

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 08 OF 2022

In the matter of refund of infrastructure cost

Bhausahab Dhondiba Jadhav Appellant

V/s.

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

Appearances:

Appellant : Vijay Jadhav, Representative

Respondent: Kanayalal S. Thakur, Addl. Executive Engineer

Coram: Vandana Krishna (Retd. IAS)

Date of hearing: 12th April 2022

Date of Order : 22nd April 2022

ORDER

The Representation is filed on 16th February 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020).

Preamble:

The Appellant had initially filed the grievance in Consumer Grievance Redressal Forum, Nashik (the Forum) on 21.12.2021. The case could not be heard as the Forum not being operational due to vacancy of Chairperson and Independent Member. The Secretary/Technical Member of the Forum by its letter dated 06.01.2022 has informed that the grievance is time


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barred as per Regulation 7.9 (c) of CGRF & EO Regulations 2020. The Appellant, therefore, filed this Representation under Regulation 19.22 (d) of CGRF & EO Regulations 2020.


2. The Appellant filed this representation which is stated in brief as below: -

- (i) The Appellant is an agricultural consumer (No. 162067003942) from 20.02.2007 having sanctioned load of 5 HP at Gat No 263/1, Sonewadi, Tal- Nagar, Dist- Ahmednagar
- (ii) The Appellant applied for new electric connection for 5 HP in the year 2005. The Respondent has sanctioned and issued Firm Quotation of Rs.27790/- on 06.05.2005 including infrastructure work Cost as below: -

Sr. No.	Particulars	Amount(Rs.)
1	Fixed Sevice Connection charges	1100
2	Additional Service Charges/Pole Charges	18000
3	Security Deposit	2160
4	Agreement Fee	20
5	Capacitor Testing Charges	100
6	Meter Charges	2250
7	Coumpounding Fee	2000
8	Penalty Charges	2160
9	Infrastructure Charges	-
		27790

The Appellant had paid this total amount of Rs. 27790/- on 27.05.2005. The connection of the Appellant was released on 20.02.2007.

- (iii) The Respondent has illegally collected cost of infrastructure work in addition to service connection charges. The Respondent was duty bound to carry out infrastructure work themselves. The Grahak Associations of Maharashtra have challenged the recovery of illegal cost of infrastructure work by filing Case in the Maharashtra Electricity Regulatory Commission (the Commission) and prayed to refund of cost of infrastructure work carried out by the Consumers by force.


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- (iv) The Commission had directed to refund all amount spent by the consumers directly /indirectly towards infrastructure works. The Respondent challenged the order of the Commission up to the level of Hon. Supreme Court of India.
- (v) The issue of refund of infrastructure cost was pending filed by MSEDCL in the Hon. Supreme Court of India. There was a stay on refund. Finally, the Hon. Supreme Court of India dismissed the C.A No. 4305 of 2007 on 10.11.2016. Thereafter, it became clear that the Appellant is eligible and can claim for refund of amount which was collected under the head of 'Additional Service Charges/Pole Charges' towards the infrastructure cost.
- (vi) After the final decision of the Hon. Supreme Court in C.A. No.4305 of 2007 dated 10.11.2016, MSEDCL issued its first Refund Circular on 12.10.2017.
- (vii) The Appellant has claimed the Refund of Rs. 27790/- by his letter dated 15.12.2017, 29.08.2018, and 22.02.2021 to the Respondent requesting to adjust this refund in 'Krushi Sanjivani Scheme'. The Appellant also requested to the Executive Engineer of the Respondent vide his letter dated 01.12.2021 for refund of amount towards infrastructure cost. However, the Respondent did not refund and or adjust the same in the bill.
- (viii) The Appellant filed his grievance application in the Forum which was registered on 21.12.2021. The Secretary/Technical Member of the Forum by its letter dated 06.01.2022 has informed that the grievance is time barred. The Appellant is a farmer, and he is not aware of rules & Regulations in detail, and process for refund of infrastructure cost. Hence, the Appellant request to condone delay for filing the instant case.
- (ix) In view of the above, the Appellant prays that the Respondent be directed to refund the infrastructure cost collected from the Appellant illegally along with accrued interest on it.



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3. The Respondent by its letter dated 24.03.2022, has filed its reply stating, in brief as under:-

- (i) The Appellant is an agricultural consumer (No. 162067003942) from 20.02.2007 having sanctioned load of 5 HP at Gat No 263/1, Sonewadi, Tal-Nagar, Dist- Ahmednagar
- (ii) The Appellant has applied for agriculture connection. After sanction, he paid Rs. 27790/- as per firm quotation vide receipt No. 1735296 dated 27.05.2005 under the scheme- 'Krushi Vikas Yojana-2005' The connection was released on 20.02.2007. The Scheme was facilitated for early release of agricultural connection after payment of Rs. 6000/- per pole as an additional service connection charge in totalling to the service connection charges which was non-refundable.
- (iii) The Appellant has approached this office for his grievance after almost 17 years. The basic record of the sanctioned paper and others are not available to this office at present.
- (iv) The Appellant has approached the Forum on 21.12.2021. The Secretary/Technical Member of the Forum by its letter dated 06.01.2022 has rightly informed that the grievance is time barred as per Regulation No. 7.8 of CGRF & EO Regulations 2020 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".
- (v) The Appellant referred the order of the Electricity Ombudsman (Mumbai) in Representation No. 189 of 2019. The Hon`ble Ombudsman has rejected the grievance on time barred as the delay was more than two years.
- (vi) The Appellant has also referred the judgement of Honourable High Court Mumbai, Bench at Nagpur in Case No. W.P.No.1297 of 2017 & 1300 of 2017.for cause of action and delay beyond two years.


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(vii) In view of the above details, the Respondent prays that the Representation of the Appellant be rejected.

4. The e-hearing was held on 12.04.2022 through Video conferencing. The Appellant argued in line with its written submission and further argued that the Appellant had paid the total amount of Rs. 27790/- on 27.05.2005 towards new Agricultural connection of 5 HP and the connection was released on 20.02.2007. The Respondent has illegally collected cost of infrastructure work in addition to service connection charges. The Akhil Bhartiya Grahak Panchayat has challenged the recovery of illegal cost of infrastructure work by filing Case in the Commission and requested to refund of cost of infrastructure work. The Commission had directed to refund all amount spent by the consumers directly /indirectly towards infrastructure works. The Respondent challenged the order of the Commission up to the level of Hon. Supreme Court of India. There was a stay on refund. Finally, the Hon. Supreme Court of India dismissed the C.A No. 4305 of 2007 on 10.11.2016. Thereafter, it became clear that the Appellant is eligible and can claim for refund of amount of 'Pole Charges' towards the infrastructure cost. After the final decision of the Hon'ble Supreme Court, MSEDCL issued its first Refund Circular on 12.10.2017. Thereafter, MSEDCL issued the circular on 29.12.2017 in which the refund period stated is 20.01.2005 to 20.05.2008. The Appellant states that he has paid pole charges on 27.05.2005 which is within the period of 20.01.2005 to 20.05. 2008. The Appellant has requested the Refund of Rs. 27790/- by his letter dated 15.12.2017, 29.08.2018, 22.02.2021 and 01.12.2021 to the Respondent requesting to adjust this refund in 'Krushi Sanjivani Scheme'. The Appellant is a farmer, and he is not aware of rules & Regulations in detail, and process for refund of infrastructure cost. Hence, the Appellant request to condone delay for filing the instant case. In view of the above, the Appellant prays that the Respondent be directed to refund the infrastructure cost collected from the Appellant illegally along with accrued interest on it.

5. The Respondent argued in line with its written submission and further argued that the Appellant has applied for agriculture connection. There was huge backlog of Seniority List of Agricultural Paid Pending Cases. The Appellant requested to regularise his AG connection under 'Krushi Vikas Yojana-2005'. The point of supply for Ag. Connection was away for more than three span of existing LT line. Hence, as per Scheme, he has paid additional Rs.18000/-,


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and compounding & penalty charges of theft totalling to Rs. 4160/-. All these amounts was non-refundable.

6. The Respondent further argued that as per the MSEDCL circular dated 12.10.2017, Out Rate Contribution (ORC), meter cost and Service Line Charges (SLC) charges were to be refunded. The Appellant paid Rs. 18000/- towards cost of three poles as per the 'Krushi Vikas Yojana-2005' which was approved by Government of Maharashtra for the release of new connection for Agricultural pump set on priority. The Scheme was never challenged in the Commission as well as in Court of Law. The Scheme was never the part of the case which was pending in the Supreme Court and the Supreme Court of India dismissed the C.A No. 4305 of 2007 on 10.11.2016. At very basic level, the Appellant was not entitled/qualified for refund of infrastructure cost.

7. The Respondent argued that the Appellant has approached this office for his grievance after almost 17 years and the Appellant approached the Forum on 21.12.2021, The Secretary/Technical Member of the Forum by its letter dated 06.01.2022 has rightly informed that the grievance is time barred as per Regulation No. 7.8 of CGRF & EO Regulations 2020. The Appellant referred the order of the Electricity Ombudsman (Mumbai) in Representation No. 189 of 2019. The Hon`ble Ombudsman has rejected the grievance on time barred as the delay was more than two years. In view of the above details, the Respondent prays that the Representation of the Appellant be rejected.

Analysis & Ruling

8. Heard the parties. Perused the documents available on record. The Appellant is an agricultural consumer (No. 162067003942) from 20.02.2007 having sanctioned load of 5 HP at Gat No 263/1, Sonewadi, Tal- Nagar, Dist- Ahmednagar. The Appellant had applied for agricultural connection, and paid Rs. 27790/- as per firm quotation dated 27.05.2005 under the scheme- 'Krushi Vikas Yojana-2005'. The connection was released on 20.02.2007. The Scheme facilitated early release of agricultural connections after payment of Rs. 6000/- per pole as additional service connection charges in addition to the service connection charges which was non-refundable.


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9. To decide the case, it is necessary to peruse 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)


(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.....*


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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


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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:

(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


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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:


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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."

(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***


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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.” (Emphasis added)


(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.”***

(Emphasis added)


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- (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.

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:-


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“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.”

10. From above referred orders, few things emerged 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)**


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- (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. It means that no refund can be ordered for the cases falling between 08.9.2006 to 30.04.2007, on account of stay granted by the Hon. Supreme Court.
- (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.


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11. It is important to note that barring the consumers from whom the amount towards ORC, Cost of Meter and CRA was collected by MSEDCL during **08.09.2006 to 30.04.2007**, for the rest of the consumers, if any, who paid such amount, they had an option to adopt the regular grievance redressal mechanism under the Regulations of the Commission. This is very 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.9(g). Moreover, the 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.

12. Now let us examine as to whether the instant representation fit into the matrix of the period **08.09.2006 to 30.04.2007** which is considered by the Commission for refund with respect to their date of payment. This is envisaged in the Commission's order dated 17.05.2007 in Case No. 82 of 2006.

13. Further, the Commission in its order dated 16.02.2008 in Case No. 56 of 2007 has specifically denied grant of relief as regards refund of the cost as stipulated under its order dated 17.05.2007 in Case No. 82 of 2006. In this order dated 17.05.2007 at para 9 (d), the Commission has said that *"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 interest, on and from September 8, 2006 (which was the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;"*

14. Therefore, it is clear that the amount collected by the MSEDCL only during period **08.09.2006 to 30.04.2006** was the subject matter of dispute and which was subsequently ordered to be refunded post dismissal of C.A. No. 4305 of 2007.

15. The date of payment was the only criteria identified by the Commission. **The Appellant paid the quotation on 27.05.2005 which is much prior to 08.09.2006, which is the starting date for the relevant period 08.09.2006 to 30.04.2007.** The Appellant was at liberty to agitate the matter before the regular grievance redressal mechanism at that point of time i.e., in the very beginning of the cause of action, to which he has not resorted.


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16. This is notwithstanding the final circular dated 29.12.2017 issued by the Respondent MSEDCL for refund from 20.01.2005 to 20.05.2008. Even if this period was taken to be the correct period for refund of infrastructure cost, the Appellant should have approached the Grievance Redressal Mechanism within a period of two years from the date of this circular of 29.12.2017. This two years period expires on 29.12.2019 as per the Regulation 6.6 of the CGRF & EO Regulations 2006. Had he approached the Mechanism within this period, the issue as to whether the Appellant was entitled to get refund under 'Krushi Vikas Yojana -2005' would have been decided on merits. However, he actually approached the Forum only on 21.12.2021 which is about two years beyond the allowed date. The prayers of the Appellant do not stand scrutiny in the face of Regulations and Orders of the Commission. It is important to note that the Appellant's case is prior to the issue of the Commission's order dated 08.09.2006 in Case No. 70 of 2005 which is the Schedule of Charges Order. The issue of refund of money allegedly collected illegally by the Respondent has its genesis in this Schedule of Charges Order and its subsequent legal travel. The Representation is time barred in view of the CGRF & EO Regulations 2003 and 2006.

17. The Representation of the Appellant is therefore rejected for refund of infrastructure cost.

18. Another issue raised by the Appellant is that he should get the benefit of 'Krishi Dhoran' issued by the Respondent vide its letter dated 15.01.2021 which is based on Decision of Government of Maharashtra dated 18.12.2020. Under this policy, if an agricultural consumer pays an amount of about 33% of the dues, the remaining 67% or so will be exempted from payment. The Appellant would have taken the benefit of this Policy, had the matter not been pending before this Authority. Because the Representation was pending in Grievance Redressal Mechanism, the Appellant was not able to take benefit of Krishi Dhoran. Considering these circumstances, the Respondent is directed to consider his case sympathetically under 'Krishi Dhoran' dated 15.01.2021. DPC and interest levied, if any, from 21.12.2021 till date, i.e., during this grievance redressal period, be waived off.

19. Compliance to be reported within two months from date of issuing the order.



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20. The secretariat of this office is directed to refund the amount of deposit of Rs.20500/- paid by the Appellant to the Respondent by way of adjustment in his ensuing bill.

21. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

