

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 170 OF 2022

In the matter of live arrears of MSEDCL prior to TPL Franchisee

Ansari Mohd. Ahmed Habbibullah ..... Appellant

V/s.

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

Torrent Power Limited (TPL), Distribution Franchisee, Bhiwandi

Appearances:

Appellant : Nadeem Ansari, Representative

Respondent : 1. Ajay N. Bhasaketre, Addl. Ex. Engineer, TUC, MSEDCL  
2. Rajesh Shanbhag, AGM, TPL  
3. Hemangi Mayekar, Nodal Officer, TPL

**Coram: Vandana Krishna [IAS (Retd.)]**

Date of hearing: 24<sup>th</sup> January 2023

Date of Order: 24<sup>th</sup> February 2023

### ORDER

This Representation was filed on 17<sup>th</sup> November 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 6<sup>th</sup> October 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).



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2. The Forum, by its order dated 06.10.2022 has dismissed of the grievance application in Case No. 170 of 2022. The Appellant has filed this representation against the order of the Forum.

3. The e-hearing was held on 24.01.2023 through Video Conference. Both the parties were heard at length. The Respondent MSEDCL and its Franchisee, TPL filed their written replies dated 15.12.2022 and 09.01.2023 respectively. For easy understanding, the Respondent's written submissions along with their arguments on 11.11.2022 are stated first in brief as below: -


**MSEDCL's Submission regarding TPL Distribution Franchisee: -**

- I) The erstwhile MSEB (now MSEDCL) was facing high Aggregate Technical & Commercial losses (AT&C losses) due to outstanding live and PD arrears especially in Bhiwandi area. Hence, the Electricity Distribution Network Assets and Billing in Bhiwandi area was handed over to M/s. Torrent Power Limited (TPL) as the Franchisee of MSEDCL for a period of 10 years from 26.01.2007 and further extended. This Franchisee Model is one of the models in India meant for controlling high AT&C losses which is an example to other licensees. The TPL is authorized to send notices of disconnection on behalf of MSEDCL as its extended hand through Franchisee model as per law. Each and every activity of TPL for controlling AT&C losses is permitted by MSEDCL, as TPL is a part and parcel of MSEDCL.
- II) The Superintending Engineer (SE) of MSEDCL, Bhiwandi as the Nodal Officer along with his Team was functioning independently to coordinate with the Franchisee in various issues including recovery from 2007 to 2018. From 2018 onwards, SE (Thane Urban Circle), Thane is the Nodal officer. The consumers used to approach the Nodal office for resolving the billing complaints. The office was resolving the grievances about billing complaints of MSEDCL period.
- III) **Brief History of the Case: -**

  
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- (i) The Appellant is a LT consumer (Service No.13892726374) having sanctioned load of 20 HP at H.No.1099, Near Alfa Hotel, Kariwali, Bhiwandi for running a power loom.
- (ii) The said service connection is live and billed every month as per the reading obtained from the meter. Also, the bills are raised as per the prevailing tariff guidelines received from the Commission from time to time. **MSEDCL dues have been shown continuously and demanded regularly in all the monthly bills over the years.** However, the Appellant has neglected to pay the same except the current bills till Jan.2021. The TPL sent disconnection notice on 16.02.2021 as per Section 56(1) of the Act for then outstanding dues of Rs.1,58,136/-. The Appellant then orally requested for settlement of dues. However, considering the ongoing pandemic situation, TPL had not initiated any action.
- (iii) The Appellant vide application dated 12.04.2021, had accepted the liability of making payment towards the MSEDCL dues and had not raised any grievance regarding the same. On 28.04.2021, the Appellant raised the grievance with TPL/MSEDCL for the first time i.e., after 14 years.
- (iv) Despite repeated follow ups, the Appellant intentionally ignored to pay the outstanding dues. Hence, another notice under Section 56(1) of the Act was served on 13.12.2021 for Rs.1,63,287.02. Instead of settling the dues, the Appellant again raised the grievance of fictitious billing on 29.12.2021 which was replied vide TPL letter No BHW/CNPB/DT/SP/147 dated 31.12.2021.
- (v) Finally, the Appellant filed a grievance before the Forum on 05.01.2022 for withdrawal of MSEDCL dues amounting to Rs.1,68,957/-. The Appellant has not mentioned any relevant provisions of the Commission, MSEDCL or the Act for withdrawal of pending MSEDCL dues.
- (vi) The Appellant has requested for testing report of Mechanical Static Meter of MSEDCL along with original meter revamp slip. Being very old i.e., of the year

  
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2007, the said information is not available with TPL. The same has been communicated to the Appellant during the hearing at the Forum.

- (vii) The ratio decided in the Judgment of Hon'ble Supreme Court in C.A No. 2846/2006, Commission's Order in Case No. 36/2002 and MSEDCL Circular No.65 is not applicable in the present grievance.
- (viii) The Appellant's statement of accounts from the year 2007 to 26.11.2022 is kept on record for further reference. However, the Respondent is ready to grant instalments from 13.11.2020.
- (ix) It is specifically brought to notice that, in the same premises (H.No.1099) another connection exists bearing consumer No.13892722271 in the name of Masud Ahmd Habibullah Momin, which is permanently disconnected with dues of Rs.1,24,468/- and Rs.12,57,888/- against MSEDCL and TPL respectively, which the Appellant has deliberately not disclosed. The Respondent referred Regulation 16.9.3 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021(Supply Code & SOP Regulations 2021), **wherein the outstanding liability lies on the premises, and the owner/occupier has to pay it.** The said Regulation is quoted as below:
- "In case of premises which are permanently disconnected or demolished for reconstruction, the liability of the arrears, if any, shall be passed on to the owners/occupiers."*
- (x) The Appellant is obliged to pay all outstanding dues of the premises which are being continuously shown in the bills, but the Appellant is not ready to pay the dues.
- (xi) **In regard to Service No. 13892722271, on 25.04.2022, the consumer had smartly chosen to pay Rs.32,050/- against MSEDCL dues (of Rs.1,24,468/-) under "Vilasrao Deshmukh Abhay Yojana," but had not settled the TPL dues (of Rs.12,57,888/-) which is a violation of the guidelines of the scheme.**
- (xii) The Forum, by its order dated 06.10.2022 has rightly dismissed the grievance application as per Regulation 7.8 and 7.9 of CGRF & EO Regulations 2020.

  
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- (xiii) The TPL again issued a notice on 07.11.2022 under Section 56 (1) of the Act against Service No. 13892726374 for outstanding dues of Rs. 1,68,956.73/- and Rs. 39,021.80/- against MSEDCL and TPL, respectively.
- (xiv) Against the said notice, on 12.11.2022, the Appellant submitted an application for restraining TPL on implementation of Forum's order. The same was replied vide TPL Letter No. BHW/CNPB/93 dated 22.11.2022. As the consumer refused to accept the said letter, the same was affixed on the premise on 26.11.2022 and necessary evidence has been recorded.
- (xv) In the meanwhile, the Appellant made payment against TPL dues amounting to Rs.39,370/- on 22.11.2022, but he failed to pay the MSEDCL dues of Rs.1.68 lakhs which is total noncompliance and contempt of the Order passed by the Forum.
- (xvi) The TPL issued disconnection notice on 23.11.2022 towards outstanding dues of MSEDCL of Rs.1,68,957/-, as the same has been continuously shown in the monthly bills and is to be recovered as per Section 56.2 of the Act.
- (xvii) On the other hand, the Appellant has not come with clean hands and has deliberately not disclosed the fact of having another permanently disconnected service in the same premise (H.No 1099) (Service No.13892722271 in the name of Masud Ahmd Habibullah Momin) with outstanding dues of Rs.12,57,888/- against TPL.
- (xviii) The TPL has replaced various meters under Mass Meter Replacement Scheme in the year 2007. It was not possible to test all the replaced meters under Mass Meter Replacement Scheme. Hence, it is not possible to provide the meter testing report as demanded by the Appellant in his prayer.
- (xix) The Nodal Officer, Bhiwandi was issuing notices to consumers having MSEDCL arrears from 2007. Now it is very difficult to trace the notice to a particular consumer.**
- (xx) There was a mechanism available for bill correction at the Nodal Office since 2007. The consumer could have approached the office, and the bill would have been rectified at that time itself. The MSEDCL dues were continuously shown**

  
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**on monthly bills issued by TPL, but the consumer never raised any grievances for the MSEDCL arrears at that time.**

- (xxi) The Representation is liable to be dismissed as per Regulation 7.8 and 7.9 of CGRF & EO Regulations 2020 which are reproduced as below:-

*“7.8 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.*

*7.9 The Forum shall reject the Grievance at any stage under the following circumstances;*

*(a) .....*

*(b) .....*

*(c) In cases where the Grievance has been submitted two (2) years after the date on which the cause of action has arisen;*

*(d) In cases of recovery of arrears where the bill amount is not disputed”*

4. The Appellant’s written submission and arguments in brief are as below:

- (i) The Appellant is a LT power loom consumer (No. 13892726374) having sanctioned load of 20 HP at H.No.1099, near Alfa Hotel, Kariwali, Bhiwandi.
- (ii) The Respondent (TPL) had issued a disconnection notice under Section 56(1) of the Electricity Act, 2003 (the Act) on 13.12.2021 against the outstanding dues of MSEDCL of Rs.1,58,136/- which are to be paid within 15 days of receipt of the notice, failing which the supply would be liable for disconnection.
- (iii) Thereafter, the Appellant approached the Forum on 05.01.2022 for withdrawal of MSEDCL dues. The Forum, by its order dated 06.10.2022 dismissed the grievance application on the grounds of Regulation 7.8 and 7.9 of CGRF & EO Regulations 2020. The Forum failed to understand the basic issue that the dues of MSEDCL are fictitious and need to be withdrawn totally. The TPL does not have any legal authority to issue notice towards MSEDCL outstanding dues and disconnect the supply thereof.
- (iv) The Respondent (MSEDCL) never sent any notice for its outstanding dues nor did the Respondent (TPL) provide any notice of MSEDCL under Section 56(1) of the Act. As per Section 56(2) of the Act, the Respondent cannot demand such alleged




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arrears which were accumulated in 2007, and the Respondent (TPL), being the Franchisee, has no authority to recover the dues prior to 2007.

- (v) The most important factor is that MSEDCL dues are to be continuously shown in the current monthly bills so that there is a continuous cause of action from 2007. In this regard, the Respondent (TPL) has taken a wrong interpretation of the alleged live arrears.
- (vi) The Appellant referred the Judgment of Hon'ble Supreme Court dated 14.08.2007 on the Appeal filed by Maharashtra Electricity Regulatory Commission (the Commission) against the Order of the Appellate Tribunal dated 29.03.2006 in the matter of issue of Average / Supplementary / Amendment bills to the consumers. As per Judgment of Supreme Court in Civil Appeal No. 2486 of 2006, order of Commission's Case No. 36/2002 and MSEDCL Circular No. 65 of 2007, the outstanding dues of MSEDCL shown in the bill are totally fictitious. The Appellant took up this issue with TPL by his letter dated 03.02.2021, that **the bill before 2007 is wrong and incorrect, as most of the bills were based on Reading Not Taken (RNT), Reading Not available (RNA), lock, faulty status.** The Appellant by his letter dated 07.04.2021 and 29.12.2021 has taken up this issue with TPL quoting the Judgment of Supreme Court in Civil Appeal No. 2486 of 2006 and MSEDCL Circular No. 65 of 2007. TPL's reply dated 31.12.2021 to the Appellant is misguided and does not clarify the basic issue of fictitious arrears.
- (vii) Further, the Appellant requested by his letter dated 13.12.2021 for a copy of CPL from 1999 to 2007 along with "Mechanical /Static Meter Testing Report" which was installed by erstwhile MSEB. However, the MSEDCL/TPL failed to do so.
- (viii) The Appellant prays that the Respondent be directed:
- to revise the bill as per actual consumption and waive off the fictitious arrears and accrued interest in view of franchisee agreement 2007 and 2016.
  - to issue Mechanical /Static Meter Testing Report along with the original meter revamp slip and CPL of MSEDCL.

  
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- c) not to disconnect the supply till the case is disposed of.


### **Analysis and Ruling**

5. Heard the parties and perused the documents on record. The Appellant is a power loom consumer (Service No. 13892726374) having sanctioned load of 20 HP at H.No.1099, Near Alfa Hotel, Kariwali, Bhiwandi. The Appellant was/is billed every month as per actual reading of the meter.

6. The Appellant was the consumer of the erstwhile MSEB (now MSEDCL) up to 2007 and was billed as per meter installed by MSEDCL. The Electricity Distribution Network Assets and Billing of Bhiwandi area was handed over to Torrent Power Limited as a Franchisee of MSEDCL for a period of 10 years from 26.01.2007, and the franchisee was further extended for 10 years up to 2027. The TPL is authorized to send notices of disconnection on behalf of MSEDCL as an extended hand through Franchisee model as per law. Each and every activity of TPL for controlling AT&C losses is permitted by MSEDCL, as TPL is a part and parcel of MSEDCL including servicing of disconnection notices. It is duty bound to recover live/PD arrears which have accumulated till date. Thus, there is no merit in the stand of the Appellant that TPL has no legal authority to recover dues of MSEDCL.

7. The TPL has replaced various meters under “Mass Meter Replacement Scheme”. According to TPL, it is not possible to test all the replaced meters under Mass Meter Replacement Scheme, nor is it necessary to do so. The accuracy of the meter was never challenged in all these years when the current bills were being paid by the Appellant. The TPL is billing as per actual reading of the new meters installed by TPL. The initial outstanding dues of Rs.47,357.55 as shown on 04.04.2007 have now reached to Rs. 1,68,957/-. These dues are being continuously shown in his monthly bills. The Appellant pays only the current bills but neglects to pay the accumulated outstanding dues of MSEB / MSEDCL right from the year 2007.

8. The following issues are framed to address the points raised: -

  
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Issue No. 1: Whether the TPL is within its legal right to recover the live outstanding dues of MSEDCL which was standing on consumer's account?

It is necessary to study the provision of the Section 56(2) of the Act which is reproduced below:-


*Section 56 (2) of the Electricity Act, 2003*

*“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due, **unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied**, and the licensee shall not cut off the supply of the electricity.”*

The Larger Bench Judgment dated 12.03.2019 of the Hon'ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions has interpreted Section 56 (2) of the Act. Electricity supply was continuously used by the Appellant during the MSEDCL period. A meter was provided for recording the consumption. The bills were raised by the then MSEB on a month-to-month basis. These bills included two parts: -

- A) Current monthly bill
- B) Previous accumulated arrears

The Appellant did not pay the accumulated bills of arrears within time, which resulted in accumulation of outstanding dues of the consumer. The TPL took over the area under a Franchisee agreement. The TPL has also continuously shown these outstanding dues on each monthly bill. Since the Appellant failed to pay MSEDCL dues, interest was applicable to these live arrears which resulted in progressively increasing accumulated outstanding dues, which are being continuously shown in the monthly bills. The billing is done by the TPL at present, and the same is recoverable. The cash collection mechanism is established by TPL; however the recovered amount goes to MSEDCL account. We hold that TPL has the legal right to recover this amount

  
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as per Franchisee agreement in force. Hence, Issue No. 1 is answered in the affirmative.

Issue No. 2: When did the cause of action arise?

Records show that TPL took over all the distribution network records of this area in the year 2007 as a franchise of MSEDCL. These records included the records of the Appellant showing accumulated arrears along with the current monthly bills. The Appellant has not disputed the fact that TPL continued to issue the monthly bills along with the previous accumulated arrears right from 2007 onwards. Thus, the Appellant was fully aware of the arrears which he did not dispute at that point of time.

MSEDCL has pointed out that **the Nodal Officer, Bhiwandi was issuing notices to consumers having MSEDCL arrears from 2007. Now it is very difficult to trace the notice to a particular consumer. There was a mechanism available for bill correction at the Nodal Office since 2007. The consumer could have approached the office, and the bill would have been rectified at that time itself. The MSEDCL dues were continuously shown on monthly bills issued by TPL, but the consumer never raised any grievances for the MSEDCL arrears at that time.** We hold that the cause of action arose around 2007.

One of the prayers of the Appellant is that he should be provided the CPL of MSEDCL prior to 2007. The record shows that the TPL has already provided the CPL from 2007 onwards. This CPL clearly shows the accumulated arrears of the previous unpaid bills in each monthly bill. An extract for the year January 2021 to December 2021 is tabulated below:

  
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Month / Year	Bill amount		Payment recd
	MSEDCL Arrears	Current bill	
Jan-21	159774.90	32105.21	32100.00
Feb-21	159774.90	26903.22	26830.00
Mar-21	159222.61	29971.54	29970.00
Apr-21	159774.90	28701.51	28640.00
May-21	160364.01	13991.4	13990.00
Jun-21	160953.12	13325.78	13300.00
Jul-21	161487.00	14834.14	14830.00
Aug-21	161592.70	29086.47	29060.00
Sep-21	162175.69	33063.06	33060.00
Oct-21	162704.03	31892.38	31540.00
Nov-21	163287.02	28152.31	28430.00
Dec-21	163833.58	26509.68	26510.00

Since these accumulated arrears remained unpaid; interest continue to accumulate, and reached the point where the current arrears are Rs.1,68,957/- which still remain unpaid.

9. There is no need to go into the CPL prior to 2007, as it will not change the fact that there are outstanding arrears at least from 2007 onwards, which was not challenged by the Appellant at that point of time.

10. The Commission had introduced a Consumer Grievance Redressal Mechanism in the year 2003 itself. The record shows that the current bills of the Appellant were showing previous accumulated arrears right from 2007 till date.

At that time, the Appellant had an opportunity to approach the internal redressal system of the Respondent with its grievance within a period of two (2) months. **If no remedy had been provided within this period, the Consumer could have submitted the Grievance to the Forum within twelve (12) months from the date of the original intimation to the Distribution Licensee, as per Consumer Grievance Redressal Forum and Ombudsman Regulations, 2003.** The said Regulation 6.2 /6.3 is reproduced below:-

  
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*“6.2 Any Consumer with a Grievance shall intimate the Distribution Licensee of such Grievance in the form and manner and within the time frame specified by the Distribution Licensee in its rules and procedures for redressal of Grievances.*

*6.3 Unless a shorter period is provided in the Act, in the event that a Consumer is not satisfied with the remedy provided by the internal redressal system of the Distribution Licensee to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the Consumer may submit the Grievance to the Forum. Provided that the consumer shall submit his Grievance to the Forum no later than twelve (12) months from the date of original intimation to the Distribution Licensee.”*

The Commission has amended these Regulations and issued new revised Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 on 20.04.2006. The relevant portion is reproduced below:-

***“6. Procedure for Grievance Redressal***


*6.1 The Distribution Licensee shall have an Internal Grievance Redressal Cell to record and redress Grievances in a timely manner. The IGR Cell of the Distribution Licensee shall have office(s) in each revenue district in the area of supply.*

*Provided that where the area of supply is the city of Greater Mumbai and adjoining areas, the IGR Cell of the Distribution Licensee shall have at least one (1) office for the area of supply. The Distribution Licensee shall endeavour to redress Grievances through its IGR Cell.*

*6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”*

It is not understood why the Appellant did not knock at the door of the Forum at the relevant point of time, if there was any issue of billing. The cause of action first arose in 2007 when the monthly bills issued by TPL showed previous accumulated arrears. The Appellant was fully aware of these arrears, yet chose to neglect them, neither did he challenge them before the Forum. The limiting date for the Forum to have admitted the case of the Appellant would have been two years from the cause of action. However, the Appellant approached the Forum only on 05.01.2022 for withdrawal of MSEDCL dues, which is a delay much beyond the limitation period.

Even the Judgments dated 10<sup>th</sup> July 2013 and 21.08.2018 of the Bombay High Court, Nagpur Bench in W.P. No. 1650 of 2012, and Bombay High Court, Bench at Aurangabad in W.P. No. 6859, 6860, 6861 and 6862 of 2017 respectively have explicitly upheld the provision under

  
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Regulation 6.6 of the CGRF & EO Regulations 2006 (at present Regulation 7.8 of CGRF & EO Regulations 2020) . In view of these Judgments, Regulation 6.6/7.8 remains valid and untouched. 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 the suit is clearly barred by limitation.

Therefore, this provision of Regulation 6.6 / 7.8 is a settled position in law. I, therefore, do not find it necessary to delve into the other citations referred by the Appellant, because if Regulation 6.6 is ignored, then the entire pyramid of the 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. The provision of Regulation 6.6 will be frustrated and there will be complete chaos.


It is a settled position in law that if the matter is decided on limitation, there is no need to go into the merits of the case, that too regarding outstanding dues of 2007. In view of the above discussions, it is clear that the case of the Appellant in the instant representation is time barred. The Forum has rightly decided the case in light of the Regulation 6.6 of the CGRF Regulations 2006.

Issue No. 3: Whether the bills raised (prior to 2007) are fictitious in nature?

Since the matter is time barred, I do not find it necessary to delve into the merits of the case and need not go into this issue at this stage.

11. In view of the findings above, there is no need to interfere with the order of the Forum, and the Representation is therefore rejected and disposed of accordingly.

12. At the same time, we note the inaction on the part of TPL and as well as the Nodal Officer of MSEDCL for not pro-actively recovering the accumulated arrears, right from 2007 onwards. No doubt, these arrears are kept 'Live' by including them in the monthly bills; however, no further action was taken to recover these dues or to follow up on the disconnection notices, with the result

  
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that the consumer also happily disregarded these arrears, probably on the assumption that no action would be taken for disconnection, and that these arrears would remain on paper. MSEDCL is well advised to look into this issue.

13. In this regard, we would like to record our suggestions as follows. It is seen that accumulated arrears of MSEDCL are kept unpaid for years especially in Bhiwandi power looms area. Some of these arrears date back to 2007 as in the present case. Even if the recovery of such arrears is legally valid, it may be practically impossible to recover these dues, unless an amnesty scheme similar to Vilasrao Deshmukh Scheme is introduced, giving some relief with an opportunity of a one – time clearance of dues, by partially / fully waiving of interest / penalty. The Respondent MSEDCL is advised to study the feasibility and desirability of designing such an amnesty scheme.

14. The Secretariat of this office is directed to refund the amount of Rs.25000/- each (taken as deposit) to the Respondent for adjustment in their ensuing bills.

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



(Dilip Dumbre)  
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