

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 33,34,35,36,37 & 38 OF 2020

In the matter of refund of infrastructure cost

1) Prakash Sidram Pattanshetty	33 of 2020	
2) Shankar Govind Pitambare	34 of 2020	
3) Pargonda Parsappa Unholi	35 of 2020	
4) Vishwas Yallappa Koli	36 of 2020	
5) Shivaji Bapu Mane	37 of 2020	
6) Shivappa Sangappa Teli	38 of 2020 Appellants

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Kavthemahankal (MSEDCL). Respondent

Appearances

For Appellant : Haribhau Khapre, Representative

For Respondent : Sandip Sanaf, Executive Engineer, Kavthemahakal


Coram: Deepak Lad

Date of Hearing: 18th June 2020

Date of Order : 26th August 2020

ORDER

All these six Representations are filed on 18th February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the common Order dated 13th December 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Kolhapur Zone.


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2. The Forum, by its common order dated 13.12.2019 has rejected the Case No.18 of 2019-2020.

3. Aggrieved with the order dated 13.12.2019 passed by the Forum, these Appellants have filed their representations. Initially, all six representations were jointly filed on 18.02.2020 with common Schedule B and independent declarations as annexures. When this anomaly was pointed out to the representative of the Appellants on 25.02.2020, then he submitted scanned documents vide email dated 26.02.2020. The facts in all these representations are similar in nature, and common grounds are raised. Therefore, for the purpose of this order, all six representations are clubbed together. The Appellants submitted highly brief information which does not reveal detailed information of the individual representations. The same is as given below: -

1) Representation No. 33 of 2020 - Prakash Sidram Pattanshetty


The Appellant is Agricultural Consumer of the Respondent (C.No.270090421325) from 20.06.2007 at Post – Shegaon, Tal. Jat, District Sangli. The Appellant has developed 0.18 km LT tap line as per the Respondent’s estimate No. EE/CSS/1240/06-07 of Rs.46800/-

2) Representation No. 34 of 2020 - Shankar Govind Pitambare

The Appellant is Agricultural Consumer of the Respondent (C.No.270060411902) from 11.05.2007 at Post – Banali, Tal. Jat, District Sangli. The Appellant has developed 0.18 km LT tap line as per the Respondent’s estimate No. OPC/15%/779/06-07 of Rs.46800/-.

3) Representation No. 35 of 2020 Pargonda Parsappa Unholi

The Appellant is Agricultural Consumer of the Respondent (C.No.270180446564) from 25.04.2008 at Post – Umrani, Tal. Jat, District Sangli. The Appellant has developed 0.12 km LT tap line as per the Respondent’s estimate No. EE/DDF/523/06-07 of Rs.31200/-.


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4) Representation No. 36 of 2020 Vishwas Yallappa Koli

The Appellant is Agricultural Consumer of the Respondent (C.No.271050670531) from 14.09.2007 at Post – Kaslingwadi, Tal. Jat, District Sangli. The Appellant has developed 0.06 km LT tap line as per the Respondent’s estimate No. EE/OPC/15%/330/06-07 of Rs.15600/-.

5) Representation No. 37 of 2020 Shivaji Babu Mane

The Appellant is Agricultural Consumer of the Respondent (C.No.271050670477) from 21.09.2007 at Post – Kaslingwadi, Tal. Jat, District Sangli. The Appellant has developed 0.06 km LT tap line as per the Respondent’s estimate No. EE/15%/CSS/1209/06-07 of Rs.15600/-.

6) Representation No. 38 of 2020 Shivappa Sangappa Teli

The Appellant is Agricultural Consumer of the Respondent (C.No.270180444693) from 18.12.2007 at Post – Umrani, Tal. Jat, District Sangli. The Appellant has developed 0.12 km LT tap line as per the Respondent’s estimate No. OPC/161/06-07 of Rs.31200/-.

4. In all these six cases, while releasing new connection to the agricultural category, the Respondent sanctioned the estimates of work under the Scheme by paying 1.3% towards supervision charges. The Appellants have completed the required infrastructure works at their own cost as per MSEDCL estimates and directions.

5. The Appellants, in their applications have said that the Respondent cannot take infrastructure cost under any head and therefore, the order of the Forum is not acceptable to them. The money recovered from the Appellants by the Respondent is not according to law and the orders of the Commission.

6. The issue of refund of infrastructure cost was pending due to Civil Appeal No. 4305 of 2007 filed by MSEDCL with Hon’ble Supreme Court of India, New Delhi. The Court granted stay on refund on 31.08.2007. Finally, Hon’ble Supreme Court dismissed the Civil Appeal of the Respondent on 10.11.2016 and Maharashtra Electricity Regulatory Commission (the

Commission) also issued directives on 20.07.2017 to comply with the Commission's order dated 17.05.2007 and 21.08.2007 and refund the amount to the consumers. Therefore, it becomes clear that the Appellants are eligible for refund of all the expenses incurred by it for infrastructure works under each case. There were no directives to the consumers to apply for refund. MSEDCL was supposed to have implemented the order at its own. Subsequently, the Respondent MSEDCL issued Circular on 12.10.2017 for refund of infrastructure charges. But till date the Appellants did not receive any response or refund from the Respondent. Therefore, the Appellants approached the grievance redressal mechanism.

7. The Appellants also referred the Judgment dated 17.01.2020 of the Hon'ble Bombay High Court, Bench at Nagpur in W.P. No. 5681, 4197, 4225, 5682, 5684 and 5892 of 2010. Moreover, the Appellants submitted that the Hon'ble Supreme Court has dismissed the C.A. No. 4305 of 2007 on 10.11.2016 which was filed by MSEDCL. It has also submitted that action for refund pursuant to this Supreme Court Judgment has also been initiated by MSEDCL, however, the Appellants did not receive any refund.

8. The Appellant also referred the Bombay High Court Judgment dated 10.02.2020 in W.P. No. 8712 of 2018.

9. It is, therefore, prayed that the Respondent be directed to refund the infrastructure cost incurred by the Appellants with interest thereon.

10. The Respondent, by its letter dated 12.03.2020 filed its reply in all six cases separately stating as under: -

- (i) The Respondent raised the following two issues in common which the Forum considered while giving the order on merit: -

Issue No.1

The Respondent pointed out that the representative of all these six Appellants has filed common Schedule A, and separate declaration of individual Appellant duly signed. As per CGRF Regulations, the Schedule A is to be signed by the consumer and not by the representative. This is a statutory requirement as per the CGRF Regulations. The Respondent referred to the circular of Government of

Maharashtra dated 14.10.2019 having No.संकिर्ण२०१९/प्र.७१/१८(र.व.का.) मंत्रालय मुंबई. This circular clearly stipulates that any grievance of a person should be signed by that affected person only. If it is signed by any agent or representative, then the grievance should not be considered at all. The instant representations are deemed to be rejected.

Issue No. 2

All these Appellants have applied for new electric connections for agricultural pumps. The infrastructure was sanctioned under Dedicated Distribution Facility (DDF) Scheme only. The Appellants have carried out infrastructure works as per DDF scheme. The electric connections were released in the year 2007-08 i.e. almost 11 years have passed for the cause of action. Hence, the grievances are time barred.

- (ii) The Respondent submitted the required information which are available on record in each case individually as below: -

Rep.No.	33 of 2020	34 of 2020	35 of 2020	36 of 2020	37 of 2020	38 of 2020
Appellant	Pattanshetty	Pitambare	Unholi	Koli	Mane	Teli
Consumer No.	270090421325	270060411902	270180446564	271050670531	271050670477	270180444693
Estimate Sanction	CSS/1240/2006-07	ORC/15%/333/2006-07	DDF/523/2007-08	ORC/15%/332/2006-07	CSS/1209/2006-07	1.3%/161/2006-07
Estimate Amount (Rs.)	52300.00	43800.00	23800.00	22700.00	15600.00	42300.00
Work Involved (LT-km)	0.18	0.18	0.06	0.06	0.06	0.3
Load Sanctioned (HP)	3	5	5	5	5	3
Quotation Amount (Rs.)	2280.00	2915.00	2809.00	2955.00	2955.00	8825.00
Date of Payment	08.02.2007	23.08.2006	05.11.2007	14.09.2007	05.06.2007	19.06.2006
Date of Connection	20.06.2007	11.05.2007	25.04.2008	10.12.2007	21.09.2007	18.12.2007
Approach to IGRC	18.02.2019	18.02.2019	18.02.2019	18.02.2019	18.02.2019	18.02.2019
IGRC Order	14.06.2019	14.06.2019	14.06.2019	14.06.2019	14.06.2019	14.06.2019
Approach to the Forum	16.08.2019	16.08.2019	16.08.2019	16.08.2019	16.08.2019	16.08.2019
Forum Order	13.12.2019	13.12.2019	13.12.2019	13.12.2019	13.12.2019	13.12.2019

- (iii) The Respondent referred the definition of grievance of Regulation 2(1) of CGRF Regulations. The Appellants have submitted the grievances with IGRC almost after 11 years from cause of action in all these six representations and hence it should not be considered as grievance as per definition of grievance in CGRF Regulations.
- (iv) The Appellants then submitted the grievance with the Forum which is after 63 days from the date of the order of the IGRC. The Appellants have approached the Forum on 16.08.2019 after 11 years from the cause of action.
- (v) The Respondent referred the Regulation 6.6 of the CGRF Regulations which is quoted as below: -

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

The Appellants should approach the Forum within two years from the cause of action i.e. the date of release of connection. In the instant cases, the connections are released in the year 2007-08 and now the Appellants approached the Forum in all six representations after 11 years hence these grievances are time barred. This principle and logic are upheld in the Judgement dated 10.12.2013 in W.P. No. 1650 of 2012 by the Hon. Bombay High Court, Bench at Nagpur and Judgment dated 21.08.2018 in W.P. No. 6859, 6860, 6861 and 6862 of 2017 by the Bench at Aurangabad.

(vi) In view of the above, the judgments, Regulation 6.6 of the CGRF Regulations remains valid and untouched.

11. The Respondent also referred the orders of the Electricity Ombudsman (Mumbai) in Representation No.189 and 190 of 2018, 152,153,154 and 160 of 2019, and the order of the Electricity Ombudsman (Nagpur) in Representation No. 88 of 2019 for its support. In all the above cases, the representations are rejected on the ground of limitation.


12. The Appellant had not paid any amount to the Respondent towards infrastructure cost as Out Rate Contribution (ORC) except supervision charges. The Respondent referred Regulation No.3 of the Supply Code Regulations in the context which is reproduced below:


“3.3 Recovery of expenses for giving supply

3.3.2 Where the provision of supply to an applicant entails works of laying of service line from the distributing main to the applicant’s premises, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18:

3.3.8 Where the Distribution Licensee permits an applicant to carry out works under this Regulation 3.3 through a Licensed Electrical Contractor, the Distribution Licensee shall not be entitled to recover expenses relating to such portion of works so carried out by the applicant:

Provided however the Distribution Licensee shall be entitled to recover, from the applicant, charges for supervision undertaken by the Distribution Licensee, at such rate, as may be approved in the schedule of charges under Regulation 18, not exceeding 15 per cent of the cost of labour that would have been employed by the Distribution Licensee in carrying out such works.”


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13. The Respondent also referred the orders of the Commission in Case No.70 of 2005, Case No. 82 of 2006 and Case No. 113 of 2019, MSEDCL Circulars for refund of SLC, ORC, Meter Cost and MSEDCL Circular No. 31793 dated 29.12.2017.

14. Hearings, in general, could not be conducted due to onset of Covid-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence of the parties. The hearing in the instant case was scheduled on 18.06.2020 on e-platform after the consent from the parties. During the hearing, the Appellant argued that after dismissal of the C.A. No. 4305 of 2007 by the Hon'ble Supreme Court and the Commission's directives dated 20.07.2017, the Respondent ought to have refunded the infrastructure cost incurred by the Appellants at its own but it did not do so. Hence, it approached the grievance redressal mechanism for suitable directions to the Respondent.

15. The Respondent argued that the cases filed by the Appellants with the Forum are not as per the requirement under the CGRF Regulations. The Appellants have made major portion of the case common and only declaration is separately attached. As a matter of fact, each case should have been a separate one with individual declaration duly signed. This was one of the reasons for the Forum to have not considered the Appellants' cases. Moreover, all these cases are time barred as the Appellants have approached the grievance redressal mechanism almost after 11 years. The Appellants have not at all paid any charges towards infrastructure cost other than the supervision charges to the Respondent. All these works have been done by the Appellants under DDF with their own consent and cost. Therefore, they are not entitled for any refund as such. It further argued that had the Appellants got their work done immediately under DDF. Had this been not the case, the Appellants would have been put in chronology with other pending applications and it would have taken long time to get the connections.

Analysis and Ruling

16. Heard the parties. Perused the documents available on record. The Appellants have also played the same trick which they adopted vide filing the grievance with the Forum and filed the representations in the same manner. When this was pointed out to the representative of the Appellants, he then emailed separate representations with declarations. In my opinion, this is not directly coming from the Appellants. It is a handiwork of the representative who tried to play trick on the Forum as well as this office. This conduct of the representative is


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highly deplorable and unbecoming of him. He is therefore hereby warned not to repeat this in future. Moreover, the representations are highly brief in nature and does not provide a complete travel of the case from the date of application for connection till its release. This does not provide clear understanding of the issue. Therefore, all such issues are taken from the submission of the Respondent.

17. In order to decide the case, I perused various orders of the Commission, Judgments of the Tribunal, and Court concerning the issues in the case. The details are given below:-

- (a) The Commission's order dated 08.09.2006 in Case No. 70 of 2005 regarding Schedule of Charges: -

Relevant portion of the order applicable in the instant representation is reproduced below: -

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

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


"18. In view of the above, it is clear that the "Service Line Charges" as proposed by the appellant are being allowed to be recovered through tariff. If the aforesaid proposal on "Service Line Charges" made by the appellant is accepted it will amount to doubling of the recovery of the expenses from the consumers. The appeal is accordingly dismissed."

- (c) The Commission's order dated 17.05.2007 in Case No. 82 of 2006 [In the matter of refund of monies collected by MSEDCL towards Outright Contribution Charges (ORC) and cost of meter while providing new connections against the Order dated September 8, 2006 in Case No. 70 of 2005 (Schedule of Charges Order)].

Operative part of order in Case No. 82 of 2006 is reproduced below: -

"9. Having considered the material.....

(a).....


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- (b).....
- (c).....
- (d) *MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and 'CRA', together with interests, on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;*
- (e) *MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of the amount of Rs. 6500/- (collected under the head 'CRA') and the interest amount collected towards ORC, cost of meter and 'CRA' from Devang Sanstha.*

The Commission observes with concern that primarily incidences of collection of amounts towards ORC, cost of meter and 'CRA' post the operation of the Order dated September 8, 2006 in Case No. 70 of 2005 and the issuance of the Commercial Circular No.43 on September 27, 2006, are demonstrative of severe anomalies in the functioning of MSEDCL. The said acts have been overtly mechanical on the part of errant and negligent officials who have not paid adherence to the revisions in the erstwhile schedule of charges which have been mandated under the Order dated September 8, 2006. The Commission further observes that the stand taken by MSEDCL that their field officers should gain clarity on the implementation procedure enunciated under the Order dated September 8, 2006 within two weeks from April 13, 2007, is misconceived. The Commercial Circular No. 43 issued by MSEDCL themselves on September 27, 2006 provides for enough clarity on the import of the said Order. On the issues raised in the complaint as to refund of the depreciated value of amounts spent on DDF, as per Regulation 3.3.3 of the Supply Code having not yet materialised in favour of various consumers, the Commission observes that the position of law is well settled under the Supply Code.

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. The Commission further observes that consumer representatives /organisations who/which are invited to attend hearings and/or make submissions, should ensure sufficient co-operation.

There shall be directions to MSEDCL in terms of the above. The Commission reiterates that appropriate action under Section 142 of the EA, 2003 may be considered by the Commission on the Managing Director, Director (Operations) and Chief Engineer (Commercial) of MSEDCL, should the directives issued to MSEDCL under this Order not be complied with.”
(Emphasis added)

- (d) The Commission’s order dated 21.08.2007 in Case No. 82 of 2006
(In the matter of compliance by MSEDCL of directions issued under Order dated 17.05.2007.)

Relevant portion of the order is reproduced below: -

“8. MSEDCL has submitted under affidavit that the amounts collected under the head CRA actually pertains to SCC (service connection charges) and is therefore not liable to be refunded. The Commission is of the finding that completely contradictory statements have been made by MSEDCL, which one hand during the hearing, as recorded in the order dated May 17, 2007, submitted before

the Commission that CRA is a head-based charge akin to SLC (service line charges). In fact, on the Commission's finding that collection of head-based charges in the nature of 'CRA' has been unlawful, Shri. K.B. Fakir, Electrical Engineer, MSEDCL-Beed Circle, undertook to refund amounts collected from Devang Sanstha, towards ORC, CRA, and cost of meter, together with interest. To this, the Commission had directed MSEDCL to refund to Devang Sanstha and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interest. The Commission is of the view that MSEDCL had all the time available if there was a need to seek a review of the Order dated May 17, 2007 on the contention that CRA is nothing but SCC. However, no such review application has been filed by MSEDCL. MSEDCL has not found it pertinent or necessary to seek a review but has gone ahead and concluded itself that compliance of the Commission's direction to refund CRA amounts, is not required, as CRA pertains to SCC. This is based on MSEDCL's interpretation which MSEDCL has not found necessary to check with the Commission by seeking a review. In view of the submissions of MSEDCL under its affidavit filed on May 28, 2007, the Commission holds that MSEDCL has contravened the directions of the Commission under the Order dated May 17, 2007 is therefore liable to be penalized under Section 142.

11. MSEDCL shall submit to the Commission their statutory auditor's certificate to the effect that the amounts collected illegally together with interest, as held at paragraph 9(d) and (e) of the Order dated May 17, 2007, have been refunded to the concerned consumers."

(Emphasis added)

- (e) Hon. Supreme Court judgment in Civil Appeal No. 4305 of 2007 (DPR No. 20340 of 2007) filed by MSEDCL against ATE judgment in Appeal No. 22 of 2007.

"Refund is stayed till the matter comes up for hearing on the date fixed i.e. 14th September, 2007"

The above interim stay was continued by the Supreme Court vide its order dated 14th September 2007 as follows:


"Until further order, interim order passed by this Court shall continue to operate."

- (f) Commission's order dated 16.02.2008 in Case No. 56 of 2007.
(In the matter of Compliance of directives issued to MSEDCL under Order dated May 17, 2007 passed in Case No. 82 of 2006).

Relevant portion of the order (56 of 2007) is reproduced below: -

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

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


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

“(g) **“Dedicated distribution facilities”** means such facilities, not including a Service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises;”


It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as a facility solely or clearly dedicated for giving supply. Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers. The transformer or the substation can also form a part of Dedicated Distribution Facility if it is provided exclusively for giving supply to these consumers and no other consumer is fed from the said transformer/substation. Also, Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Section 43 of the EA 2003 read with the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. In fact, the licensee should take advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfil ‘Universal Service Obligation’ as per the spirit envisaged in the EA 2003 and the Regulations made thereunder.

It is also necessary to point out certain specific portions of the Supply Code Regulations dealing with Dedicated Distribution Facilities, as under:

“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:

Provided however that where the discontinuance of supply is on account of the consumer’s failure to pay any sum under Section 56 of the Act, the Distribution Licensee, in addition to the rights available under that Section, shall be entitled to adjust such sums due from the depreciated value of facilities to which the consumer is entitled under this Regulation 3.3.5 or to retain facilities of such depreciated value as to cover such sums due from such consumer to the Distribution Licensee.”


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(2) *In view of the above, the Commission hereby directs that:*

(i) MSEDCL should submit 'Schedule of Charges' proposing rates on normative basis, for providing Dedicated Distribution Facilities within two weeks from the date of this order, in accordance with the requirement of Regulation 3.3.3 of the Supply Code Regulations, which specifies as under:

3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated Distribution Facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.

Therefore, the MSEDCL are directed to levy charges for Dedicated Distribution Facilities based on the schedule of charges approved by the Commission under Regulation 18. The MSEDCL shall take immediate action in this regard. There shall be direction to the MSEDCL in terms hereof.

(ii) Issue instructions to the field offices clarifying the meaning of the term Dedicated Distribution Facility and making it clear that the charges towards the same, as approved by the Commission, should be recovered only if the consumer precisely seeks such facilities.


(iii) Should immediately prepare and submit CAPEX schemes for network expansion required for catering prospective consumers based on load survey and demand projection.

The scheme should basically cover the equipment/material required to release anticipated new connections.

(3) *With reference to the prayers of the Petitioners to direct refund of ORC and such other head based charges, the Commission is of the view that taking into account the submissions of the MSEDCL that there have been many instances where there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities) though different nomenclatures may have been used, hair splitting will not be possible in the present petition in this regard. It will not be appropriate to direct refund under this Order as the Order dated August 31, 2007 passed by the Hon'ble Supreme Court in Appeal No. 20340 of 2007 is still in force as the term SLC which is subject matter of appeal has purportedly been charged by MSEDCL herein using the nomenclature of ORC in many cases although they both are and pertain to SLC. In view of the admittedly overlapping nature of these charges with Service Line Charges which is sub-judice before the Hon'ble Supreme Court, the Commission declines to order refund as stipulated under its Order dated May 17, 2007. It is for the Petitioners to make suitable prayers and agitate in the said proceedings in Appeal No. 20340 of 2007 as the stay Order dated August 31, 2007 continues. This applies also in case of the third prayer in the present petition.*

(4) *The issue raised by the Petitioners relating to refund of meter cost, has been raised by MSEDCL under its petition filed on December 19, 2007 seeking a review of the direction contained in the Order dated May 17, 2007 to refund the cost of meter, which stipulates as under:*

"5.The refunding should be made by MSEDCL in a lumpsum and at one go, and not via adjustments in future energy bills."


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- (g) The Commission's order dated 01.09.2010 in Case No. 93 of 2008.
(In the matter of Petition of Akhil Bhartiya Grahak Panchayat, Latur seeking directions against MSEDCL for non-compliance of the Electricity Supply Code Regulations and the Electricity Act, 2003).

"19. Having heard the Parties and after considering the material placed on record, the Commission is of the view as under:

iii. Regarding, 10,740 number of cases where MSEDCL has recovered charges other than approved Schedule of Charges; the Commission is of the view that these are only indicative cases found out on the sample checking basis. MSEDCL either has to scrutinise details of all the consumers released during the period of 9th September 2006 to 20th May 2008 for charges levied other than approved Schedule of Charges or publicly appeal either through news papers or electricity bills, asking the consumers to contact MSEDCL if such charges are levied on them during above period. Thereafter, MSEDCL should adjust the extra charges collected by MSEDCL in the energy bills of the respective consumers. If any consumer has any grievance regarding excess charges levied by MSEDCL and its refund, they may file the same before the concerned Consumer Grievance and Redressal Forum established by MSEDCL under the provisions of Section 42(5) of the EA 2003 read with the "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006". This directive of refund of excesses recovered charges will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007."


- (h) The Commission's order dated 08.12.2014 in Case No. 105 of 2014
(In the matter of Petition of MRVGS for penal action against MSEDCL for breach of provisions of law in respect of new electricity connections to Agricultural consumers, and non-compliance of certain other directions).

The relevant portion is reproduced below: -

*"16. MSEDCL appears to have complied with the direction to ascertain if additional charges beyond the approved Schedule of Charges were recovered during the relevant period from consumers, or publicly appeal to affected consumers and refund the charges. **Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response.** However, MSEDCL should submit to the Commission, before the Technical Validation Session (TVS) in respect of its pending MYT Petition, the number of consumers identified, and additional charges refunded or pending for refund so far.*

17. The Commission has noted MSEDCL's submission regarding compliance of directions to review its Circulars and practices in the context of DDF, service connections, etc.

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


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

- (i) Supreme Court judgment dated 10.11.2016 in Civil Appeal No. 4305 of 2007 filed by MSEDCL. Relevant portion of the judgment is reproduced below: -

“Ms. Rimali Batra, the learned counsel, appearing for the appellant has argued vehemently and has made all submissions, which could have been made. However, we are unable to agree with her submissions. The impugned judgement does not require any interference.

The Civil Appeal is dismissed. Pending application, if any, stands disposed of.”

- (j) Letter No.3955 dated 20.07.2017 from the Commission addressed to MSEDCL for compliance of Commission's directives regarding refund of amount recovered other than approved schedule of charges by the MSEDCL, after the Judgment dated 10.11.2016 of the Supreme Court dismissing Civil Appeal No. 4305 of 2007.

Relevant portion of the letter is quoted below:-

“6. With dismissal of MSEDCL's Appeal, stay granted on refund of amount becomes non exist. Hence, MSEDCL needs to comply with the Commission's order dated 17 May, 2007 and 21 August, 2007 and refund the amount to the consumers.

7. In view of above, MSEDCL is required to submit compliance of the Commission's orders dated 17 May, 2007 and 21 August, 2007.”

18. From above referred orders, few things emerged out distinctly: -

- (i) Commission issued Schedule of Charges order dated 08.09.2006 in Case No. 70 of 2005. MRVGS filed petition (Case No. 82 of 2006) with the Commission as MSEDCL unauthorizedly collected monies under the head of ORC, cost of meter and CRA in violation of Schedule of Charges order. The directions of the Commission dated 17.05.2007 in this case is as below: -

“9 (d) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and 'CRA', together with interests, on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007”

It clearly means that the refund was limited to the period from 08.09.2006 to 30.04.2007.

- (ii) MSEDCL filed Appeal with the ATE being Appeal No. 22 of 2007 against Commission's order in Case No. 70 of 2005. ATE in its judgment dated

14.05.2007 upheld the order of the Commission. This was challenged by the MSEDCL in Supreme Court in Civil Appeal No. 4305 of 2007.

- (iii) MRVGS filed a complaint through Case No. 82 of 2006 seeking refund of monies collected by MSEDCL towards ORC, cost of meter and CRA. Commission issued order on 21.08.2007 and imposed penalty on MSEDCL. Relevant portion being as below:-

“11. MSEDCL shall submit to the Commission their statutory auditor’s certificate to the effect that the amounts collected illegally together with interest, as held at paragraph 9(d) and (e) of the Order dated May 17, 2007, have been refunded to the concerned consumers.”
(Emphasis added)

- (iv) Supreme Court stayed the judgement of ATE by order dated 31.08.2007 thereby staying the refund and further on 14.09.2007 the Supreme Court issued directions that until further orders, interim order issued by it shall continue to operate.
- (v) MRVGS filed petition with the Commission on 05.11.2007 through Case No. 56 of 2007 seeking compliance of directions issued by the Commission in its order dated 17.05.2007 in Case No. 82 of 2006. The Commission in this order said that it will not be appropriate to direct MSEDCL for refund in view of the pendency of Civil Appeal in the Supreme Court. It also clarified the issue of DDF.
- (vi) At this stage, in view of above development, MSEDCL issued Circulars on 09.05.2007 for refund of meter cost, and on 20.05.2008 regarding guidelines for releasing new connections and augmentation. In this Circular MSEDCL framed policy for recovery of charges towards development of infrastructure.
- (vii) In the meantime, on 10.11.2016, the Supreme Court dismissed Civil Appeal No. 4305 of 2007 which was filed by MSEDCL against ATE judgment. Therefore, the stay got automatically vacated and the Commission’s order in Case No. 70 of 2005 dated 08.09.2006 became operative.
- (viii) The Commission issued letter dated 20.07.2017 to MSEDCL for compliance of Commission’s directives regarding implementation of its order dated 17.05.2007 and 21.08.2007 both in Case No. 82 of 2006.
- (ix) On close scrutiny of the legal travel of the case, it is noted that the issue of SLC was taken up at ATE and then in Supreme Court by MSEDCL. The Commission has also accepted the reality that there has been an overlap between ORC and SLC

(for Dedicated Distribution Facilities). The Commission, in its order dated 17.05.2007 in Case No. 82 of 2006 has stipulated period of refund for amount collected towards ORC, Cost of Meter and CRA from 08.09.2006 to 30.04.2007. However, this refund could not take place because of specific order of the Commission dated 16.02.2008 in Case No. 56 of 2007 due to Civil Appeal No. 4305 of 2007 pending in Supreme Court and stay thereon.

- (x) It is important to note that barring the consumers from whom the amount towards ORC, Cost of Meter and CRA is collected by MSEDCL during 08.09.2006 to 30.04.2007, rest of the consumers, if any, has paid such amount were having option to adopt the grievance redressal mechanism under the Regulations of the Commission. This is very much clear from para 19 of the Commission's order dated 01.09.2010 in Case No. 93 of 2008 which is quoted above at para No. 17 (g) at Page No.14. Notwithstanding this specific mention in the order, the route of adoption of grievance redressal mechanism is always open to the aggrieved person. Moreover, Commission in its order dated 08.12.2014 in Case of 105 of 2014 has specifically said that it is satisfied with the action of MSEDCL in compliance of its order in Case No. 82 of 2006.

It is noted that the Appellants have applied for their respective agricultural connections, paid the quotation amount on different dates and the connections are released. Brief account of this as follows:

Rep.No.	33 of 2020	34 of 2020	35 of 2020	36 of 2020	37 of 2020	38 of 2020
Appellant	Pattanshetty	Pitambare	Unholi	Koli	Mane	Teli
Consumer No.	270090421325	270060411902	270180446564	271050670531	271050670477	270180444693
Quotation Amount (Rs.)	2280.00	2915.00	2809.00	2955.00	2955.00	8825.00
Date of Payment	08.02.2007	23.08.2006	05.11.2007	14.09.2007	05.06.2007	19.06.2006
Date of Connection	20.06.2007	11.05.2007	25.04.2008	10.12.2007	21.09.2007	18.12.2007

The estimates of all these six representations are sanctioned by the Respondent under various schemes like CSS, ORC, DDF and the works have been done by the Appellants by paying supervision charges only.

Now let us examine as to whether all these cases fit into the matrix of 08.09.2006 to 30.04.2007 with respect to their date of payment which is envisaged in the Commission's order in Case No. 82 of 2006 dated 17.05.2007.

Therefore, the date of payment being the only criteria identified in the Commission's order, case of the Appellant in Representation No. 33 of 2020 falls


in the period 08.09.2006 to 30.04.2007. The order of the Commission in Case No. 70 of 2005 dated 08.09.2006 is with respect to the schedule of charges and was effective from 08.09.2006. Therefore, out of six Representations, only Representation No. 33 of 2020 sustains in view of the order dated 17.05.2007 in Case No. 82 of 2006 issued by the Commission.

19. Order of the Commission dated 17.05.2007 in Case No. 82 of 2006 has genesis in the Commission's order dated 08.09.2006 in Case No. 70 of 2005 which is Schedule of Charges order. If the date of payment of the consumers fall outside the period of 08.09.2006 to 30.04.2007, grievance redressal mechanism available under the Act is the only remedy for redressal of grievance which the Appellants in Representation No. 34, 35, 36, 37 and 38 of 2020 could have adopted.

20. In view of these discussions, all the Representations except Representation No. 33 of 2020 are barred by limitation.

21. Since Representation No. 33 of 2020 in respect of Prakash Sidram Pattanshetty sustains, he is entitled for refund of infrastructure cost. However, with regard to his prayer for refund of this cost with interest, it is noted that he has jumped the queue of chronology of paid pending similar applicants who were desirous of getting their agricultural connections. By virtue of his own option to get his work done by payment of supervision charges, he has incurred the expenditure on infrastructure and got the connection immediately which otherwise would have taken a long time. Therefore, he reaped the benefits of getting the connection immediately and therefore, there is no sound justification for grant of interest on amount of refund.

22. The undersigned perused the order of the Forum and noted the strictures passed by it as far as the submission of common schedule A and separate declarations of the Appellants. I also noted that the typing font for the common part of the Schedule A and declaration are different. Despite the strictures passed by the Forum, the authorised representative ventured to repeat the same while submitting the representations in this office. This conduct on his part is highly deplorable. Should the authorised representative of the Appellants failed to conduct


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



himself in a manner as required under the Regulations and try to play smart in future, he will be debarred from presenting any case before the undersigned.

23. In view of the above, I pass the following order: -

- (a) The Respondent is directed to refund the cost of infrastructure to Prakash Sidram Pattanshetty in Representation No. 33 of 2020.
- (b) This refund shall be minimum of, the cost of the estimate for infrastructure only excluding supervision charges, and the cost finalized under the WCR irrespective of the expenditure incurred by him. This refund shall be without any interest.
- (c) The refund shall be adjusted against the ensuing energy bills and the arrears of bills, if any, of the Appellant.
- (d) All other prayers of the Appellant in Representation 33 of 2020 are rejected.
- (e) The Representations No. 34, 35, 36, 37 and 38 of 2020 are rejected.

24. The order of the Forum is modified to the extent above.

25. The Respondent is directed to submit the compliance within a period of 3 months from the date of issue of this order.

26. The Representations are disposed of accordingly.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

