

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 213 OF 2019

In the matter of refund of Infrastructure cost

Anay Fertilizer..... Appellant

V/s.

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

Appearances

For Appellant : Pratap Hogade, Representative


For Respondent : 1) Sagar B. Marulkar, Ex. Executive Engineer
2) Ashok R. Kabade, Asst. Engineer
3) N.P. Nalavade, Jr. Law Officer,

Coram: Deepak Lad

Date of Order: - 27th February 2020

ORDER

This Representation is filed on 5th December 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 19th October 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Kolhapur Zone (the Forum).



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2. The Forum, by its order dated 19.10.2019 has partly allowed the grievance application of the Appellant in Case No.11/2019-20 and directed Respondent to refund Rs.80,830/- in one lump sum through the electricity bill which was stopped for the period April 2018 to June 2019. The refund of 50% amount of the bill which started from July 2019 be continued till the total amount is refunded.

3. Not satisfied with the order of the Forum, the Appellant filed its representation stating in brief as below: -

- (i) The Appellant is a LT Industrial Consumer (No. 250653446337) from 22.12.2016 at C.S. No. 628, Kachara Depot, Sangli Road, Ichalkaranji, Dist.Kolhapur. The connected load of the Appellant is 19 HP at present.
- (ii) The Appellant had applied for new power supply of 100 HP to the Respondent on 17.06.2016. The power supply was sanctioned under Non-Dedicated Distribution Facility Non-DDF(CC&RF) Scheme vide letter dated 16.08.2016. The infrastructure work included laying of 0.23 Km.11 KV HT line, 100 KVA Transformer Centre and other related works. Accordingly, the Appellant had completed all the concerned Infrastructure Works as per this scheme estimate and directions. The Appellant had handed over the Infrastructure to MSEDCL and after preparation of work completion report, the load was released on 22.12.2016. The audited refundable infrastructure cost was **Rs.5,73,889/-** which was to be refunded to the Appellant through energy bills.
- (iii) As per the terms and conditions of the said scheme, it was necessary to complete the work of infrastructure by the consumer and the refund of infrastructure cost was to commence through energy bills.
- (iv) Initially, the Appellant received the refund through energy bills from February 2017 to March 2018. Thereafter, it was stopped from April 2018 to June 2019 and was again started from July 2019 onwards.
- (v) After stoppage of refund, the Appellant applied to MSEDCL for refund by its letter dated 11.04.2018 and 13.04.2018, however it was not replied or responded.
- (vi) The Appellant filed the grievance application in the Internal Grievance Redressal Cell (IGRC) on 25.02.2019 for full refund of infrastructure cost along with interest,


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but the IGRC, by its order dated 28.03.2019 has rejected the grievance. Thereafter, the Appellant approached the Forum on 22.04.2019. The Forum has rejected the grievance on wrong basis and assumptions through its order dated 19.10.2019.

Submission/Grounds in Support of the Representation: -


- (vii) This denial of refund by the Forum is totally wrong, illegal and not in line with the Judgment of the Supreme Court, the orders of the Commission and MSEDCL's own refund circulars. The submissions in this regard are given in the following paragraphs.
- (a) It is not disputed that the infrastructure work is done by the Appellant and the cost incurred of Rs. 5,73,889/- was to be refunded through energy bills.
- (b) Points of disputes are as below: -
- i. either the full amount in lump sum and one go should be refunded to the consumer or
 - ii. the interest from the date of expenditure till the date of repayment to be given.
- (viii) MSEDCL Circular dated 20.05.2008: - This circular itself is based on the various orders of the Commission. The issue needs to be examined in light of the Judgment of Hon'ble Supreme Court passed in the year 2016.
- (ix) Commission's Order dated 08.09.2006 of Schedule of Charges: - The Commission has first time decided the "Schedule of Charges" to be recovered from the consumers in case of MSEDCL vide its order in Case No. 70 of 2005 on dated 08.09.2006.

The Commission has ordered on 3 major issues as below:

- i. The cost of meter & meter box shall be borne by the licensee.
- ii. The levy of SLC to consumer is totally disallowed.
- iii. Infrastructure cost shall not be recovered from the consumers.

The Commission, in this order (Page 28, last para) has stated as below,

"However, expenses that a licensee incurs for putting the necessary electric lines connecting the transmission boundary to the distribution mains, should be included in the cost of fixed assets for the purposes of arriving at the capital base during the process of determination of annual revenue


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requirement of the licensee under Section 45 read with Section 62 of the EA 2003 and cannot be charged by licensees under their "Schedule of Charges".


- (x) MSEDCL Commercial Circular No. 43 dated 27.09.2006: - MSEDCL in its circular - Schedule of Charges - has clearly stated in Para 6.2 as below,

"The Commission has directed that the cost towards infrastructure from the delivery point on the transmission system to distributing mains shall be borne by the Company and therefore shall not be recovered from the consumers."

- (xi) Commission`s Order dated 17.05.2007:- The Commission in its Order dated 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 the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) and also SLC, Cost of Meter which are at variance from the Order of the Schedule of Charges dated 08.09.2006.

Few Extracts of this Order are as below.

- i. *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."*
 - ii. *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. Due care should be taken while refunding such charges recovered in violation of the Order dated September 8, 2006. The refunding shall be made by MSEDCL in a lumpsum and at one go, and not via adjustments in future energy bills."*
 - iii. *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."*
- (xii) Commission`s Order dated 21.08.2007: - Again the Commission has issued 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


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for compliance as per Order dated 17th May 2007. In this order in Para 9, the Commission has clearly stated as below,

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


(xiii) Commission`s Order dated 16.02.2008: - Again, Case No. 56 of 2007 was filed by the same petitioner before the Commission for the compliance of the directions issued on 17.05.2017 in Case No. 82 of 2006. In this case, issues of ORC, DDF and Non DDF were fully discussed by the Hon`ble Commission. In this order, dated 16.02.2008, the Commission has clarified the concept of DDF and issued detailed clarification on "DDF" on request of MSEDCL itself.

Few important extracts of this order are as below,

- i. 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."*
- ii. 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."*
- iii. Para 12 - *"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."*
- iv. Para 12 - *"Also Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Sector 43 of E. Act 2003 read with SoP regulations."*

MSEDCL had issued circular dated 20.05.2008 on the background of all the above-mentioned orders. Hence, it is clear that any cost recovered from or imposed on the consumers towards infrastructure cost is refundable in lump sum along with interest thereon.

The directions of the Commission are clear. The Section 62(6) of the Electricity Act, 2003 (the Act) clearly states that excess recovered amount



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must be refunded to the concerned person along with the interest thereon. Hence, the Appellant is clearly eligible to get the refund of infrastructure cost along with the interest thereon in lump sum and at one go and not via energy bills.

- (xiv) MSEDCL Circular 21.12.2009: - MSEDCL has issued further Circular bearing no. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of the infrastructure cost. It is stated in the circular that the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure. But in both the circulars i.e. 20.05.2008 & 21.12.2009, MSEDCL has totally avoided the issue of interest.
- (xv) MSEDCL Civil Appeal in Supreme Court: - In the meanwhile, MSEDCL had impleaded this issue of refund in its Civil Appeal No. 4305/2007 (earlier stamp no. 20340/2007), in which Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31.08.2007. Hence, all the Refunds were stopped. NDDF CCRF Refunds were continued as per MSEDCL circulars dated 20.05.2008 and 21.12.2009 without interest through energy bills.
- (xvi) Supreme Court Order dated 10.11.2016: - Finally the Civil Appeal filed by MSEDCL before the Hon'ble Supreme Court was dismissed by its Judgment dated 10.11.2016. After this Judgment, it is the duty of the MSEDCL to implement the Commission's Orders dated 17.05.2007 and 21.08.2007 in letter and spirit. But MSEDCL has continued the refund as per its own circulars, which are inconsistent with the concerned orders of the Commission.
- (xvii) Supply Code Regulations: - After MSEDCL circular dated 20.05.2008, MSEDCL has sanctioned many Non-DDF connections with its own conditions of refund via energy bills without interest, which were inconsistent with the Commission's orders and in contravention of the provisions of the Act. Actually, such works are nothing but Out Right Contribution (ORC). Actually, such acts and conditions of MSEDCL are against the Supply Code Regulations. The Regulation No. 19.1 reads as below:-


19.1 "Any terms & conditions of the Distribution Licensee, whether contained in the terms and conditions of supply and/or in any circular, order, notification


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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."

- (xviii) 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. Also, the Commission has declared Practice Directions regarding Interest on dated 22.07.2019.
- (xix) MSEDCL Circular dated 23.04.2018: - The IGRC has quoted this circular in its order and issued directions to verify the NDDF-CCRF connection, the assets and to start the refund. Thereafter, the refund was started through bills again from the billing month of July 2019.
- (xx) MSEDCL Circular dated 28.06.2019: - HO, MSEDCL, Mumbai has issued Commercial Circular No. 319 on 28.06.2019 regarding the policy for refund.
- (a) The Appellant submitted its grievance for refund to the Forum on 22.04.2019. Thereafter its circular was issued by MSEDCL on 28.06.2019. The Appellant requested for lump sum full refund in its account on the basis of the circular in the Forum.
- (b) But the Forum took wrong stand and noted its finding on the basis of MSEDCL submissions that this circular is applicable for refund of tariff difference only and not applicable in this case.
- (xxi) Wrong Interpretation by the Forum: - The Respondent and the Forum both have interpreted the circular wrongly, which is clear from the following: -
- (a) It is clearly stated in the circular as "Or any other reasons" which clearly includes all cases of refund. But the Forum has totally ignored the wording, though clear.
- (b) The reasoning is also quoted in the circular. In many cases the refund amount is much high as compared to monthly bills and hence the consumers have requested to refund the amount in their bank account.
- (c) This reasoning is applicable in the case. In the Appellant's case, with current consumption and monthly billing, it will take further 10/12 years


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for refund through bills. This is not affordable, and it will be injustice to the Appellant.

- (d) MSEDCL has accepted the request, taken policy decision and decided/directed to refund the amount in excess after retention of 12 months billing amount.
- (e) It is clear from the above-mentioned grounds that the Forum has grossly erred to interpret the circular.


Also, it should be noted that any excess or illegal recovery is against the provisions of Section 62(6) of the Act and the licensee has no right to retain it with itself on any grounds. It must be refunded to the concerned person with interest. The licensee can recover these expenses through ARR as allowed by the Commission in its various orders.

- (xxii) High Court Order dated 10.01.2017: - MSEDCL takes the stand that the consumer himself accepted the conditions, willfully agreed & agreement is done. But in fact, such illegal imposed contract is not binding on the consumer. It is clearly mentioned and ordered in various High Court and Supreme Court orders. One important order of the High Court of Bombay dated 10.01.2017 in WP/2718/2015 in similar refund case is referred herewith.
- (xxiii) Contract Period ends in May 2020: - The Appellant is in contract with Ichalkaranji Municipal Council for the period of 5 years which ends in May 2020 for using the waste collected from the city and manufacturing the Organic fertilizer from the municipal waste. The Appellant is working for the "Clean India" mission and had invested the amount in infrastructure on the assumption that it will be recovered in 2 years.
- (xxiv) The Appellant prays that
 - (a) The connection should be declared as eligible for Refund in lump sum along with interest on the basis of Supply Code Regulations, concerned Orders of the Commission and MSEDCL's concerned Circulars.
 - (b) The expenditure amount Rs.5,73,889/- be refunded along with the bank interest, excluding the amount refunded through energy bills.


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4. The Respondent filed its reply by letter dated 24.12.2019 stating in brief as below:-
- (i) The Appellant is a LT Industrial Consumer (No. 250653446337) from 22.12.2016 at C. S. No. 628, Kachara Depot, Sangli Road, Ichalkaranji, Dist. Kolhapur. The load of the Appellant was sanctioned as 105 HP under Non-DDF Scheme as per Appellant`s request. The sanctioned estimate was of Rs.6,38,700/-. The work was carried out by the Appellant with the standard terms and the condition prescribed in the sanctioned letter. The work completion report valuation was of Rs.5,73,889/-. The Appellant is eligible for refund of Rs. 5,73,889/-.
 - (ii) In case, any consumer wants early connection out of its own choice under Non-DDF Scheme, he may get the work executed at his expenses so incurred through his energy bills. The Respondent issued circular for refund of infrastructure cost by its letter dated 21.12.2009 indicating that the consumer is entitled for the refund of legitimate expenditure incurred by it under such Non-DDF Scheme by the way of adjustment of 50% of the monthly bill amount till clearance. Hence, the refunds of expenditure of the Appellant were continued in the electric bills.
 - (iii) The Respondent, Competent Authority by its letter dated 14.03.2018 has directed to withhold temporarily the refunds of expenditure to Non-DDF(CC&RF) consumers in order to verify the refund cases at zonal level. Accordingly, the refund of further expenditure of the Appellant was withhold temporarily from April 2018. This is a totally temporary phenomena to confirm the refund of expenditure cases in right way from Zone Office and the refund will again start as per merit of the case.
 - (iv) The Appellant filed the grievance application in the IGRC on 25.02.2019. The IGRC by its order dated 28.03.2019 has directed to verify the case as per Corporate office Circular dated 23.04.2018 in zonal level and be refunded in next bill. The Appellant approached the Forum on 22.04.2019 with following prayers: -
 - (a) The Appellant has paid excess amount of Rs.80,810/- till date as the refund was stopped. Therefore, it becomes refundable with interest and the refund be started immediately as per the said scheme.


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- (b) If the said scheme is foreclosed and not continued further, the balance infrastructure amount of Rs.4,88,872/- be refunded with interest as full amount.
- (c) To give compensation of Rs. 10,000/- towards mental torture.

These prayers were also made by the Appellant with IGRC.

- (v) The Forum by its order dated 19.10.2019 has partly allowed the grievance application of the Appellant in Case No. 11/2019-20 and directed Respondent to refund Rs. 80,830/- in one lump sum through the electricity bill which was stopped for the period April 2018 to June 2019. The refund of 50% amount of the bill which started from July 2019 be continued till the total amount is refunded.
- (vi) The Appellant filed the representation with different prayers before the Hon`ble Ombudsman.
 - (a) The connection should be declared as eligible for Refund in lump sum along with interest on the basis of Supply Code Regulations, concerned Orders of the Commission and MSEDCL's concerned Circulars.
 - (b) The expenditure amount Rs. 5,73,889/- be refunded along with the bank interest, excluding the amount refunded through energy bills.

These prayers are totally different than the Appellant's initial prayers with the IGRC and the Forum hence this Representation of the Appellant is not maintainable as per CGRF Regulations.

- (vii) The further reply on merit is as follows: -
 - (a) The Respondent complied the order of the Forum and hence nothing remains in the grievance.
 - (b) The Appellant has reduced the load from 105 HP to 19 HP and the same was sanctioned immediately. If the Appellant had initially applied 19 HP, it was not necessary to develop costly infrastructure. The infrastructure is on remote place, no other consumers are connected on the said infrastructure.


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(c) There is no provision of interest part in the refund scheme and hence it is not applicable in the case.

(viii) The Respondent prays that the representation of the Appellant be rejected.

5. During the hearing on 22.01.2020, the Appellant and the Respondent argued in line with their written submissions. The Appellant argued that the load of the Appellant is reduced to 19 HP at present and the bill amount is hardly about of Rs. 1000/- per month. The Appellant has invested a huge amount in the infrastructure. The Respondent has decided the policy for refund of huge amount by Board Resolution No. 1671 and Commercial Circular dated 28.06.2019 indicating,

“As per present practice followed for refund of extra amount collected from consumers because of change of tariff or tariff category or any other reasons the amount adjusted in the monthly bills only.....


.....
Accordingly, it has been decided to revise to revise the present procedure of refund of amount

1) Refund in case of live consumer,

i. To retain 12 months average monthly amount and adjusting through bills for next 12 months and refund of balance amount over and above 12 months average bill amount through direct payment transfer mechanism of live consumer.”

The grievance of the Appellant squarely falls under the circular and is entitled for refund. This refund of amount in one lump sum be ordered to be given along with interest. As a matter of fact, the Respondent should not have recovered infrastructure cost as per the Commission’s order. Stoppage of refund for the period from April 2018 to June 2019 is for the internal purpose of the Respondent and the Appellant has nothing to do with it.

6. The Respondent argued that the Appellant has made totally different prayers vis-à-vis the prayers at the IGRC and the Forum. Such change in prayer at the Appellate stage is incorrect and therefore not maintainable. The circular for refund which the Appellant has quoted is not applicable in this case as the same is with respect to refund of tariff difference.


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Analysis and Ruling


7. Heard both the parties and perused the documents on record. Following important observations are made.

- (i) MSEDCL issued circular under the subject 'Guidelines for releasing new connections and augmentation' in May 2008.
- (ii) MSEDCL issued first circular for refund of expenditure incurred by prospective consumers for release of supply by way of adjusting through energy bills in December 2009.
- (iii) Subsequently, MSEDCL issued Commercial Circular No. 319 in June 2019. This circular under the subject 'Policy for refund of tariff difference amount to consumers through RTGS / NEFT in their bank account, instead of adjusting the refund amount in their electricity bills.'

8. After careful reading of all these three circulars, it is noticed that there are two sets of things,

- (a) One which deals with releasing new connections and refund thereon and the another one
- (b) On policy for refund of tariff difference amount to consumers through RTGS / NEFT instead of adjusting the refund amount in the electricity bills.

9. For release of connections under item (a) above, MSEDCL issued letters to all Superintending Engineers on 21.12.2009. In this letter, it is mentioned that in case any consumer or group of consumers wants early connection out of its own volition or choice, he may get the work executed under DDF (even though work is not dedicated) with their own expenses under MSEDCL supervision and get the refund of these expenses so incurred through their monthly energy bill. In this letter, it is further said that 50% of the monthly bill of such consumers shall be adjusted from the expenditure incurred by such consumers and such adjustment shall continue till entire amount is refunded. Even the software for such type of arrangement is also modified by MSEDCL. Thus, it is a specific case of expenditure of infrastructure and its refund through bills.


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10. However, MSEDCL, in its Commercial Circular 319 dated 28.06.2019 has issued directions outlining the procedure for refund of amount of tariff difference to consumers through RTGS / NEFT. These directions are in short are as below:-


- (i) Refund in case of live consumers.
- (ii) Refund in case of PD Consumers.

11. The Appellant in this representation has prayed for refund of balance infrastructure cost along with interest under the Commercial Circular No.319 dated 28.06.2019. The Appellant argued that its case squarely fits into this circular by virtue of the words “or any other reasons” appearing in the said circular.

12. There is a particular scheme called Non-DDF(CC&RF) Scheme and it has its own background and operational philosophy, if the Appellant’s prayer is accepted, then the main purpose of this scheme shall be defeated. Therefore, the prayer of the Appellant for refund in one lump sum under the said Commercial Circular cannot be accepted.

13. Moreover, the prayers of the Appellant at IGRC and at Forum are totally different than those are in the instant representation except for compensation. Such a change in prayer/s at the Appellate stage cannot be entertained. Moreover, the refund that was stopped by MSEDCL for the period from April 2018 to June 2019 has already been started by the Respondent as per the order of the Forum.

14. The argument of the Appellant, that it is having 5 years contract with Ichalkaranji Municipal Council till May 2020 and if it does not get extension, its contract may be terminated, does not hold good. The Respondent is duty bound to refund the cost of infrastructure incurred by it, if the connection is permanently disconnected. Even in case of other PD consumers, the Respondent closes the account of such consumers by refunding the security deposit, etc.


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15. Notwithstanding this, the Respondent is at liberty to refund the balance amount of infrastructure cost incurred by the Appellant as per Commercial Circular No.319 dated 28.06.2019, if deemed appropriate.

16. The Representation is disposed of as not being maintainable.

17. The secretariat of this office is directed to send a copy of this order to the Chairman and Managing Director MSEDCL.

Sd/-
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Electricity Ombudsman (Mumbai)


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