

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 31, 32 & 33 OF 2023

In the matter of refund of infrastructure cost

S.N.	Appellants	Consumer No.	Rep. No.
I	Chhaya Co-op. Powerloom Weavers Society Ltd.	250481028287	31 of 2023
II	Surindar Sevaram Manglani	250481028279	32 of 2023
III	Hargovind Namamal Jagwani	250481028261	33 of 2023

.....Appellants

V/s.

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

Appearances:

Appellant : Pratap Hogade, Representative

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


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

Date of hearing: 8th August 2023

Date of Order : 1st September 2023

ORDER

These three Representations were filed on 17th March 2023 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 19th January 2023 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum) in Case No. 15 of 2020.


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2. The Forum, by its majority common order dated 19.01.2023 has rejected the refund of infrastructure cost and allowed the refund of meter cost. The Forum has directed to refund Rs.13,500/- towards meter cost (Rs.4500/-per consumer x three consumers) along with interest at the rate of 4.65% from 29.10.2018 till the date of order.

3. Aggrieved by the common order of the Forum, the Appellants have filed these representations. A hearing took place on 8th August 2023 where the Appellants' representative was physically present, and the Respondent attended the hearing through video conferencing. The detailed submissions of the Appellants are as under: -


- (i) The Appellants are 3 phase LT Industrial Power loom consumers of MSEDCL, Ichalkaranji Division from 29.10.2018 having Sanctioned Load, Contract Demand, Activity, etc., tabulated as below:

Table 1

Rep. No.	Appellants	Consumer No.	Date of Connection	Sanctioned Load (KW)	Contract Demand (KVA)	Supervision Charges paid on	Activity	Address
31 /2023	Chhaya Co-op. Powerloom Weavers	250481028287	29.10.2018	135	150	02.08.2018	Power loom	Plot No. 1 to 8 , Khanjire Industial Estate, Shahapur, Ichalkaranji, Tal. Hatkananagale
32 /2023	Surindar Sevaram Manglani	250481028279		135	150			
33 /2023	Hargovind Namamal Jagwani	250481028261		135	150			


The Appellants had applied to MSEDCL, Ichalkaranji Division for fresh Industrial Power loom connections under LT Multiparty Power loom Group Scheme for Connected Load of 135 KW each and for Contract Demand 150 KVA each.

- (ii) The then Superintending Engineer (SE), MSEDCL, Kolhapur Circle sanctioned their applications vide Letters Nos. SE/KPC/T/DyEE-I/Multiparty/ 6920 to 6922 dated 31/07/2018 for power supply at 33 KV level under Dedicated Distribution Facility (DDF) Scheme and directed to complete the work as per estimate of Rs. 17,80,270/- for 33 KV HT Line 0.30 km with 5 poles along with all the concerned infrastructure work including Transformer and HT & LT metering work.


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- (iii) Dy.E.E., MSEDCL, Ichalkaranji issued a firm quotation of Rs. 2,31,096/- on 01/08/2018 including Supervision Charges of Rs. 10,783/- which have been paid by the Appellants on 02/08/2018. The Appellants have completed all the Infrastructure & Metering work as per estimate. Thereafter the load was released on 29/10/2018 to all the Appellants. The copy of the Single Line Diagram of the concerned 33 KV Gangatara Feeder is on record.
- (iv) 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 of 2007 filed by MSEDCL. Hon'ble Supreme Court dismissed the CA and then it became clear that the Appellants can claim for refund of all expenses incurred for Non DDF Infrastructure Works and/or Metering Works.
- (v) After the Final Decision dated 10/11/2016 of the Hon'ble Supreme Court in Civil Appeal No. 4305/2007 regarding Refund of such charges, MSEDCL issued its first Refund Circular on 12/10/2017 & Amendment on 29/12/2017. MSEDCL continued to impose the condition of DDF to actually Non DDF works. The Appellants had no other option but to accept the condition, due to monopoly of MSEDCL, to get the connections.
- (vi) The imposed condition was illegal & hence null & void. Hence the Appellants filed complaint for refund of infrastructure cost with interest before the Internal Grievance Redressal Cell (IGRC) on 11/11/2019 which was rejected on 21/01/2020. The IGRC failed to understand the basic issue that the infrastructure for electricity is to be developed by the Respondent.
- (vii) Thereafter, the Appellants submitted their grievance applications before the Forum on 09/03/2020. However, the Forum rejected their grievance applications by order dated 19/03/2023. Hence these representations are filed for refund of infrastructure expenses with interest before the Electricity Ombudsman, Mumbai.
- (viii) To impose the condition of DDF for Non DDF works and to put the burden of expenditure of infrastructure works on the consumers is totally wrong, illegal and against the orders of the Maharashtra Electricity Regulatory Commission (the


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Commission) and the Hon'ble Supreme Court and the MSEDCL circulars itself. The detailed submissions in this regard are as below:

- (1) **Work Done** - The work done by the Appellants as per estimate of MSEDCL is the extension of the existing HT 33 KV line up to their premises. The scope of the work was laying of 0.30 km HT 33 KV line along with 5 poles and all the concerned infrastructure work including Transformer and HT/LT Metering work.

In case of Meter/Metering Cubicle, as per the Commission's Order regarding "Schedule of Charges" dated 08.09.2006 in Case No. 70 of 2005 and the corresponding MSEDCL Circular No.43 dated 27.09.2006, meters are to be installed by the licensees. Also if the cost of meter 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 33 KV Gangatara Feeder, which is emanating from 220/33 KV Tilawani Substation through 33/11 Shahapur Substation. The original feeder from MSEDCL Substation was 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 Gangatara Feeder.
- (4) **MERC Order 16/02/2008** - "**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, in its order in Case No. 56 of 2007 dt. 16/02/2008.
- (5) Hence the work done by Appellants is clearly Non DDF and they are fully eligible for the refund of the amount of Rs. 17,80,270.
- (6) **MERC Order 17/05/2007** – The Commission in its Order dt. 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


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Regulations 2005 and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dt. 08/09/2006.

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 21/08/2007** - The Commission has issued a 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 dt. 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. 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*


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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 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 of DDF on the request of MSEDCL itself, 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 Section 43 of Electricity Act 2003 read with SOP regulations."

- (9) **Provisions of Section 62 (6) of the Electricity Act 2003 (the Act)** - It is clear from the directions of the Commission quoted in Para 7 above that "the directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally". And that "consumers should not be burdened with infrastructure costs which are the liability of MSEDCL".

Also Section 62 (6) of the Act 2003 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."

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 the Appellants are eligible to get the refund of infrastructure cost along with the interest thereon.

- (10) **MSEDCL Circular 20/05/2008** - After this order dt. 16/02/2008, MSEDCL issued a circular on 20/05/2008 as Guidelines for release of new connections. The circular itself clarifies that all Non DDF connections are refundable. MSEDCL has issued the circular only for LT connections. Actually the Commission's order is applicable for both LT & HT connections. It is clearly stated in this circular that **in case of all LT Industrial individual or group consumers, all the infrastructure will be created by MSEDCL & only SCC will be recovered from the Consumers.**
- (11) **MSEDCL Circular 21/12/2009** - MSEDCL has issued another Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21/12/2009 to the effect 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.
- (12) **MSEDCL Circular dt. 12/10/2017 & dt. 29/12/2017** - After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement concerned Commission orders in letter & spirit. MSEDCL issued circular for refund of SLC, ORC & meter cost after 11 months vide its circular No.


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CE/Dist/D-IV/MERC No. 25079 on 12/10/2017. Again the circular was amended vide Amendment Circular dt. 29/12/2017. In this circular dt. 12/10/2017, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF. But if the connection is actually Non DDF and it is merely named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then the Infrastructure Cost imposed on consumers is nothing but ORC. Hence the Consumers are eligible to get the refund along with the interest thereon.

- (13) **Supply Code Regulations** - After Supply Code Regulations, till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually using the phrase DDF and imposing this cost on consumers is totally illegal & against the orders of the Commission. Such an 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,

"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."

- (14) **Interest** - As per provisions of Section 62 (6) of the Act, 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.
- (15) Actually the expenditure on the concerned work is more than the estimate of MSEDCL. But logically and reasonably, the Appellants can claim the


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estimate amount only. Hence, on the basis of all above mentioned grounds, Appellants are eligible to get the refund of estimate amount Rs. 17,80,270/- along with the interest thereon at the bank rate from 29/10/2018 up to the actual date of repayment.


- (16) **Compensation** – The complaint is a complaint other than bills. Hence as per **Regulation No. 7.6 of SOP Regulations 2014, , "In other cases the complaint shall be resolved during subsequent billing cycle."** The Appellants had filed their complaints in November 2019. It was necessary & binding on MSEDCL to resolve it in the subsequent billing cycle, i.e. maximum up to the end of December 2019. Hence, the Appellants are eligible for SOP Compensation of Rs.100/- per week or part thereof from 01.01.2020.

- (17) **Consumers Consent, Agreement, No Protest etc.** -

MSEDCL always takes a stand that the concerned consumer/s have given consent, have signed agreement and have not protested & hence are not eligible for refund. This stand/submission is totally wrong, illegal and hence null & void. This provision is clearly given in Reg. No. 19.1 of Supply Code Regulations 2005 which is reproduced in Para No. 13 above.

Also MSEDCL is the only licensee all over Maharashtra except Mumbai. MSEDCL has a monopoly. Consumers have no other option. Consumers can not insist for any relief. On the contrary, MSEDCL insists on illegal conditions imposes the infrastructure cost on the consumers against regulations & orders. 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 MERC 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 High Courts in many cases. One such order dt. 18/01/2017


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is of the Hon'ble High Court, Bombay in W.P. No. 2798 of 2015. Also this case is wrt similar issue of DDF & Non DDF. **Also the conditions in MSEDCL Circulars Nos. 6 & 151, which are inconsistent or against the Regulations & orders, are invalid & illegal.**


- (18) **SLC, ORC & DDF all are Infrastructure Charges under Different Names** - All these 3 types of charges 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 in the cases only where the connection is actually DDF as per Supply Code Regulations & as per MERC Clarificatory Order dt. 16/02/2008. In this case the connection is totally Non DDF

- (19) **Additional Load, Higher Voltage Level etc. -**

It is stated by IGRC that the supply level was changed from 11 KV to 33 KV, hence the consumers have to incur required expenses. In fact, MSEDCL itself denied connections on 11 KV level, due to its own problems i.e. non availability of load. MSEDCL itself told the Appellants to give a letter for 33 KV level. In fact, supply level was not changed but the new connections were sanctioned on 33 KV supply level. This point is clarified by the Commission in its order dt. 08/09/2006 - Schedule of Charges in its ruling on page 29 as below,

"As regards expenditure incurred on 33 KV & 11 KV infrastructure beyond distribution mains, which forms a distinct part of wheeling business i.e. system of wires and associated facilities, there is no provision in the Supply Code Regulations allowing licensee to recover it from prospective consumers. The expenditure incurred on upstream of the distribution mains may be claimed through ARR."

Hence the findings of the IGRC are totally wrong.


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(20) **Additional Submissions wrt Forum's Observations -**

1. Regulations prevail -

Multiparty circulars are not approved or even vetted by the Commission. Hence all the conditions in these circulars are null and void and hence ultra vires wrt such cases.

2. Recent Commission's order dated 02.09.2022 in Case Nos.62, 63 & 64 of 2022 -

It is clearly stated in the order that the regulations are the laws, and its provisions can't be overruled. Infrastructure cost cannot be recovered from any LT or HT and even EHV consumers. Only normative charges should be recovered, and remaining amount should be claimed in ARR by the Distribution licensee and the Transmission licensee also.


3. Connections on 33 KV Line -

MSEDCL denied connections from 11 KV line showing load nonavailability reasons. The Appellants don't know if it was real or wrong. MSEDCL authorities said that the Appellants can get connections on 33 KV line only. Hence the Appellants had no other option but to apply for connections from 33 KV line. It was nothing but an imposed condition on the Appellants

4. MERC Notification dated 19.09.2017 regarding amendment in SoP Regulations 2014 and MSEDCL Commercial Circular No. 298 dated 16.12.2017 are additional attachments.

The Appellants total load demand was 450 KVA. It was allowable under LT as per MSEDCL's own circular in existence. But MSEDCL authorities had not given any information to them. It was possible to release all their connections on LT supply instead of 33 KV level. Hence, the Respondent has imposed 33 KV level on Appellant.

- (ix) The Commission has amended Regulation 5.3 (a) (ii) of the Standards of Performance Regulations 2014 on 19.09.2017 which is as follows:


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

(a) AC system

(i)

(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and contract demand not exceeding 80 kW/ 100 kVA in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187kVA:

Provided that in case of multiple consumers with contract demand more than 150 kW / 187 kVA, in the same building / premises as a single point supply in the Municipal Corporation areas where such limit would be 480 kW / 600 kVA:”


amended to “(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and contract demand not exceeding 80 kW/ 100 kVA in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187kVA:

*Provided that in case of **multiple consumers in the same building / premises with cumulative contract demand exceeding 150 kW / 187 kVA, such a limit would be 480 kW / 600 kVA.**”*

The Appellants state that their cumulative contract demand is only 450 KVA which is within the limit of 600 kVA.

(x) The Appellant referred to the following orders in support of its arguments:-

- a) Judgment dated 18.01.2017 passed in W.P. No. 2798 of 2015 between MSEDCL V/s. M.R. Scion Agro Processors Pvt. Ltd. & Anr.
- b) Judgment dated 20.03.2019 in W.P. No. 468 of 2018 between MSEDCL V/s. Darpan Multi Polypack (India) Private Ltd., Nagpur & Anr.


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- c) Order dated 02.09.2022 in Case No. 62 of 2022 of Surya Ferrous Alloys Pvt. Ltd, Guardian Castings Pvt. Ltd and Jaideep Metallics and Alloys Pvt. Ltd V/s. MSETCL and MSEDCL

(xi) The Appellant's pray that the Respondent be directed that:-

- a. the connections should be declared as Non DDF connections.
- b. The expenditure as per MSEDCL DDF estimate of Rs. 17,80,270/- should be refunded along with the interest at bank rate from 29/10/2018 till the date of repayment, or alternatively the total amount should be credited in the further bills of the Appellants.
- c. SOP Compensation, for delay in Complaint Resolution, at the rate of Rs. 100/- per week from 1st January 2020 should be awarded.

4. The Respondent, by its letter dated 12.04.2023 filed its reply and the hearing was held on 08.08.2023 at length. Its written submission and arguments are as below:

- (i) The Appellants are 3 phase LT Industrial Power loom consumers under "Multiparty Power Loom Group". The details of sanctioned load, contract demand, address etc., is captured in Table 1 of Para 3(i).
- (ii) The Appellants applied for fresh power supply for 3 LT Consumers under one roof with a total load of 540 HP at 33 KV level. The load of the Appellants was initially proposed at 11 KV Level, subject to
 - a. Bifurcation of 11 KV Jantatex Feeder under IPDS- 2 Scheme.
 - b. After Permanent Disconnection of 3 existing Power loom connections.
- (iii) MSEDCL had proposed the 11 KV load bifurcation and sanctioned the estimate. However it was the urgency of the Appellants, and they submitted a letter to avail the supply at 33 KV level on 01.06.2018. Accordingly the connections were sanctioned at 33 KV level.
- (iv) As per Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP regulations 2014), the Respondent has been allotted a time


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period of one year for developing substation and subsequent rearrangement of loading of feeders. The relevant part of regulation of SOP Regulations 2014 is quoted as below:


Appendix A			
LEVEL OF COMPENSATION PAYABLE TO CONSUMER FOR FAILURE TO MEET			
	Supply Activity/Event	Standard	Compensation Payable
	1	2	3
1. Provision of Supply (Including Temporary connection)			
iii	Time period for provision of supply from the date of receipt of completed application and payment of charges		Rs. 100 per week or part of there of delay
	in case connection is to be from existing network	One (1) month	
	where extension or augmentation of distributing main is required	Three (3) months	
	where commissioning of new sub-station forming a part of the distribution system is required	One (1) year	

However the Consumer was not willing to wait for the period of one year for commissioning the new substation and reorganise the existing 11 KV network. Hence as per the request of the Appellants the load was sanctioned at 33 KV level. Thus the sanction of the load was made on higher voltage on 33 KV level instead on 11 KV level as prescribed in SOP Regulations. The Appellants never protested during the execution of the works. When supply is released at a higher voltage level than what is envisaged under the SOP Regulations, expenses towards the changes that are required for erection of infrastructure are to be borne by the consumer as per Regulation 5.3 which states that

“Provided that in case the consumer who is eligible for single phase connection wants to avail supply at three phases, or any consumer who seeks supply at the voltage level higher than its eligible voltage, such consumer can avail such supply by incurring required expense”

The word "separate establishment" is very important to understand that SOP Regulations have increased the limit to 600 KVA, but only for multiple connections with specified demarking and physical separation, which is misinterpreted by the applicant. This provision applies to Multiplexes and malls as all the establishments are separate and have physical separation or identity.

In the instant case, the establishments are not separate and are in one shed without physical separation. However, they are given different points of supply, which signifies


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the violation of Regulation 3.4.3 of the Supply Code Regulations, and hence is clearly governed by Commercial Circular No 151 dated 25.11.2011. The purpose of all connections is for power looms.

The connections have to be physically separated for the provision of amended Regulation 5.3 of SOP Regulations to apply.

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 an interim order on 18.07.2013 and granted a 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.

- (v) Further, these are in Multiparty Group Agreement and governed by Commercial Circular No. 151 dated 25.11.2011.

It is pertinent to note that as per Regulation 5.3(ii) of SOP Regulations 2014 "*the LT connections 230V/440V is to be given for load upto 150KW/187 KVA i.e upto 201 HP.*" However, in this case the load in a single premises is 540 HP; hence the above said Appellants are actually eligible for HT connection. It is only because of the multiparty agreement, that the Appellants are enjoying the benefits of LT Connection with its lower tariff.

The work involved in this Case is

- 1) 0.3 km HT line
- 2) 500 KVA Transformer
- 3) 1 no. HT Cubicle
- 4) 3 LT meters


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The 500 KVA transformer is dedicated to the Appellants. MSEDCL cannot use this since it is in the Appellants' premises and as per the multiparty agreement. The transformer's cost is the biggest cost out of all the above.

- (vi) The Respondent has an existing 11 KV network in the said premises; however only because of the consumer's application sanction is given on a higher voltage than prescribed in the SOP regulations. The Commission has rejected the refund of infrastructure cost in its order dated 05.09.2020 in Case No.5 of 2020 of Case of Shri. Vitthal Vasant Gurav on behalf of M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others.
- (vii) The Appellants are governed by the then prevailing Commercial Circular No.151 dated 25.11.2011. The connection is sanctioned vide No.SE/KPC/DYEE (I)/99/2018-19 vide no.6920 to 6922 dated 31.08.2018. The Appellants accepted the sanction and had paid the charges for connection on 02.08.2018 abiding with its terms and conditions. The Appellants had paid the amount without any protest or grievance, and done the work under DDF scheme, which is also in line with Supply Code Regulations 2005.
- (viii) The Appellants have even submitted the DDF bond agreeing to create the infrastructure under DDF also executed multiparty consent. The Appellants have been given 3 LT connections as per provision of Commercial Circular No. 151 dated 25.11.2011, and breach of the multiparty agreement will attract billing of this consumer as an HT consumer, as per the Regulation 5.3 of the SOP Regulations 2014 which states "*Three phase, 50 cycles, 11 kV all installations with contract demand above the limits specified in the clause (ii) and up to 3000kVA.*" Hence MSEDCL would have no option other than to recover the tariff difference billed to the consumer on HT side. The Appellants want to abide with one aspect of agreement i.e. LT tariff, however denying the other aspect of expenses which are actually dedicated and used by themselves only.

The details of the premises: -

- (ix) 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


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that the parties are taking this liberty of common premises. Regulation 3.4.3 of Maharashtra Electricity Regulatory Commission (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”.

- (x) MERC in Conditions of Supply Code Regulations, 2005 under clause 3.3.8 read as

“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.”


Clause 3.3.3 read as

“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 read as

"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"

- (xi) The Respondent referred to the orders passed by Hon'ble Electricity Ombudsman in support of its case which are as below:


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- a) Representation No.71, 72 73, 74, 75 & 76 of 2022 in R/o Multiparty Group of Smt. Suyash Yantramag Audyogik Sahakari Sanstha Maryadit and other 5.
- b) Representation No. 77, 78, 79, 80, 81 & 82 OF 2022 in R/o Multiparty Group of Sangram Textiles and other 5.
- c) Representation No 83 & 84 OF 2022 in R/o Multiparty Group M/s Mahalaxmi Textiles and others.
- (xii) The Respondent cited the WP No. 1588 of 2019 in Case of MSEDCL V/s Mahamaya Agro Industries and others in support of its submissions. 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.
- (xiii) In view of the aforesaid facts, it is requested to dismiss the present application.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The details of load sanctioned, estimate amount, supervision charges paid, work done, etc., of the Appellants are tabulated below:

Rep.No.	Name of Consumer	Consumer No.	Address	Sanctioned Load (HP)	Contract Demand (KVA)	Estimate Amount (Rs.)	Details of work done	Supervision charges paid (Amount & date)	Date of connection	Activity
126/2022	Chhaya Co-op. Powerloom Weavers Society Ltd.	250481028287	Plot No. 1 to 8, Khanjire Industrial Estate, Shahapur, Ichalkaranji	135	150	17,80,270/-	0.30 Km 33 KV HT line, 500 kVA DTC, HT cubicle & LT metering	Rs. 10,783/- dt. 02.08.2018	29.10.2018	Powerloom
127/2022	Surindar Sevaram Manglani	250481028279		135	150					
128/2022	Hargovind Namamal Jagwani	250481028261		135	150					


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

Issue A: Whether the Appellant has opted to avail Power supply under Multi- Party Group Scheme and has to incur expenditure on their own?


Issue B: As per Standards of Performance Regulations, whether the Appellants are eligible for 33 KV power supply?

Issue A: 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*”. It 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 as below:

“In view of upward trend for cloth in market, various powerloom consumers under one premises/shed are coming up in our State at different locations. The individual entrepreneurs coming under one premises/shed to establish powerloom 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 install their own transformers, metering KIOSKS etc which would occupy considerable space in such common premises/sheds.”

The Respondent issued the following guidelines for multiparty consumers as per Commercial Circular No. 6 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.


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2. *An individual entrepreneur having load requirement up to 107 HP/201 HP form a group of maximum 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. 6 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 LT 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.*
- 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*


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


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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 a 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 consumer 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.”*

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

Considering the various submissions and arguments it is a fact that the Appellants have opted to choose Multi- Party Group connections wherein the Appellants have to incur the expenditure on their own, as they are the beneficiaries of the scheme, as all these three connections of power loom were given in one “premises” without any separation. The infrastructure created was commissioned by the Appellant under Multi- Party Group connections.

Accordingly, **the Issue A is answered as POSITIVE.**

Issue B: It is pertinent that the sanction of load was made on the higher voltage of 33 KV level instead of 11 KV level. The Appellants contended that the Respondent imposed this condition on them to apply on 33 KV level instead of 11 KV level, as the adjacent 11 KV feeder was overloaded. On the contrary, the Respondent reiterated that approval to the Appellant’s


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application was subject to the bifurcation of 11 KV Jantatex Feder under IPDS- 2 Scheme. However, to avoid delay, the Appellants themselves chose 33 KV level for immediate release of power supply vide letter dated 01.06.2018.

The regulatory provision for deciding the voltage level is summarised as below. The said 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 volt 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.”

The Commission in its Supply Code and Standard of Performance Regulations 2021 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.


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- 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).*

*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)


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In this case, the contract demand of the Appellants was 150 KVA each, totalling 450 KVA, and hence the Appellants were eligible for 11 kV power supply considering multi-Party group connections in one premises and as per Standards of Performance. In the instant Representations, the Appellants opted for power supply on 33 KV level, at a higher voltage level than what is envisaged under the SOP Regulations 2005, therefore the expenses were to be borne by the consumers.


Issue B is answered as NEGATIVE.

7. The ratio of the Judgements and orders cited above by the Appellant are not applicable in the instant representations.

8. 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 Electricity Ombudsman had directed MSEDCL to refund the cost of infrastructure of 0.4 km H.T. line to M/s Mahamaya Agro Industries Ltd. **It is notable that the Appellants never agitated for refund of infrastructure costs while executing the said estimate.** 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 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**



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arrived at by the forum by its order dated 25.06.2018 are sustained.”
(Emphasis added)

9. Considering the above facts, the Appellants’ Representations do not stand on merit. The Forum has given a reasoned order. The 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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