

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**  
(Appointed by the Maharashtra Electricity Regulatory Commission  
under Section 42(6) of the Electricity Act, 2003)

Representation Nos. 202,203,204 and 205 of 2019

In the matter of refund of infrastructure cost

1. Soktas India Pvt. Ltd. (Processing Unit) ..... (Rep. No. 202 of 2019)  
(Now Grasim Premium Fabric Pvt. Ltd.)
2. Menon Piston Rings Pvt. Ltd..... (Rep. No. 203 of 2019)  
(Earlier Menon Ancillaries (Auto) Ltd.)
3. Menon Piston Ltd..... (Rep. No. 204 of 2019)
4. Soktas India Pvt. Ltd. (Weaving Unit) ..... (Rep. No. 205 of 2019)  
(Now Grasim Premium Fabric Pvt. Ltd.)

.....Appellants

V/s.

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

Appearances: -

For Appellant : Pratap Hogade, Representative


For Respondent : 1. S. B. Marulkar, Executive Engineer  
2. N.P. Nalavade, Jr. Law Officer

Coram: Mr. Deepak Lad

Date of Order: 20<sup>th</sup> May 2020

**ORDER**

All these four Representations are filed on 19<sup>th</sup> November 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the common order dated 23<sup>rd</sup> September 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum).

  
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2. The Forum, by its individual order in each case dated 23.09.2019 has rejected the grievance applications by majority in Case No.87, 89, 93 and 94 of 2018-19.


3. Aggrieved by the order of the Forum, the Appellant has filed these four representations separately. The details of which are as follows:

- (i) The Forum Case No. 94 – Representation No. 202 of 2019
- (ii) The Forum Case No. 89 – Representation No. 203 of 2019
- (iii) The Forum Case No. 87 – Representation No. 204 of 2019
- (iv) The Forum Case No. 93 – Representation No. 205 of 2019

The facts in all these representations are similar in nature, and common grounds are raised by them. Therefore, for the purpose of this order, all four representations are clubbed together. Individual representation-wise submission made by the Appellant is as below-

**A. Representation No. 202/ 2019 : Soktas India Pvt. Ltd.(Processing Unit) :-**

- (i) The Appellant is 33 KV industrial consumer (No. 251019050680) from 20.07.2009 having Sanctioned Load (SL) of 3000 KW and Contract Demand (CD) of 1500 KVA at Plot No. T-8, Five Star MIDC, Tal. -Kagal, Dist.-Kolhapur.
- (ii) The Appellant has applied for fresh power supply for SL of 3000 KW and CD of 1500 KVA vide application dated 11.12.2007 at 33 KV level. The Respondent has sanctioned the power supply vide letter No. 5703 dated 18.07.2008 at 33 KV level under Dedicated Distribution Facility (DDF) Scheme.
- (iii) The infrastructure work could not be started within specified limit, the Respondent, SE revised the estimate under DDF Scheme vide its letter No. 3372 dated 22.05.2009 with estimate amount of Rs.16,09,900/- for 0.554 Kms HT line and the other infrastructure work including metering work.
- (iv) The Appellant has paid Rs.13,100/- towards 1.3% supervision charges initially and thereafter additional of Rs.7560/- as per revised estimate and has completed all the infrastructure work as per sanctioned estimate. The work completion report was sent in June 2009. Accordingly the power supply was released on 20.07.2009 under industrial tariff category.

  
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**B. Representation No. 203/ 2019: Menon Piston Rings Pvt. Ltd :-**

- (i) The Appellant is presently a 33 KV industrial consumer (No. 250249302232) from 15.03.1996 having SL of 6400 KW and CD of 3200 KVA at Gat No. 197/A, Sambapur-Kasarwadi Road, Toap, Tal.-Kagal, Dist.-Kolhapur.
- (ii) Previously, the CD of the Appellant was 1500 KVA. The Appellant has applied for enhancement of CD to 1900 KVA at 33 KV level on 10.02.2008 and later on to 4990 KVA on 20.05.2011.
- (iii) The Respondent has sanctioned the estimate of Rs.6,65,753/- for enhancement of CD from 1500 KVA to 1900 KVA under DDF Scheme vide sanctioned letter No. 7256 dated 11.11.2009 at 33 KV level. Accordingly, the Appellant has paid Rs.8,600/- on 02.01.2010 towards 1.3% supervision charges as per estimate. The infrastructure and metering works (with materials) were carried out as per sanctioned estimate under supervision of the Respondent. The work was completed in September 2010. The work completion report was sent immediately. The Respondent has released the additional load from the billing month of October 2010.
- (iv) As per request of further additional load, the Respondent has sanctioned the estimate of Rs.1,78,085/- under DDF Scheme for enhancement of CD from 1900 KVA to 4990 KVA vide sanctioned letter No.6064 dated 11.08.2011 at 33 KV level. Accordingly, the Appellant has paid Rs.2,290/- in August 2011 towards 1.3% supervision charges as per estimate. The infrastructure work and metering work were carried out as per sanctioned estimate under supervision of the Respondent. The work was completed in May 2012. The work completion report was sent immediately. The Respondent has released the additional load from the billing month of May 2012.

**C. Representation No. 204/2019: Menon Piston Ltd :-**

- (i) The Appellant is presently a 33 KV industrial consumer (No. 266779100740) from 26.10.1978 having SL of 5500 KW and CD of 3500 KVA at Plot No. 182, MIDC-Shiroli, Tal.-Hatkanangale, Dist.-Kolhapur.
- (ii) Previously, the CD of the Appellant was 1950 KVA. The Appellant has applied

  
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
for additional load of 1550 KVA with total enhancement of CD to 3500 KVA at 33 KV level on 19.05.2010.

- (iii) The Respondent has sanctioned the estimate of Rs.16,30,240/- for enhancement of CD from 1950 KVA to 3500 KVA under DDF Scheme vide sanctioned letter No.9566 dated 15.12.2010 at 33 KV level. Accordingly, the Appellant has paid Rs.15,612/- towards 1.3% supervision charges as per estimate. The infrastructure work and metering with materials was carried out as per sanctioned estimate under supervision of the Respondent. The work was completed in January 2012. The work completion report was sent immediately. The Respondent has released the additional load from the billing month of February 2012.

**D. Representation No. 205/2019: Suktas India Pvt. Ltd. (Weaving Unit):-**

- (i) The Appellant is presently a 33 KV industrial consumer (No. 251019050280) from 13.10.2008 having SL of 3000 KW and CD of 2000 KVA at Plot No. T-8, Five Star MIDC, Tal.-Kagal, Dist.-Kolhapur.
- (ii) The Appellant has applied for fresh power supply at 33 KV level for Connected Load of 3000 KW and CD of 2000 KVA vide application dated 25.11.2007 which was sanctioned vide letter No. 2007 dated 05.03.2008.
- (iii) The Respondent has sanctioned the estimate of Rs.52,63,400/- under DDF Scheme vide its letter No. 1450 dated 04.03.2008 for 3.527 Km. HT line and the concerned infrastructure work along with metering work.
- (iv) The Appellant has paid 1.3% supervision charges of Rs.67,550/- on 02.04.2008. The Appellant has completed all the infrastructure works as per sanctioned estimate. The work completion report was sent in September 2008. Accordingly, the power supply was released under industrial tariff category.

4. 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. Therefore, it becomes clear that the Appellants are eligible for refund of all the expenses incurred by them for infrastructure works under

  
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each case. Subsequently, the Respondent MSEDCL issued Circular on 12.10.2017 for refund of infrastructure charges.


5. The Appellants then applied to the Respondent in all four cases for refund of infrastructure charges along with interest, but till date the Appellants did not receive any response or refund from the Respondent. The Appellants filed the grievance applications in Internal Grievance Redressal Cell (IGRC), however the IGRC rejected the grievances. Thereafter, the Appellants approached the Forum, the Forum also rejected the grievances. All these events are tabulated as below: -

Rep. No.	Appellant's Application to Respondent	IGRC		Forum	
		Application	Order	Application	Order
202/2019	28.09.2018	05.11.2018	03.01.2019	01.03.2019	23.09.2019
203/2019	12.06.2018	24.09.2018	22.11.2018	25.01.2019	23.09.2019
204/2019	03.05.2018	24.09.2018	22.11.2018	22.01.2019	23.09.2019
205/2019	28.09.2018	05.11.2018	03.01.2019	01.03.2019	23.09.2019

6. The Forum, by its order dated 23.09.2019 has rejected the grievances on the ground of limitation of 2 years. The Forum has failed to understand the basic issue that limitation of two years is not applicable here. This observation is totally wrong and illegal.

7. The Appellants carried out the works of laying of 33 kV line and all the concerned infrastructure works and Kiosk Metering Works as per estimates of MSEDCL for extension or tapping or conversion of the existing HT 33 kV line up to its premises. There are other consumers which are being serviced on 33 kV feeders from which the Appellants in the instant representations are also connected. Therefore, these feeders are not specifically meant for the Appellants i.e. the 33 KV Feeder was not dedicated or express feeder on which the Appellants have carried out the work.

8. As per the Order of the Maharashtra Electricity Regulatory Commission (the Commission) dated 08.09.2006 in Case No. 70 of 2005 regarding Schedule of Charges, (followed by MSEDCL Circular No. 43 dated 27.09.2006), meters are to be installed by the licensee. Also, if the cost is recovered, it is to be refunded to the consumer as per the circulars of MSEDCL.

  
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9. As per the order of the Commission dated 16.02.2008 in Case No. 56 of 2007, it was observed that mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF. In these cases, only extension and conversion works were done by the Appellants and many other consumers are getting supply from the same feeders. It is clear from the definition of DDF in the regulations and clarifications given by the Commission in the said order that the works done by the Appellant are clearly Non-DDF. Hence, the Appellants are eligible for the refund of all the said amounts which are as per MSEDCL's own estimates along with interest.

10. The Commission, in its Order dated 17.05.2007 in Case No. 82 of 2006 of Maharashtra Rajya Veej Grahak Sanghatna (MRVGS) V/s. MSEDCL has given clear directions that MSEDCL shall refund the consumers, the 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 Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) and also Service Line Charges (SLC), Cost of Meter which are at variance from the Order of the Schedule of Charges dated 08.09.2006.


The relevant portion of the said Order is as below: -

*“4 At the hearing held on.....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.*

*5 On being enquired by the.....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.....future energy bills.*

*9 Having considered .....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.....ensure sufficient cooperation.”*

11. On a complaint filed by the said petitioner for non-compliance, the Commission has issued further Order dated 21.08.2007 in Case No. 82 of 2006 imposing penalty on MSEDCL due to non-compliance of the earlier order and again directed MSEDCL to comply with the direction issued in the Order dated 17.05.2007. The Respondent did not comply the directions. The Commission issued order dated 16.02.2008 in Case No. 56 of 2007 on the petition filed by MRVGS. In this case, issues of ORC, DDF and Non DDF

  
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were fully discussed by the Commission. In this order, the Commission has clarified the concept and issued detailed clarification on DDF on request of MSEDCL itself.

Relevant extracts of Commission's order dated 21.08.2007 in Case No. 82 of 2006

7. The fourth direction was "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', ..... Public utilities such as MSEDCL are those industries who are affected with public interest and as such are subjected to regulatory control and cannot be permitted to claim charges beyond what the legislature regards as legal. ....the Commission holds that MSEDCL has contravened the directions of the Commission under the order dated May 17, 2007 and is therefore liable to be penalised under Section 142 of EA 2003.

9. The penalty is attracted as soon as contravention of the statutory obligations as contemplated by the EA 2003 is established and, therefore, the intention of MSEDCL committing such violation becomes immaterial. ....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 also be leviable on such amounts. MSEDCL cannot argue that the amounts spent towards creating infrastructure must be replenished at the cost of those consumers at whose cost MSEDCL has enriched unjustly. What is sought to be prevented is unjust enrichment or unjust benefit derived by MSEDCL from its consumers. .... In view thereof, the Commission directs that, without prejudice to any other penalty to which MSEDCL may be liable under the EA 2003, MSEDCL shall pay, by way of penalty, an amount of Rupees One Lakh for each contravention as aforesaid at paragraph 7 and paragraph 8, which shall be paid within 30 days from the date of this Order and in case of a continuing failure with an additional penalty of Rupees Six Thousand for every day during which the failure continues after contravention of the directions contained in the Order dated May 17, 2007.


Relevant extracts of this order (56 of 2007) are as below: -

"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.....to provide supply.

12. Having heard.....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.....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.....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 Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for giving supply and Determination of Compensation) Regulations, 2005.....as per spirit envisage in the EA 2003 and regulations made thereunder....."

12. As per Section 62 (6) of the Act, refund is to be given with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

13. MSEDCL issued a Circular dated 20.05.2008 giving guidelines for release of new connections based on the Commission's order in Case No. 56 of 2007 dated 16.02.2008. The

  
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circular itself clarifies that refund is to be made in all Non DDF connections. MSEDCL has issued circular only for LT connections. However, the Commission's order is for both LT and HT connections.


14. MSEDCL has issued further Circular bearing No. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of the infrastructure cost. The refund will be by way of adjusting 50% of the monthly bill till adjustment of the total expenditure.

15. 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. Supreme Court had ordered "*Stay on Refund*" while hearing on 31.08.2007. Hence all the Refunds were stopped.

16. Finally, the Civil Appeal filed by MSEDCL before the Hon. Supreme Court came for final hearing in the year 2016. Hon. Supreme Court heard the matter, issued final order on 10.11.2016 and dismissed the Civil Appeal in toto.

17. After the order of the Hon. Supreme Court, it is binding on MSEDCL to implement the Commission's concerned orders in letter and spirit. MSEDCL issued circular for refund of SLC, ORC and meter cost after 11 months vide its Circular No. CE/Dist/D-IV/MERC No. 25079 on 12.10.2017. In this circular, MSEDCL has denied refund in DDF cases. It is correct if the connection is really DDF as per its definition in Supply Code Regulations and as per detailed clarification given by the Commission in its order dated 16.02.2008. But if the connection is actually Non DDF and it is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then in such Non DDF cases, consumer is eligible to get the refund along with the interest thereon.

18. After Supply Code Regulations till date, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Imposition of such conditions by MSEDCL are against the

  
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
Supply Code Regulations. Relevant Regulation 19.1 of the Supply Code Regulations reads as below: -

*"Any terms and conditions of the Distribution Licensee, whether contained in the terms and conditions of supply and/or in any circular, order, notification or any other document or communication, which are inconsistent with these Regulations, shall be deemed to be invalid from the date on which these Regulations come into force."*

19. The Appellants filed grievances in 2018 in respect of all these four cases. It was necessary and binding on MSEDCL to resolve it in subsequent billing cycle. But MSEDCL has failed to do so. Hence, the Appellants are liable for compensation of Rs. 100 per week or part thereof from 2018 as per Regulation 7.6 of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014).

20. Service Line Charges (SLC), Out Rate Contributions (ORC) and DDF, all are Infrastructure Charges under different names. All these 3 type of charges are the charges towards Infrastructure Cost. ORC was allowed up to 20.01.2005 i.e. up to the date of Supply Code Regulations. SLC was allowed up to 08.09.2006 i.e. up to the date of Schedule at charges. DDF is allowed from 20.01.2005, but in the cases only where the connection is actually DDF as per Supply Code Regulations and as per Maharashtra Electricity Regulatory Commission (the Commission) `s Clarificatory Order dated 16.02.2008. In these cases, the connections are totally Non- DDF. And as per Regulations and Orders of the Commission, in case of all Non DDF connections, Infrastructure Costs cannot be recovered from the consumers. Hence Appellants are fully eligible for refund.

21. The IGRC and the Forum has observed and noted that the grievances are beyond the period of limitation of 2 years. This observation is totally wrong and illegal. This SLC, ORC, DDF issue was before Honorable Supreme Court in Civil Appeal No. 4305/2007 filed by MSEDCL itself. Honorable Supreme Court has issued final order on 10.11.2016 and on that date the stay on refund is vacated. Then after, the Respondent's H.O. have issued circulars for refund of SLC, ORC and Meter Cost to consumers on 12.10.2017, 07.11.2017 and 29.12.2017. The Appellant had applied for refund to the Respondent in the year 2018, hence, there is no issue of any limitation. Thus, the order of the Forum is totally wrong, illegal and it needs to be revised. It should be noted that MSEDCL has itself represented

  
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before various Courts that the judgment towards refund of ORC is pending before Honorable Supreme Court. 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 shall be refunded to the concerned person with interest. The orders of the Forum should be squashed and set aside on the basis of all above mentioned grounds and submissions. The licensee can recover these expenses through ARR as allowed by the Commission in its various orders.

22. The Appellant referred following orders for interpretation of limitation: -

- (i) The Commission has issued directions to MSEDCL dated 20.07.2017 regarding refund of unlawful collection of ORC, cost of meter and CRA. The summary of the said direction is as below: -

The Commission vide its order dated 08.09.2006 had approved the schedule of charges for MSEDCL. On the complaint regarding recovery of amount other than the approved Schedule of Charges, the Commission vide its order dated 17.05.2007 in Case No. 82 of 2006 had issued direction for refund of unlawful collection of ORC, cost of meter and CRA. In the proceedings of verification of compliance of above directives, the Commission vide its order dated 21.08.2007 in Case No.82 of 2006 has further clarified the directions to MSEDCL for refund. The above referred order of the Commission was stayed by the Supreme Court vide its interim order dated 31.08.2007 in C.A. No. 4305 of 2007. The Supreme Court vide its judgment dated 10.11.2016 has dismissed the Civil Appeal filed by MSEDCL. Hence, MSEDCL needs comply with the Commission's order dated 17.05.2007 and 21.08.2007 and refund the amount to the consumers.

- (ii) Hon. Supreme Court Judgment dated 12.02.2016 in C.A. 3699/2006 with respect to cause of action.
- (iii) Schedule of charges is a part of Tariff and Limitation does not apply.

  
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(iv) Procedural law not mandatory– Regulation No. 6.6 is a Part of procedural law. The Supreme Court in its order dt. 20.11.2008 in C.A. 6731/2008 has observed and clearly stated that,

*"A procedural law should not ordinarily be construed as mandatory. The procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed."*

(v) Hon. Ombudsman, Mumbai has issued orders based on abovementioned directions of the Supreme Court in Rep. No. 20/2010 order dated 30.03.2010 and recently in Rep. No. 179/2018 order dated 30.08.2018.

(vi) Regulation 6.6 of the CGRF Regulations and limitation of 2 years therein is a part of procedural law and it should not ordinarily be construed as mandatory is observed and directed by the Hon. Supreme Court and hence it has become a law of the land as laid down by the Hon. Supreme Court.

(vii) Section 62(6) of the Act: –

*"If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."*

Infrastructure cost recovery or burden to create infrastructure on consumers in Non DDF cases is a charge exceeding the tariff determined by the Hon. Commission. Hence the consumers are eligible to get the refund along with interest as per mandatory provisions of Section 62(6) mentioned above. Also, there is no limitation for this refund provided in the Electricity Act, 2003(Act).


(viii) Provisions of the Act prevail over the Regulations –

Judgement of Appellate Tribunal for Electricity (ATE) in Appeal No. 197 of 2009 dated 11.03.2011 has clearly stated that

*"The tariff fixation is a continuous process and is to be adjusted from time to time."*

There are many evidence of such adjusted and recovered or paid charges e.g. RLC refund, Mula Pravara refund, C/NC difference refund, SLC/RAC refund/recovery etc.

Also, it is pertinent to note here that the Commission has ordered refund of SLC, ORC, Non DDF, Meter Cost etc. and at the same time the Commission has


  
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allowed the licensee to claim and recover this expenditure through ARR. Hence, MSEDCL is revenue neutral in this case. It will not have any loss due to refund.

Also, Hon. Supreme Court has already stated in its order dated 03.01.1979, "*the State authorities ought not to take such technical plea to defeat the legitimate rights of the consumers.*" Also ATE has quoted this statement in its order and issued positive directions in Case No. 197 of 2009.


- (ix) E.O.(Mumbai) Order dated 06.07.2018 in Representation No. 75/2018 -The E.O. Mumbai has issued order in this case and directed penalty as per Section 43 of the E. Act 2003 in case of delay for new connection. Here the Ombudsman has rightly followed mandatory provisions of Section 43 of the Act.
- (x) Bombay High Court, Nagpur Bench Judgment dated 22.03.2018 in WP No. 1276 & 1392 of 2011. MSEDCL has accepted the infrastructure cost refund to the concerned consumers and on those observations the petitions are disposed by High Court.
- (xi) The Appellant submitted short note which covers following issues to show that limitation in tariff issues does not apply for recovery as well as refund: -
- RLC Refund and subsequent recovery allowed by the Commission over a considerable period.
  - Mula Pravara User Charges Payment & Recovery of 14 years.
  - Continuous and Non-Continuous Refund & Recovery through ARR for the period of 10 years.
  - Regulatory Asset Charge of Rs. 12382 Cr. of MSEDCL created by the Commission vide Tariff Order dated 12.09.2018.
  - SLC refund, of Commission's order in the year 2009 where SLC period 22.06.1999 to 27.06.2000.
  - Regulatory Assets Recovery in case of then R-Infra.
- (xii) The chronological events and facts clearly prove that the issue of refund and compliance of Commission's orders dated 17.05.2007 and 21.08.2007 was involved in Civil Appeal and it was finally decided by Hon. Supreme Court on 10.11.2016 and thereafter MSEDCL issued amendment circular on 29.12.2017. Hence, the applications of refund are fully linked with the order of the Hon.

  
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Supreme Court. Hence, cause of action can be stated at an earliest started on 29.12.2017 and we have approached the Forum in the year 2018. Hence, no issue of limitation arises with respect to the estimate amounts.

23. The Appellant prays that the Respondent be directed
- a. to declare all these four connections as Non –DDF scheme Connections on the basis of Supply Code Regulations, Concerned orders of the Commission, concerned MSEDCL Circulars and final verdict of the Hon`ble Supreme Court.
  - b. to refund all expenditures carried out by the Appellants along with interest at the bank rate as per Section 62(6) of the Act.
  - c. to compensate at the rate of Rs. 100/- per week as per SOP Regulations for delay in Grievance Resolutions after 60 days from first grievance raised i.e. 28.11.2011, 12.08.2018, 03.07.2018 and 28.11.2018 of Rep. 202/2019, 203/2019, 204/2019 and 205/2019 respectively.
24. The Respondent filed its reply vide its letter dated 11.12.2019. However, it has not given specific details such as cost of the estimate, load enhancement, amount paid by the individual Appellants, etc. However, it has not contested these issues as submitted by the Appellants. Barring this, other submissions of the Respondent is as below:
- (i) While releasing the said supply, the Appellants had neither disputed towards infrastructure cost nor any payment made against the said connections except minor payments of 1.3 % supervision charges.
  - (ii) The Commission's order dated 17.05.2007 in Case No. 82 of 2006, order dated 21.08.2007 in Case No. 82 of 2006 and order dated 16.02.2008 in Case No. 56 of 2007 deals with the issue of refund of ORC, SLC etc. recovered during the period from 08.09.2006 to 30.04.2007. The matter before Hon`ble Supreme Court in Civil Appeal No. 4305 of 2007 and stay order to refund is in respect of recovery of SLC charges during above period only. In the present matters, the Appellants are demanding cost of DDF infrastructure which was never part of Judgement of the Hon`ble Supreme Court. Therefore, the citing of pendency of Judgement of Supreme Court is not applicable for enhancement of time

  
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limitation. The ratio laid down in the Judgement of Supreme Court cannot squarely be made applicable in the present matter. All matters are distinguishable. The major points of differences between these matters are


- a. Matter before Hon'ble Supreme Court was dealing with specific period only, whereas present matter has no such binding
- b. Stay order granted by Hon'ble Supreme Court only for specific period for refund of ORC, SLC etc.
- c. Refund of DDF infrastructure cost was not the subject matter before the Supreme Court.

This shows that, current matter and the matter before Hon'ble Supreme Court has no relevance. Hence, Appellants aversion that, it has waited till decision of Hon'ble Supreme Court for refund does not hold water and liable to be dismissed at first instant.

- (iii) The Appellants cited circulars issued by the Respondent MSEDCL. In furtherance of same, the said circulars also speak about specific period of refund to be given in respect of SLC, ORC and meter charges. With aforesaid discussion, it is very much crystal clear that, present matter and matter before the Supreme Court are very much distinct. Therefore, it also becomes clear that, Appellants aversion for waiting till finalization of Hon. Supreme Court decision for raising present grievances become baseless. The limitation claimed by the Appellants do not have any force.
- (iv) The Respondent referred the definition of DDF as per SOP Regulations 2014 which is reproduced as below:-

*“ **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;” ....emphasis added*

The said definition clearly inclusive of Single Consumer or Group of Consumers on the same premises or contiguous premises. This definition make very much clear that, even there are more than one consumer on feeder, and it would be treated as DDF. Also it is pertinent to note that, quality of supply is not disputed by the Appellants.

  
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- (v) The Respondent referred Regulation 3.3 of the Supply Code Regulations as the Appellant's extension of load is more than 25% with respect to existing load.

The relevant portion of Regulation 3.3 is reproduced below: -

*"3.3.1 The Distribution Licensee shall recover the expenses referred to in Regulation 3.2(a) above, in accordance with the principles contained in this Regulation 3.3 and based on the rates contained in the schedule of charges approved by the Commission under Regulation 18: Provided that the Distribution Licensee may, with the approval of the Commission, in case of any category of consumers, recover such expenses on the basis of an average or normative rate for providing the electric line or electrical plant for the purpose of 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:*

*Provided that the Distribution Licensee shall be entitled to use such service-line to supply electricity to any other person, notwithstanding that all expenses reasonably incurred have been recovered in accordance with this Regulation 3.3.2, except if such supply is detrimental to the supply to the consumer already connected therewith.*

*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.*

*3.3.4 Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred on such works as the load applied for bears to the incremental capacity that will be created by augmentation of the distribution system:*


*Provided that where the load applied for does not exceed 25 per cent of the capacity that will be created by augmentation of the distribution system, the Distribution Licensee shall not be entitled to recover any expenses under this Regulation 3.3.4:*

*Provided further that any dispute with regard to the need for and extent of augmentation of the distribution system under this Regulation 3.3.4 shall be determined in accordance with the procedure set out in the Consumer Grievance Redressal Regulations."*

In view of this provision, the Appellants have applied for the supply under DDF scheme and submitted consent of DDF and hence the Appellants are not entitled to refund of expenses incurred for carrying out work as per estimate.

- (vi) The Respondent referred to Regulation 3.8 of the Supply Code Regulations which is reproduced as below: -

*"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:*


  
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*Provided however the Distribution Licensee shall not 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.”*

Regulation 3.3.8 provides the option to the consumer with the permission of licensee to carry out the work through licensed electrical contractor and in that case licensee is allowed to recover the supervision charges not exceeding the 15% cost of labour. In the present case, the Appellants have suo moto exercised the option for carrying the work of infrastructure by executing undertaking/ consent for DDF in writing and accordingly, MSEDCL recovered only 1.3% supervision charges as allowed by the Commission as per schedule of charges. Appellants had willingly carried out the said work through the licensed electrical contractor due to its urgency therefore applicant consumer is not entitled a right to claim the refund of amount incurred on infrastructure.

- (vii) The claim of the Appellants are time barred and beyond limitation. As per Regulation 6.6 of CGRF Regulations, it provides that Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Therefore, in view of the above-mentioned regulation, claim of the Appellants are not maintainable. There was no reason for the Appellants to have waited till the decision, dated 10.11.2016, of Supreme Court in Civil Appeal No.4305 of 2007. The Appellants were not prohibited from approaching the Forum to get resolved its grievances if at all any charges in contravention of Schedule of Charges has been recovered. That, after the dismissal of Civil Appeal in Supreme Court, the MSEDCL has issued various circulars in Compliance of the order of the Commission in Case No.82 of 2006. The Appellants were neither covered in said period nor it has produced the receipt of deposit under head of ORC/SLC etc. of the defined period. It is pertinent to note that, issue involved before Hon’ble Supreme Court and issue involved in present matter are totally different. The matter before Hon’ble Supreme Court was pertaining to refund of ORC, SLC etc. Therefore, by any stretch of imagination, decision passed by Hon’ble Supreme Court in Civil Appeal No.4305 of 2007 cannot be made applicable to present matter. As the matter before Supreme

  
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Court and present matter are different. The Appellants cannot be allowed to take shield or defence of the same to cover limitation period.

- (viii) Further, as per Regulation 3.3.3 & 3.3.4 & 3.3.8 of Supply Code Regulations, the Appellants are liable for expenses for DDF. Hence, they were not liable for any refund towards infrastructure cost.
- (ix) The cause of action arose when the estimate in the individual case was sanctioned. The details are as below: -
- Rep. No. 202 of 2019 on 22.05.2009
  - Rep. No. 203 of 2019 on 11.11.2009 and 11.08.2011
  - Rep. No. 204 of 2019 on 15.12.2010
  - Rep. No. 205 of 2019 on 04.03.2008

However, the Appellants were not vigilant and didn't raise any dispute about the said issue of refund. Now after expiry of more than 9 to 10 years of cause of action, Appellants cannot claim refund as it is time barred as per Regulation 6.6 of CGRF Regulations which clearly states that complaint to be filed within 2 years from the date on which the cause of action has arisen. The Appellants did not file even a single complaint about so called illegal recovery towards infrastructure cost or other cost with the Respondent till the year 2018.

- (x) The Respondent relies on the Judgment of Bombay High Court, Bench at Aurangabad judgment in W.P. No.6859, 6860, 6861 and 6862 of 2017 dated 21.08.2018 which has explicitly upheld the provision under Regulation 6.6 of the CGRF Regulations. In view of these judgments, Regulation 6.6 remains valid and untouched. The relevant part of the said Judgment is quoted below

*"42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.*

  
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*43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.”*


(xi) The Appellants ought to have taken recourse of Grievance mechanism. The Appellants were not estopped by any court of law or any other Forum for the same. Moreover, the prayer for declaring the work done by them as NDDF instead of DDF is raised before Forum in the year 2018 for the first time. Hence, as per law of law of limitation, said prayer needs to go through limitation bar. Therefore, prayer of consumer for declaring its work as NDDF is not within limitation and liable to be dismissed

(xii) The Appellants have approached the Forum and filed grievances on 01.03.2019 in Rep. No. 202/2019 and 205/2019, on 25.01.2019 in Rep. No. 203 of 2019 and on 22.01.2019 in Rep. No. 204 of 2019. The Forum has conducted the hearing in the matter and passed the order on dated 23.09.2019 and rightly rejected the claim of the Appellants on the ground of limitation.

(xiii) In view of above, the Respondent prays for rejection of all these Representations.

25. During the hearing on 22.01.2020, all the parties argued in line with their respective written submissions and reiterated it. The Appellants argued that the work under the estimate is Non-DDF and the Respondent ought to refund the amount illegally recovered by it. The case is not time barred as claimed by the Respondent as the actual cause of action started after issuing of Judgment by the Apex Court and circulars issued by the Respondent subsequently.

26. The Respondent argued in the hearing that the Appellants enjoy group dedicated distribution facility feeder services from the date of the connection and even there was shortage of the power supply.

  
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


## Analysis and Ruling

27. Heard the parties and perused the documents available on record. I note that: -
- (i) MSEDCL issued a Circular dated 20.05.2008 giving guidelines for release of new connections based on the Commission's order in Case No.56 of 2007 dated 16.02.2008. The circular itself clarifies that refund is to be made in all Non-DDF connections. MSEDCL has issued circular only for LT connections. However, the Commission's order is for both LT and HT connections.
  - (ii) MSEDCL has issued further Circular bearing No. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of the infrastructure cost. The refund will be by way of adjusting 50% of the monthly bill till adjustment of the total expenditure.
  - (iii) In the meanwhile, MSEDCL had impleaded this issue of refund in its Civil Appeal No.4305/2007 (earlier stamp No.20340/2007), in which the Hon'ble Supreme Court had ordered "Stay on Refund" while hearing on 31.08.2007. Hence all the Refunds were stopped.
  - (iv) Finally, the Civil Appeal filed by MSEDCL before the Hon'ble Supreme Court came for final hearing in the year 2016. The Hon'ble Supreme Court heard the matter, issued final Judgment on 10.11.2016 and dismissed the Civil Appeal.
28. Details of the estimate sanctioned in individual representations and the date when the Appellants approached the Forum is tabulated below: -

Rep. No.	DDF Estimate Date of the Respondent	Application to the Forum	Forum Order
202/2019	22.05.2009	01.03.2019	23.09.2019
203/2019	11.11.2009 and 11.08.2011	25.01.2019	23.09.2019
204/2019	15.12.2010	22.01.2019	23.09.2019
205/2019	04.03.2008	01.03.2019	23.09.2019

The Appellants approached the Forum after two years limitation period prescribed under Regulation 6.6 of the CGRF Regulations. They ought to have approached IGRC first, and then the Forum which could have entertained the grievance if filed within two years from the cause of action. Therefore, the limiting date for the Forum to have admitted the case of the Appellant would have been within two years from the cause of action.

  
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On the contrary, the Appellants approached the Forum as tabulated above in all these cases with a delay of almost 8-10 years in all these representations which is much beyond the two years limitation period. The Appellants, at least, could have approached the Forum after the order of the Commission dated 01.09.2010 in Case No.93 of 2008 when the matter became clear through the directions of the Commission to approach the Forum, if consumers have any issue with respect to the refund. The relevant portion of this order is quoted below:


*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 newspapers 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. (Emphasis added)*

29. The Appellants also argued that their cases being a tariff case, the law of limitation does not apply. In support of this argument, it cited ATE judgment dated 11.03.2011 in Appeal No. 197 of 2009.

*"Hon. ATE has clearly stated that "The tariff fixation is a continuous process and is to be adjusted from time to time."*

The above ATE Judgment is with respect to tariff fixation under the provision of the Act. Obviously, there is no question of any limitation in this regard. The Hon. ATE on the facts therein held that Limitation Act is not applicable to the State Commission in their regular activities of fixation of tariff. This judgment cited by the Appellants is not relevant to the instant representation because once the tariff / order of the Commission such as Schedule of Charges, etc. is issued, distribution licensee applies it to the respective consumers across the board. Once it is applied and if consumer has any grievance about its application, then it falls under the individual case of the consumer and grievance redressal mechanism under the CGRF Regulations is the only way of addressing the grievance of the

  
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individual consumers. Therefore, plea of the Appellants that the instant representations are tariff fixation cases does not hold good.


30. Even the judgment of the Bombay High Court, Nagpur Bench in W.P. No.1650 of 2012 dated 10th July 2013, and Bombay High Court, Bench at Aurangabad judgment in W.P. No.6859, 6860, 6861 and 6862 of 2017 dated 21.08.2018 has explicitly upheld the provision under Regulation 6.6 of the CGRF Regulations and therefore, it has become settled position of law.

31. In a recent judgment, the Hon'ble Supreme Court in Civil Appeal No.2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if suit is clearly barred by limitation.

32. I, therefore, do not find it necessary to delve into the other aspects of the case because if Regulation 6.6 is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all to contest the claim irrespective of the period elapsed from the cause of action. If the issues are allowed to be exhumed and dissected on the basis of hindsight and that too with no bar on time elapsed, then no decision can be made in Regulatory Framework. The provision of Regulation 6.6 will be frustrated and there will be complete chaos.

33. It is settled position in law that if the matter is decided on limitation, there is no need to go into the merits of the case. Therefore, the Appellant should have raised the issues at least immediately after the Respondent issued a Circular dated 20.05.2008 giving guidelines for release of new connections based on the Commission's order in Case No.56 of 2007 dated 16.02.2008. The circular itself clarifies that refund is to be made in all Non-DDF connections. But the Appellants chose to remain silent on this issue. There was no bar, whatever, on the Appellants approaching the Forum within limitation notwithstanding the Civil Appeal then pending in the Apex Court, so that the matter regarding its work whether it is DDF or Non-DDF and whether they were entitled for any refund, could have been decided.

34. In view of the above discussions, it is clear, that the cases of the Appellants in the instant representations are time barred and the Forum has rightly decided the cases, in light, of the Regulation 6.6 of the CGRF Regulations. I do not find it necessary to interfere with the

  
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order of the Forum in all these representations. I have already decided similar cases in common order dated 16.08.2019 in Representations No.68, 69 and 71 of 2019 on the same lines.

35. Representations are therefore rejected and disposed of accordingly, with no order as to cost.

36. The instant representations were filed in this office on 19.11.2019. As per Regulation 16.9 of the CGRF Regulations, I should have passed the order by 19.01.2020, however, delay is on account of heavy in rush of other representations and further the instant representations required lot of due diligence and perusal of voluminous records. In addition, Corona Virus Epidemic (Covid 19) had its own share in the delay.

Sd/  
(Deepak Lad)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

