections 142 and 146 of the EA, 2003 in view of the foregoing.”*

- (vii) 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.

8. On close scrutiny of the legal travel of the case, it is noted that the issue of SLC was taken up at ATE and then in Supreme Court by MSEDCL. The Commission has also accepted the reality that there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities). The Commission in its order dated 17.05.2007 in Case No. 82 of 2006 has stipulated the period of refund for amount collected towards **ORC, Cost of Meter and CRA from 08.09.2006 to 30.04.2007**. However, this refund could not take place because of specific order of the Commission dated 16.02.2008 in Case No. 56 of 2007 due to Civil Appeal No. 4305 of 2007 pending in Supreme Court and stay thereon.

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

Issue A: Whether the grievance submitted before the Forum is maintainable as per the Regulations 6.2 / 6.3 of the CGRF & EO Regulations 2003 / Regulations 6.6 of the CGRF & EO Regulations 2006?

Issue B: As per Standards of Performance Regulations, was the Appellant eligible for 33 KV power supply?

**Issue A:** Initially, the Appellant had applied for Power Supply at 33 KV under a common group of consumers for their lift irrigation scheme for Contract Demand of 462, 529, and 517 KVA vide their applications on 06.11.2006. The Respondent approved the applications and issued an estimate with an estimate of Rs. 45,96,500/-for the 33 KV HT Line, all the concerned infrastructure work and HT metering work. The Appellant paid 1.3% Supervision Charges in each case to MSEDCL on 12.09.2007 and completed all the infrastructure work. Thereafter, the supply was released on 08.02.2008. **The cause of action arose on 12.09.2007 when the Appellant paid the supervision charges thereby committing to undertake the infrastructure works at his cost.** All these consumers were sanctioned fresh power supply at 33 KV Level. Considering various orders of the Commission, the Judgments of ATE and 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.

10. 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 2003/2006. If the Respondent failed to take cognizance of a consumer's complaints / grievances, the consumer had the opportunity to approach the Grievance Redressal Mechanism framed under the Act, and the Regulations made thereunder.

  
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11. At that time, the Appellant 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, the Appellant could have submitted their Grievances to the Forum within twenty-four (24) months from the date of the original intimation to the Distribution Licensee as per Consumer Grievance Redressal Forum and Ombudsman Regulations, 2006. However, they did not do so.


CGRF & EO Regulations 2006 came into force from 20<sup>th</sup> April 2006. The Regulation 6.6 of CGRF & EO Regulations 2006 states that,

*“The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”*

12. We have already held that the cause of action of the current grievance arose on 12.09.2007 when the supervision charges were paid. The Appellants have filed their grievance applications with the Forum on 21.09.2020 while the cause of action arose in 2007. The Appellant ought to have approached the grievance redressal mechanism as per the CGRF & EO Regulations 2006 which was in force at that time. The grievance redressal mechanism could have entertained the grievance if filed within two years from the cause of action. However, the Appellant approached the Forum only on 21.09.2020. Again, after the Commission’s order dated 08.12.2014, in Case No. 105 of 2014, the consumers had another opportunity to file their grievance. They did not do so.

13. The power supply to the Appellant was released on 08.02.2008. The Appellant contended that the issue of refund of Infrastructure Cost was pending due to Stay given by the Hon’ble Supreme Court in the Civil Appeal No. 4305/2007 filed by MSEDCL, which was dismissed on 10.11.2016, and it was only then that consumers could claim refund of expenses done for Non DDF Infrastructure Works and/or Metering Works. The Refund Circular was issued by the Respondent on 12.10.2017 and the amendment circular on 29.12.2017. **Thus, contends the Appellant, the cause of action arose on 29.12.2017 after the issue of the above refund circulars of the Respondent.**

Even if the above contention is assumed but not admitted, the Appellant still had to approach the Forum on or before 29.12.2019 as per CGRF & EO Regulations 2006, but the

  
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Appellant actually approached the Forum only on 21.09.2020 which is also clearly time barred beyond two years as per Regulation 6.6. This cannot be condoned as no power is vested in this authority to do so, as per the CGRF & EO Regulations. In fact, the Appellant has wrongly contended that he had to approach the IGRC within two years, but actually he had to approach the Forum withing two years from the cause of action.

14. The Hon'ble Supreme Court in its judgment dated 13.03.2019 in Civil Appeal No. 2960 of 2019 has laid down that there is no necessity to go into merits, and a plaint can be rejected, if it is clearly barred by limitation. Considering the above statutes, the case is time barred as per Regulation 6.6 of CGRF & EO Regulations 2006. Issue A is answered as NEGATIVE.

15. **Issue B:** It is pertinent that the sanction of the load was made on higher voltage of 33 KV as per request of the Appellant instead of 11 KV level as prescribed in MERC SOP regulations in force. The Regulation 5.3 of SOP Regulations 2005 is reproduced below:

*“5.3 Except where otherwise previously approved by the Authority, the classification of installations shall be as follows:*

*(i) A.C. system*


*(a) Two wire, single phase, 240 volts General supply not exceeding 40 amperes*

*(b) Four wire, three phase, 240 volts between phase wires and neutral general supply exceeding 40 amperes and sanctioned load not exceeding 80 kW/ 100 kVA (107 HP) in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187 kVA (201 HP).*

*(c) Three phase, 50 cycles, 11 kV/ 22 kV – all installations with contract demand above 80 kW/ 100 kVA (107 HP) in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187 kVA (201 HP) and up to 1,500 kVA.*

*(d) Three phase, 50 cycles, 22 kV – all installations with contract demand above 1,500 kVA and up to 3,000 kVA*

*(e) Three phase, 50 cycles, 33 kV – all installations with contract demand above 1,500 kVA and up to 5,000 kVA.”*

  
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As per Standard of Performance, the Appellant was eligible for 11 KV voltage level. When power supply is released at a higher voltage level than what is envisaged under the SOP Regulations 2005, the expenses were to be borne by the consumers.

The Commission in its Supply Code and Standard of Performance Regulations 2020 has clarified this aspect. The Relevant regulations are quoted below:

“3.2. Except where otherwise previously approved by the Authority, the classification of installations shall be as follows: -


- a. *Two wires, single phase, 230 / 240 volts- General supply not exceeding 40 amperes.*
- b. *Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and Sanctioned Load/Contract Demand not exceeding 160 kW/ 200 kVA:*

*Provided that in case of multiple Consumers in the same building / premises with cumulative Sanctioned Load/Contract Demand exceeding 160 kW/ 200 kVA, such limit would be 480 kW / 600 kVA.*

- c. ***Three phase, 50 cycles, 11 kV – all installations with Contract Demand above the limit specified in the clause (b) and up to 3000 kVA:*** *Provided that in Metropolitan Area or in case of supply to an installation through an express feeder in other area, the Contract Demand limit would be 5000 kVA.*
- d. *Three phase, 50 cycles, 22 kV – all installations with contract demand above the limit specified in the clause (b) or clause (c) and up to 7500 kVA:*

*Provided that in Metropolitan Area or in case of supply to an installation through an express feeder in other area, the Contract Demand limit would be 10,000 kVA.*

- e. ***Three phase, 50 cycles, 33 kV – all installations with Contract Demand above the limit specified in the clause (b) or clause (c) or (d) above and up to 10,000 kVA:*** *Provided that in Metropolitan Area or in case of supply to an installation through an express feeder in other area, the Contract Demand limit would be 20,000 kVA.*
- f. *Three phase, 50 cycles, Extra High Voltage – all installations with Contract Demand above the limit specified in the clause (d) or clause (e).*

  
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*Provided that in case the Consumer who is eligible for single phase connection wants to avail supply at three phase, or any Consumer who seeks supply at the voltage level higher than its eligible voltage, **such Consumer can avail such supply, if it is technically feasible and by incurring required expense:***

*Provided further, the licensee may release electricity supply at the voltage higher or lower than specified above only under exceptional circumstances based on the technical feasibility and considering the system constraints:”*

*..... (Emphasis added)*

In this case, the contract demand of the Appellants was 462, 529 and 517 KVA respectively, and hence was eligible for 11 kV power supply.


It is clear that the Appellants have to bear the expenditure for supply on voltage level which is higher than what was prescribed as per standards of performance. Issue B is answered as NEGATIVE.

16. The Respondent cited the WP No. 1588 of 2019 in Case of MSEDCL V/s Mahamaya Agro Industries and others. The reasoning and ratio of the said case is squarely applicable to the present 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. The relevant extract of the order of the Hon’ble Bombay High Court at Nagpur bench is reproduced below:

*“28 I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter storeroom and then turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate.*

*29.....*

*30. In view of the above, the first Petition No.1588/2019 filed by the company is allowed in terms of prayer clause (1). The impugned order dated 17.10.2018 shall*

  
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*stand quashed and set aside to the extent of the challenge and the conclusions arrived at by the forum by its order dated 25.06.2018 are sustained.”*

17. Considering the above facts, the Appellant’s Representations are time barred, as well as do not stand on merit. The Forum, by its Common Order dated 02.12.2022 has rightly analysed the grievance. Hence, the order of the Forum is upheld.

18. The Representations are rejected and disposed of accordingly.

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

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

