

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 88 OF 2023

In the matter of refund of infrastructure cost and compensation

Sourabh Kulkarni..... Appellant
(Sneh Residency Association)

V/s.

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

Appearances:

Appellant : Sourabh Kulkarni, Promoter / Builder

Respondent: Appaso Malhari Khandekar, Executive Engineer

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

Date of hearing: 13th December 2023

Date of Order : 29th January 2024

ORDER

This Representation was filed on 6th September 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity

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Secretary

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Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 25th August 2023 passed by the Consumer Grievance Redressal Forum, Kolhapur (the Forum) in Case No. 54 of 2023. The Forum by its order (Original order is in Marathi language) has rejected the main prayer of the grievance as below:-

- 1) *The grievance of the Complainant for “refund of the infrastructure cost incurred” is rejected.*
- 2) & 3) *The new electric connections of upcoming projects on S.No.69/4 and 69/13 of Developer Saurabh Kulkarni be sanctioned on this augmented 200 KVA Distribution Transformer and not to give any sanction to the other consumers on the said 200 kVA transformer in general.*

2. Aggrieved by the order of the Forum, the Appellant filed this representation. The e-hearing was held on 13.12.2023 through video conference. Parties were heard at length. The Appellant’s submissions and arguments are stated as below: -

- (i) The Appellant is a promoter / builder / developer of “Sneh Residency Association” at S.No.69/08, Ashray Housing Society, Vijaynagar (West), Sangli. The Appellant applied for 11 electricity connections (residential flats: 10 & common use connection: 1) on 10.08.2022 with a total connected load of 52.30 KW and demand of 25.52 KVA on the supply system as per demand factor. The details of total load applied, loading of 100 KVA existing Distribution Transformer, the cost of Dedicated Distribution Facility (DDF)Scheme, etc., are tabulated as below:




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Table 1

New Application for residential connections	Total applied Load as per Carpet Area (KW)	Demand on System considering PF 0.9 (KVA)	Existing Dist. Transformer (KVA)	Peak Loading on 100 KVA DTC	Work Involved	Estimated Cost under DDF Scheme (Rs.)
11	52.3	25.52	100	96%	Augmentation of 100 KVA DT to 200 KVA	4,25,970/-

- (ii) The Appellant met the Respondent several times requesting for sanctioning the new connections; however, the Respondent was reluctant to sanction and execute the infrastructure work as the existing transformer was overloaded. The Respondent was duty bound to carry out the required infrastructure work of augmentation of 100 to 200 KVA Distribution Transformer Centre (DTC) for sanctioning of these 11 connections.
- (iii) The Respondent forced the Appellant to execute the infrastructure work under the Dedicated Distribution Facility (DDF) Scheme at his own cost. Finally, after 5-6 months, the Appellant had no alternative but to surrender and had to bear the financial burden of about Rs. 6 lakhs for infrastructure work for augmentation of 100 KVA to 200 kVA transformer by signing the DDF bond, since the possession of the flats was at a crisis point for handing over to the flat Owners along with electricity connection.
- (iv) The Appellant stated that he is not bound to provide a space for a distribution transformer for a plot area of hardly 329 Sq. meter, and the load requirement was only 25.72 KVA. However, the Respondent was demanding space at the first stage.


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- (v) The Appellant referred to Clause 3.6 of the Unified Development Control and Promotion Regulations (UDCPR 2020) For Maharashtra State dated 02.12.2020 in support of his say. The Clause 3.6 of UDCPR 2020 is reproduced as below:-


“3.6 PROVISION FOR ELECTRIC SUB-STATION:

In case of development/re-development of any land, building or premises mentioned below, provision for electric sub-station shall be made as under, if the requirement for the same is considered necessary by the concerned power supply authority.

Sr. No.	Plot Area	Maximum requirements
1	Plot above 2000 sq.m.	One single transformer sub-station of the size of 5m.x 5m. and height of not more than 5m.
2	Layout or sub-division of a plot measuring 2 .0 ha. or more.	A suitable site for an electric sub-station as required by the Power Supply Company.


Provided that the sub-station is constructed in such a manner that it is away from main building at a distance of at least 3 m. and in general does not affect the required side marginal distances or prescribed width of internal access or recreational open space. “

From the said Clause 3.6, it was clear that the Appellant was not bound to hand over a piece of land for substation.


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- (vi) If a consumer, under urgency, has spent on the infrastructure cost, it is the duty of the Respondent to refund such cost as per the schemes available with the Respondent. In fact, in this case, the proper scheme was “New Service Connection” where in a refund was available. However, the Respondent sanctioned the estimate under DDF scheme and took an undertaking on Rs. 100/- stamp paper that the Appellant was willing to work under DDF scheme.
- (vii) The Appellant argued that the Respondent did not guide the Appellant properly, and gave unnecessary excuses for not doing the infrastructure work. The relevant circulars of the Respondent are as below: -
- CE (Dist)/D-III/NSC/30011 dt.20.12.2018
 - CE (Dist)/D-III/NSC/14157 dt.21.05.2019
 - CE (Dist)/D-III/Technical/07949 dt.19.03.2019
 - CE (Dist)/M-1/NSC/6660 dt.19.03.2021
- (viii) Thereafter, to seek justice, the Appellant filed a grievance application in the Forum on 30.06.2023 for refund of infrastructure cost. The Forum partly allowed the grievance, except for the refund of infrastructure cost and compensation.
- (ix) The Appellant reiterated that the Respondent misinterpreted point 4 of the Respondent’s Circular No. CE (Dist)/M-1/NSC/6660 dt.19.03.2021 before the Forum regarding “Supplementary Guidelines for Infrastructure Development to Release New Connections”. Point 4 of the Circular is produced in Para 3 (9). The present project of the Appellant is **a new project and not redevelopment** as claimed by the Respondent. Hence, the DDF scheme was not applicable as indicated in Point 4 of the Circular.
- (x) Similarly, the Appellant argued that no proper guidance was given regarding NSC scheme where the capacity of the transformer was to be increased and a refund can also be sought as per Circular No. CE (Dist)/D-III/Technical/07949 dt.19.03.2019.


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Point 2 of the said Circular is reproduced below:

“2. *Development of infrastructure under urgency by the applicant and refund of expenditure:*

- a. *The Developer / applicant / consumer or a group of consumers, can opt for development of infrastructure, on account of urgency, through Licensed Electrical Contractor (LEC) under MSEDCL supervision and claim refund of expenditure, if so requested at the time of application of power supply. **The estimates for such cases will be sanctioned under NSC Scheme.***
- b. *MSEDCL will reimburse works cost of material with Erection / Labour Charges thereon (at the rate of 5% for inside substation and 15% for outside substation works) the cost of material to be considered for refund will be as per cost data prevailing at the time of sanction of estimate.*
- c. *The GST will be paid additional on the cost of material & erection charges, at the rates notified by Government on works contract, as per cost data at the time of sanction of estimate (Presently 18%).*
- d.
- e. ***The refund of expenditure shall be carried out in five (05) equal installments. There shall be no delayed payment charges or interest liable and permitted over and above amount to be refunded. The refund of expenditure will be permitted only after release of permanent power supply to project / consumer.***



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In case of phase wise projects where group of buildings are there in first or further phase, refund will be carried out only after completion of all work and release of permanent power supply to each building in the phase.”

With this circular being available, still no information was given to the Appellant about this Circular, and the Respondent only stated that it has no scheme available at that particular time for refund of infrastructure cost. This act of the Respondent has made the Appellant feel cheated.

This circular, itself, has the provision for refund of the infrastructure work done by the builder / developer, and promoter. Similarly, in urban areas, for 25.52 kVA load, the consumer has to spend Rs.5-6 lakhs for augmentation of transformer at the behest of MSEDCL with no refund facility, which is a very serious matter. Due to this, **the consumers of the Appellant are unable to get electricity supply in time (delay of about 10 months), and unable to get possession of flats in time.** The Appellant and his customers have to face mental harassment, for which the concerned officials of the Respondent are fully responsible.

- (xi) The Appellant also requested that if the refund of work done is not possible for any technical reason, then at least allow the remaining balance load of the 200 kVA transformer for the Appellant’s new projects on Survey No. 69/04 and 60/13. However, there is no positive response to this request from the Executive Engineer.
- (xii) Prayers:
- a) The amount of Rs. 6 lakhs should be refunded.



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- b) Applications for new connections were submitted on 10.08.2022, and the new connections were released on 25.06.2023 i.e. after about 10 months, resulting in mental torture to the Appellant as well as loss of faith of his customers for not giving possession of flats in time. Hence, compensation of Rs.1,00,000/- to be given.
- c) Awareness of policies or guidelines be done to the officials of the MSEDCL.


3. The Respondent has filed its reply dated 05.10.2023. Its submissions and arguments are stated in brief as below: -

1. The Appellant is a promoter / builder / developer of Sneh Residency Association with details as mentioned in para 2 (i). The following events will show that there was no delay by MSEDCL in granting the new connections.
2. After receipt of applications for new connections from the Appellant, the Respondent carried out a joint survey with the Appellant immediately, when, it was found that the existing 100 KVA Distribution Transformer (DT) was already over loaded (the peak Load found 96 %), and the new proposed load could not be released on this 100 KV DTC. Hence, it was necessary to install a new DTC which requires 25 square meters of open space in the premises. This is a thickly populated area and the Respondent is facing a critical power system bottleneck as regards to loading of transformers. Hence, a substation space is expected to be allotted by the Developer under Standard Rent Agreement. However, the Appellant claimed that the plot area is comparatively small and it is not possible to allot the required space for installation of a new DTC. Hence, an alternative was offered to the Appellant to augment the existing 100 KVA DTC to 200 KVA in order to release the connected load of 52.30 KW of Sneh Residency Association.


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3. The Respondent clarified that this is a case of **redevelopment**. Shri Dattatray Shankar Joshi is the original owner of this bungalow property (Aashray Housing Society, C. S.No 69, Plot no.8, Vijay Nagar, Sangli). Dattatray Shankar Joshi was the consumer (No. 279940115960) from 15.08.1985. He decided to redevelop the said Plot by constructing a new multistoried building. He submitted an application to the Municipal Corporation for Building construction permission on 03.11.2020, and permission was received on 21.03.2021 vide letter no. K/254/2021/21.03.2021. The construction permission is kept on record. Meanwhile Shri Joshi made a registered agreement for sale of plot No.8 under C.S.No.69 with the Appellant / builder Shri Saurabh Kulkarni, and registered the sale deed on 22.01.2021. Later, the builder Shri Saurabh Kulkarni demolished the old building of Shri Joshi and constructed a multistoried building which is known as “Sneh Residency”. Hence Sneh Residency Construction Project comes under the definition of a “redevelopment” project, as the land of plot no.8 was already in use, it was not vacant. The existing residential category (Consumer No.279940115960) connection in the name of Shri Dattatray Shankar Joshi was changed to commercial category for construction purposes.
4. The building of Sneh Residency Association was constructed by the developer Shri Saurabh Kulkarni. The Respondent had clarified to the Developer to execute the work of augmentation of DTC under DDF scheme, since the case falls squarely under “redevelopment”.
5. Accordingly, a technical estimate was submitted on 26.08.2022. The Respondent MSEDCL, by its letter dated 01.09.2022, informed the Appellant that there are no funds available under the New Service Connection (NSC) Scheme at present. There is a considerable waiting period for the release of new connections under the NSC Scheme. Hence, the said connections can only be released under 1.3% DDF Scheme (if the


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Appellant so desires) by augmenting the existing 100 KVA Distribution Transformer to 200 kVA, as no other alternative is available with the Respondent, and no refund will be allowed for the said infrastructure work.

6. After a lapse of 6 months, Shri Kulkarni shown his willingness to carry out the work under DDF scheme, & on 10.03.2023, Shri Kulkarni submitted an undertaking on Rs.200/- stamp paper for 1.3% DDF scheme along with a consent of Licensed Electrical Contractor S. S. Associates, Sangli dated 10.03.2023. Accordingly, the project was submitted for technical sanction.
7. The technical estimate was sanctioned vide EE/SGL-U/T/DDF (1.3%)/2022-23/453 dated 23.03.2023 for the proposed work of augmentation of the existing Distribution Transformer Centre (DTC). The total cost of the estimate was Rs.4,25,970/-. The consumer paid 1.3% supervision charges of Rs.6535/- on 10.04.2023.
8. After execution of the proposed work and obtaining relevant permissions from the Electrical inspector, the consumer's Licensed Electrical Contractor submitted work completion report on 05.06.2023, & 10 single phase connections were released on 13.06.2023. Considering the above progression of events, there was no delay in releasing of power supply to Sneh residency from MSEDCL side.

MSEDCL Circulars on Release of New Service Connections:

9. The Respondent referred to the Circular of Corporate Office dated 19.03.2021 regarding "Supplementary Guidelines for Infrastructure Development to Release New Connections". It is clearly indicated in Point No.4 as

"TO DETERMINE THE LAND FOR ELECTRICAL INFRASTRUCTURE IN REDEVELOPMENT CASES


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In Metropolitan or urban areas there are cases of redevelopment, the land for electrical infrastructure is considered as per new load. In such case, if adequate land is not available for new DTC, then land shall be acquired on Lease for new DTC limited to new additional load. For existing load, if physically, separated and if feasible then power supply to such entire premises shall be release on existing network in the area by augmentation of existing DTC in the area instead of insisting for land for new DTC. The cost of such augmentation shall be borne by the developer in DDF scheme on non-refundable basis either by execution of work through LEC under MSEDCL 1.3% supervision or execution by MSEDCL in new connection/connection scheme after deposit of cost for such augmentation to MSEDCL.” (Emphasis added)

The “Sneh Residency” is a re-developed property, and hence the Appellant has to bear the cost of infrastructure augmentation.

10. After release of the connections, surprisingly the Appellant filed a grievance application on 30.06.2023 claiming refund of the expenditure incurred for infrastructure work (Augmentation of DTC). The Forum’s order dated 25.08.2023 has partly allowed the grievance. The operative part of the order is already captured in the First Para.
11. Vide letter dated 28.08.2023, the SDO North Zone informed Section Office Govt. Colony to implement the above CGRF order. Vide letter dated 18.09.2023, the SDO North Zone requested Shri Kulkarni to submit their proposed load at C.S.No.69/4 & C.S. No.69/13, so as to implement the CGRF order. Vide email dated 20.09.2023, Shri Kulkarni informed regarding 2 proposed ongoing building construction projects, one having a plot area of 329 sq. meters. consisting of 14 flats of 68 sq. meters carpet area, & another project having a plot area 296 sq. meter consisting of 7 flats of 90 sq. meters carpet area & common connections of 5 KW to each apartment.

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12. MSEDCL is following the order of the Forum. The Appellant had submitted an undertaking to carry out the work under 1.3% DDF scheme. As per this undertaking “he will not claim either the material used or any monetary claim or refund thereof.” There was no delay in releasing of power supply to Sneh Residency from MSEDCL side. The present representation does not have any merit. The Appellant enjoyed DDF facility for speedy release of new connections. There is a considerable waiting period for NSC works which are to be done through Departmental infrastructure work. Therefore, the Respondent prays that the Representation of the Appellant be rejected.

Analysis and Ruling

4. Heard both the parties and perused the documents on record. The Appellant is a promoter / builder / developer of Sneh Residency Association with details as captured in Table 1.

5. The Respondent contended that it was found during the preliminary joint survey that the existing 100 KVA Distribution Transformer was already overloaded (the peak Load found 96 %); hence the new proposed load could not be released on this 100 KV DTC. Hence, it was necessary to augment the existing 100 KVA DTC to 200 KVA to release the connected load of 52.30 KW of Sneh Residency. It is a case of redevelopment. Shri Dattatray Shankar Joshi is the original owner of a bungalow which used to exist on this plot. He was a consumer (No. 279940115960) from 15.08.1985. Building construction permission was received on 03.11.2020. The builder Shri Kulkarni demolished the old bungalow of Shri Joshi and constructed a multistoried building which is known as Sneh Residency. Hence this construction project comes under “redevelopment project”. There is a considerable waiting period for releasing new connections under the NSC Scheme under which the cost of infrastructure augmentation is borne by MSEDCL. Hence, the


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said connections were released under 1.3% DDF Scheme by augmenting the existing 100 KVA Distribution Transformer to 200 kVA at the developer's cost. The Appellant paid 1.3% supervision charges of Rs.6535/- on 10.04.2023. After completion of this infrastructure work, the load was released on 13.06.2023.

6. The Appellant contended that the above work should have been executed under NSC Scheme, where in refund was permissible / available. He claimed that the said project was a new development, and not "redevelopment". Hence, he is eligible for refund of infrastructure cost, considering the work done to be eligible under NSC scheme.

7. We have examined both these contentions and find that the case falls under "redevelopment". The Respondent has clearly outlined the sequence of events in para 3 (3), which established this is a case of redevelopment. The Respondent has also explained (para 3(5)) why it was not possible to sanction the project at its cost under the NSC Scheme. The Appellant has executed the work under DDF Scheme. At this juncture, this authority cannot change the work executed under DDF Scheme into the NSC scheme.

8. The High Court Bombay, Nagpur Bench in WP No. 1588 of 2019 in Case of MSEDCL V/s Mahamaya Agro Industries and others held that:-

"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 Page 28 of 29 77,78,79,80,81 & 82 of 2022 Sangram Group turn


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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.

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30. In view of the above, the first Petition No.1588/2019 filed by the company is allowed in terms of prayer clause (1). **The impugned order dated 17.10.2018 shall stand quashed and set aside to the extent of the challenge and the conclusions arrived at by the forum by its order dated 25.06.2018 are sustained.** (Emphasis added)

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.

9. The Forum by its order dated 25.08.2023 has directed MSEDCL to provide the new electric connections of the Appellant's upcoming projects on S.No.69/4 and 69/13 on this augmented 200 KVA Distribution Transformer and has directed not to give any sanction to other consumers on the said 200 kVA transformer. The Respondent has agreed to abide by these orders of the Forum. The Respondent by its letter dated 20.09.2023 has assured that it will keep spare capacity for the 2 new upcoming projects of the Developer at S.No.69/4 and 69/13, as detailed in para 3(11). Consequently, the Appellant will not have to invest in any extra infrastructure cost for augmentation of capacity while executing his proposed 2 new projects. We direct the Respondent to stick to its assurance in this regard. Further, no service connection charges should be levied for these proposed 2 new projects.



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10. The Forum has given a fair and reasoned order, which does not need any interference. The Representation is rejected and disposed of accordingly.

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



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