

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 29 OF 2021

In the matter of Refund of Infrastructure Cost of Non-DDF Scheme

Amit Auto Components Pvt. Ltd Appellant

V/s.

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

Appearances:

Appellant : 1. Suraj Bhorkade
2. Mahesh C. Dhage, Representative

Respondent : 1. S. R. Garud, Executive Engineer
2. Rahul A. Dere, Dy. Ex.Engineer, Chakan S/Dn.


Coram: Mr. Deepak Lad

Date of Hearing: 11th June 2021

Date of Order : 15th July 2021

ORDER

The Representation is received on 9th April 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 1st March 2021 passed by the Consumer Grievance Redressal Forum, MSEDCL, Pune Zone (the Forum).



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2. The Forum, by its Order dated 01.03.2021 has dismissed the Grievance Application in Case No. 24/2020 on limitation issue.

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -


- (i) The Appellant is an industrial consumer (No.176860003440) having Sanctioned Load (SL) of 150 HP and Contract Demand (CD) of 140 KVA at Plot No. PAP-B-150, Chakan Industrial Area, Phase-II, Bhamboli, Taluka Khed, Dist. Pune.
- (ii) The Appellant has initially applied for new electric connection for industrial load of 150 HP on 26.04.2016 along with all relevant statutory documents in order to start the manufacturing activity of auto components.
- (iii) The Respondent, Additional Executive Engineer, Chakan (AEE) had submitted the technical feasibility report along with the estimate to the Executive Engineer, Rajgurunagar (EE) for necessary sanction. The EE, vide its letter No.2563 dated 19.05.2016, has sanctioned the estimate of Rs.7,16,840/- under Non-DDF (CC & RF) Scheme wherein the infrastructure work is to be executed by the Appellant as per MSEDCL's standard method of construction. The expenditure carried out for infrastructure work is to be refunded through ensuing energy bills.
- (iv) Here it is apprised that infrastructure development is the responsibility of the Respondent and not the Appellant. However, due to urgency of electric connection and availability of Non-DDF (CC & RF) Scheme, the Appellant preferred to opt the said scheme.
- (v) The major material involved in the infrastructure work as per sanctioned estimate are 22/0.433 KV, 200 KVA Distribution Transformer, 22 KV HT cable and aligned materials.
- (vi) The Appellant paid following charges vide receipt No 4307357 dated 29/07/2016, as per Firm Quotation (dated 28.07.2016).


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Particulars	Amount (Rs.)
1.3% supervision charges	7860
15 % Service Tax	1630
Transformer testing charges	3000
Processing Fee	100
Total	12590


- (vii) The Appellant completed the infrastructure work as per the estimate, directions, and supervision of the Respondent. The handing over of the electrical installation was done on 23.08.2016. The Declaration of Guarantee on Stamp Paper of Rs.100/- was done on 01.09.2016.
- (viii) The Respondent AEE had submitted the Work Completion Report (WCR), handing over paper, guarantee declaration, with other documents to the EE vide letter dated 14.09.2016. It is mentioned here that the date of completion of the work is 23.08.2016. Accordingly, the EE by its letter dated 28.09.2016 has issued the load release order.
- (ix) The Respondent released the supply to the Appellant on 07.10.2016 after completion of all formalities.
- (x) The supply date shown on the bill is 30.01.2018. The Appellant visited the subdivision office of the Respondent as bill was not generated and hence refund was not forth coming. This was explained to the officer after which the provisional bill was issued with the assurance that from the next bill, the refund will be given. The provisional bill of Rs.1,80,680/- was issued on 08.02.2018 for 19084 units of consumption after rigorous follow up by the Appellant. However, acknowledgement of the letter of refund is not taken by the Appellant because of mutual trust with the Respondent MSEDCL.
- (xi) The WCR was submitted on 14.09.2016, the supply release order is dated 28.09.2016 and meter was issued on 07.10.2016, and as per the provision of Non DDF (CC & RF) scheme, 50 % of the energy bill of the month is to be adjusted against the expenditure incurred on creation of infrastructure. However, that being the provisional bill, probably the adjustment of 50% of the energy bill might not have been done by the Respondent. It was therefore expected that monthly adjustment to


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the extent of 50% would come in subsequent bills till the total amount of expenditure on infrastructure incurred is exhausted. However, the refund by way of adjustment did not come through.

- (xii) Despite complaints and follow up, the Respondent did not refund the amount through bills. Therefore, the Appellant filed grievance with Internal Grievance Redressal Cell (IGRC) on 11.12.2019 for non-refund of infrastructure cost within period of 2 years from date of issue of provisional bill. The IGRC did not conduct the hearing.
- (xiii) The Appellant then approached the Forum on 27.10.2020. The delay in filing the grievance with the Forum was also due to Covid-19 epidemic. The Forum, by its Order dated 01.03.2021 has dismissed the Grievance Application on the ground of limitation of 2 years. The Forum has failed to understand the basic issue that limitation of two years is not applicable here. This observation is totally wrong and illegal.
- (xiv) The Respondent's Chief Engineer (Distribution) issued circular No.22197 dated 20.05.2008 and 39206 dated 21.12.2009 regarding refund of infrastructure cost under this scheme. As per circular dated 20.05.2008, in case any consumer or group of consumers wants early connections out of his volition or choice, he gets the work executed at his expense under MSEDCL supervision and gets the refund of the expenses so incurred through his energy bills.
- (xv) The circular dated 21.12.2009 stipulates that, "*Managing Director MSEDCL has accorded approval to refund the entire expenditure incurred by the prospective consumer for release of supply under dedicated distribution facility (even though work is not dedicated) by way of adjusting 50% of monthly bill amount till clearance of the total expenditure.*"
- (xvi) Therefore, the Respondent ought to have refunded the amount incurred by the Appellant in creation of infrastructure for release of supply to his factory by way of adjustment to the extent of 50% of monthly energy bill till the entire amount is adjusted. This is again squarely mentioned in the recent circular No. CE(Dist.)/D-III/Technical/07949 dated 19.03.2019.


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- (xvii) The Chief Engineer (Dist.) vide circular CE(Dist.)/D III/ Non DDF (CC & RF)/005489 dated 14.03.2018 had directed to temporarily withhold the refund and to verify all Non DDF (CC & RF) cases and revised procedure is laid down vide circular No. CE(Dist)/D III/ Non DDF stoppage/009245 dated 23.04.2018. The scheme is started again vide CE (Dist)/D III/ Non DDF stoppage/014747 dated 15.06.2018.
- (xviii) The initial provisional bill is issued to the Appellant on 08.02.2018 whereas power supply was released much earlier in October 2016. This also did not come easily. The Appellant had to pursue the matter rigorously. It is not understood as to why even a provisional bill was issued so late when the WCR was finalised long back, and supply was actually released on 07.10.2016. The date of release of supply as mentioned on the bill is wrong.
- (xix) The grievance actually started after issue of first bill in the month of September 2018 though the provisional bill was issued on 08.02.2018 and remained in continuity till the clearance of complete expenditure cost from the subsequent energy bills. The grievance may arise if refund is not adjusted in some bills in intervening period. Thus, date of cause of action may be considered as September 2018 due to lengthy procedure of refund mentioned in circular issued in the year 2018 by the Respondent.
- (xx) It is to apprise that first energy bill is generated in the month of September 2018 after the laps of 23 months. After generating of energy bill of September 2018 only, it is coming to know that the 50% of the energy bill amount is not refunded which is mandatory as per the Non-DDF (CC&RF) Scheme under which the sanction was approved by the Respondent. Thus, agreement made by the MSEDCL with Appellant is breached by non-refunding the first instalment and then consecutive instalment in the subsequent energy bills. Hence, grievance is initiated on the issue of the first bill, and it is continuous, as clearance of the expenditure remained till date.
- (xxi) Apart from the above, it is to appraise that the procedure laid down by the MSEDCL for refund of the expenditure is modified and it is now through the digital system, as per the revised circulars of 2018. The system is also locked from the Corporate Office


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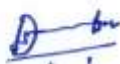


of MSEDCL. This may also be one of the reasons for non-payment of the refund. Here again approval has to be taken from the Chief Engineer of the concerned Zone for refund. The lengthy procedure may delay in refund. Apart from this MSEDCL is the only utility to supply the Electricity in Pune Region and there is monopoly of the said Utility. Being the urgency, the expenditure is made for the development of infrastructure despite it is the work of Respondent. Therefore, refund of infrastructure cost through energy bill ought to be implemented as per the Circular of the Respondent itself as the work is done under the scheme floated by the Respondent. There is no question of any limitation.

(xxii) Hence the Appellant prays that the Respondent be directed to refund the expenditure cost incurred by the Appellant on infrastructure creation in a manner as stipulated in the scheme floated by the Respondent along with interest.

4. The Respondent MSEDCL, by its letter dated 03.05.2021 submitted its reply stating in brief as under: -

- (i) The Appellant is an industrial consumer (No.176860003440) having SL of 150 HP and CD of 140 KVA at present, at Plot No. PAP-B-150, Chakan Industrial Area, Phase-II, Bhamboli, Taluka Khed, Dist. Pune.
- (ii) The Appellant had submitted an application for providing power supply for Industrial Load of 150 HP on 26.04.2016. Accordingly, estimate for release of electric connection was sanctioned vide Estimate Sanction No EE/RGR/T/Non DDF/CCRF/Industrial/CKN/01/2016-17/2563 dated 19.05.2016. The Appellant has paid the amount of estimate on 29.07.2016 vide Receipt No. 4307357. The connection was released in the month of October 2016.
- (iii) Actually, it was necessary to submit proper application/proposal to the concerned Subdivision office mentioning Consumer Number along with copy of electricity bill and copies of all necessary original bills for expenses incurred by the Appellant on creation of infrastructure for the said electric connection.
- (iv) As per Clause No 2 of the Circular No 9245, dated 23.04.2018 it is clearly mentioned that the refund under the Scheme shall be effected through system after


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due verification of individual cases by Zonal Office. But the Appellant has not submitted proper application or proposal such as Application, Original Receipts of material purchased, undertaking etc. to Subdivision office for getting the benefit of Non-DDF (CC & RF) Scheme.

- (v) The Appellant approached the Forum on 27.10.2020 for its grievance after two years i.e., beyond the time of limitation prescribed under Regulation 6.6 of the CGRF Regulations 2006. Therefore, the representation is not maintainable on the ground of limitation and needs to be dismissed.
- (vi) Instead of submitting the proper application/proposal for refund to Chakan Subdivision, the Appellant has approached the Forum, and after hearing on 17.02.2021, the Forum has issued order stating that the Appeal filed by the Appellant is dismissed since it is barred by limitation.
- (vii) Further, the Respondent has liberty to recover its dues from the Appellant as per the prevalent Rules and Regulations framed under the Electricity Act, 2003.
- (viii) Hence, it is kindly requested to consider the facts and situation mentioned above and kindly accept the reply of the Respondent.

5. The hearing was held on 28.04.2021 on e-platform through video conferencing due to Covid-19 epidemic and conditions arising out of it.

6. The Appellant argued and reiterated its submission. The Appellant further argued that the work is carried out as per the estimate of Non-DDF (CC & RF) Scheme. The Respondent ought to refund the amount as per the guidelines of the Competent Authority of the Respondent. The case is not time barred as claimed by the Respondent as the actual cause of action started when the first bill was issued through computerised billing system in September 2018. Considering Covid-19 situation, the case is not time barred. The Competent Authority of the Respondent issued guideline for refund of expenditure incurred under Non-DDF (CC & RF) Scheme by the consumer or group of consumers, by refunding entire expenditure incurred by prospective consumers for release of supply under the said scheme by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.


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7. The Respondent argued that the Appellant paid necessary supervision charges of the estimated amount to the Respondent and the work has been completed by the Appellant. The Appellant did not apply for refund of infrastructure cost. The Respondent argued that since the Appellant was in urgency of electricity supply, WCR was finalised, and supply was released. Beyond this, the Respondent neither argued anything else nor submitted any additional documents.

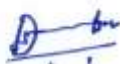
8. Both the parties were directed to submit additional information which will substantiate their respective claims and bring more clarity to the issue within two weeks from the date of hearing. However, till the writing of this order, nothing has been submitted by the Respondent. The Appellant submitted some papers but were of no use except the invoice for purchase of distribution transformer of 200 KVA from Manisha Engineers Pvt. Ltd.

Analysis & Ruling

9. Heard the parties and perused the documents on record. The Appellant has argued that there was delay in filing the case with the Forum due to Covid-19 epidemic. The case is examined in light of Regulation 6.6 of the CGRF Regulations 2006.

It is noticed that the lockdown pursuant to Covid-19 epidemic started from 22.03.2020. The Appellant has filed the case with the Forum on 27.10.2020 and the instant Representation on 09.04.2021. Lockdown practically lifted on 30.06.2020 pursuant to development by way of order of the Hon'ble Supreme Court in *Suo Moto Writ (Civil) No. 3 of 2020* with reference to Cognizance for Extension of Limitation with IA No.48411/2020 followed by subsequent orders and various orders issued by Government of Maharashtra. Moreover, this office has also hosted a message on its website about filing petitions by email. Therefore, the Appellant could have filed the grievance through email followed by submission in hard copies.

This is with respect to plea of the Appellant that the filing in the Forum is delayed due to Covid-19 epidemic. However, it has no relevance in the instant case as the instant case is different, and it deals with refund under Non-DDF (CC & RF) scheme and evaluated on a different footing in light of Regulation 6.6 of the CGRF Regulations 2006.


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The Appellant filed the grievance with the Forum on 27.10.2020 and claiming refund from the date of connection which is 07.10.2016. Therefore, Regulation 6.6 of the CGRF Regulations 2006 needs to be applied, however, entire claim cannot be dismissed as the refund is a continuous process for a particular period till the amount that is to be refunded is exhausted by way of adjustment of 50% of monthly energy bills. Therefore, he will be entitled for refund of 24 months prior to and including October 2020 and refund beyond 24 months is not admissible which is a limitation period as per CGRF Regulations 2006.


It, therefore, follows that for the purpose of calculation of refund, it will **virtually** start from the first bill after 07.10.2016 which is the date of connection. But as the first computerized bill is issued in February 2018 as could be seen from CPL, the virtual refund by way of adjustment to the extent of 50% of energy bill will commence from February 2018. Since the Appellant has filed the grievance with the Forum on 27.10.2020, the **refund from February 2018 till October 2018 shall stand lapsed** being time barred as per Regulation 6.6 of the CGRF Regulations 2006 and the refund shall be limited to **balance amount only** and that too for a period from November 2018 onwards through monthly energy bills to the extent of 50%. till the balance amount is exhausted.

For example,

- Let the total expenditure on infrastructure is Rs.10000/-
- First bill issued in February 2018.
- Monthly bill is Rs.1000/- for all months.
- Refund shall be limited to Rs.500/- only.
- Complaint filed with the Forum in October 2020.
- Refund from February 2018 to October 2018 (9 months) $9 \times 500 = \text{Rs. } 4500/-$ shall be lapsed.
- Balance of Rs. 5500/- ($10000 - 4500$) will be the only amount to be refunded.
- This balance amount of Rs.5500/- will be in the instalments of Rs.500/- for remaining period till Rs.5500/- is refunded.

Therefore, condonation to that effect cannot be allowed as the claim will stand admitted on merit from October 2018 onwards only.

10. It is observed that there is no dispute on the date of release of supply which is 07.10.2016, and also on erection of infrastructure by the Appellant. The Appellant submitted that the original invoices of material purchased and utilised had been submitted to the Respondent which has been vehemently denied by the Respondent. On perusing the documents submitted by the Appellant, it is observed that the first bill was issued to the Appellant in February 2018


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as per CPL though the connection was released in October 2016. However, energy bill from date of connection till June 2018 for accumulated consumption was finally issued in July 2018. It is seen that maximum demand charges as may be applicable does not appear to have been charged from October 2016 to January 2018 and similarly, credit for average billing for March 2018 to June 2018 does not appear to have been given which needs to be verified by the Respondent.

The connection was released to the Appellant under Non-DDF (CC & RF) Scheme, prime feature of which is that a consumer who wants immediate connection needs to spend on infrastructure from his own pocket initially, refund of which will come through the ensuing bills after release of supply by way of adjustment to the extent of 50% of the bill. This will continue till the entire amount is refunded.

When there is a question of refund, it is necessary to ascertain the cost incurred by the Appellant in creation of such infrastructure through various purchase invoices. The Appellant said that all original invoices have been submitted to the Respondent, however, it did not bother to submit its zerox copies with the Representation. It is highly unbelievable that anybody to submit the original copies and not retain the zerox one. It is more so evident as the original invoices, payment receipts, etc. need to be kept by the Appellant for the purpose of filing various Government statutory Returns and this is a standard business norm vis-à-vis statutory provision. Therefore, I am not convinced that the Appellant has submitted original invoices / receipts of material purchased and used by the Appellant, to the office of the Respondent.

Now the question that needs to be answered is as to how WCR has been finalized by the Respondent. The answer to this question lies in the submission and argument of the Respondent itself that the Appellant was in urgent need of power supply and therefore, the Respondent somehow completed the mere formality of finalization of WCR. The very peculiar feature of this WCR document as could be seen that the quantity and cost of the material purchased and utilized, exactly numerically tallies with the estimate that has been prepared and sanctioned by the Respondent. This is rarest of rare case because the Respondent frames the estimate as per the cost data prepared sometime back through various tenders and used subsequently without incorporating the real time changes in the market value of the material purchased. Therefore, it can be safely concluded that the finalization of WCR by the Respondent is mere a formality


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which has been completed by the Respondent without any application of mind. Therefore, no importance can be attached, and inference drawn to the issue of finalization of WCR by the Respondent. In token of submission of record by the Appellant with respect to purchase of material, it is a piece of paper titled as Tax Invoice without any PAN, TAN, etc. which are mandatory statutory requirements of any invoice and therefore, this piece of document cannot be considered to be a valid document and no importance could be attached to it. Further, it has also attached a copy of invoice for purchase of distribution transformer of 200 KVA from Manisha Engineers Pvt. Ltd. The cost of this transformer in this invoice does not tally with that shown in the so-called Tax Invoice mentioned above.

Therefore, notwithstanding the fact that the work has been completed, supply has been released, the asset has been handed over with various test reports of the material used, unless valid documents which will conclusively prove that a certain cost has been incurred on the infrastructure created are submitted, refund cannot be made.

In view of the above, the Appellant failed to prove his case to the limited extent of submission of valid substantial documents which will conclusively prove that it has really spent certain amount on the infrastructure creation. This is more so important as the amount to be refunded shall be the amount spent by the Appellant and the amount estimated by the Respondent, whichever is less.

11. In view of the above discussions, I pass the following order:

- (a) The Appellant is directed to submit documents / invoices, tax receipts, etc. to the Respondent within 30 days towards its claim for refund.
- (b) The Respondent is directed to verify and ascertain the veracity of the documents before refunding the balance amount, as explained above within a period of 15 days thereafter, and refund, if any, to commence from next billing month without interest.
- (c) Other prayers of the Appellant are rejected.
- (d) The Respondent to submit the compliance whatever within 3 months from the date of issue of this order.


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12. The office of the undersigned had to mine the data from what the Appellant has submitted. The Respondent Executive Engineer has almost not submitted anything substantial worth its name. The Respondent does not appear to have applied its mind to the case and simply submitted a reply which is of no use at all.

13. The order of the Forum stands modified to the extent above.

14. The secretariat of this office is directed to send a copy of this order to the Chief Engineer, Pune, who is directed to thoroughly investigate the entire case including billing of the Appellant with respect to demand charges, credit for average billing and casual attitude towards submission of reply and overall conduct of the concerned officials and take appropriate action as deemed fit.

Sd/-
(Deepak Lad)
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Secretary
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