

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 17 OF 2021

In the matter of refund of infrastructure cost

M/s. Ramayya Textiles (Prop. Sunil Mallayya Swami).....Appellant

V/s.

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

Appearances:

Appellant: Mukund Mali, Representative

Respondent: N. D. Ahuja, Executive Engineer (In charge)

Coram: Deepak Lad


Date of hearing: 28th April 2021

Date of Order : 12th May 2021

ORDER

This Representation is filed on 8th March 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 31st December 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kolhapur Zone (the Forum).

2. The Forum, by its order dated 31.12.2020 has rejected the grievance application in Case No. 35 of 2019-20.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




3. Aggrieved by the order dated 31.12.2020 of the Forum, the Appellant has filed this representation stating in brief as follows: -

- (i) The Appellant was a Power loom consumer having sanctioned load of 105 HP (No. 250380193015) at H.No.5/666, Pant Mala, Ichalkaranji, Dist. Kolhapur.
- (ii) The Appellant has applied for power supply of 105 HP for power loom purpose on 05.01.2006. The Respondent has approved the same vide its letter No. 001322 dated 17.06.2006 and Estimate No. ORC-P/70/2006-07 dated 17.06.2006 of Rs.2,73,500/- under Outright Contribution Scheme- Pvt (ORC-P). The Respondent issued a quotation of Rs.2,86,950/- as below:-

Sr.No.	Particulars	Amount (Rs.)
1	Service Connection Charges	1650.00
2	Security Deposit	105000.00
3	Capacitor Testing fee	100.00
4	ORC charges	157500.00
5	15% Supervision Charges	3700.00
6	DTC Metering charges	19000.00
	Total	286950.00

- (iii) The Appellant paid Rs.2,86,950/- vide Receipt No. 0034151 dated 04.07.2006.
- (iv) The Appellant after paying the supervision charges of Rs.3700/- on 04.07.2006 started the infrastructure work under ORC – P scheme on 12.10.2006 as per the estimate and direction of the Respondent. The work was completed on 22.04.2007, however, the supply was released only on 19.06.2007.
- (v) The Maharashtra Electricity Regulatory Commission (the Commission) issued order dated 08.09.2006 in Case No. 70 of 2005 in respect of Schedule of Charges followed by subsequent other orders.
- (vi) Aggrieved with refund of Service Line Charges, Outright Contribution Charges and meter cost in these orders of the Commission, the then erstwhile Respondent MSEB filed an Appeal with the Appellate Tribunal for Electricity (ATE) which was rejected. The Respondent then approached the Hon'ble Supreme Court and


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




filed the appeal which was registered as Civil Appeal No. 4305 of 2007 (earlier Stamp No. 20340 of 2007).

- (vii) The Hon'ble Supreme Court granted stay on refund on 31.08.2007. Finally, Hon'ble Supreme Court dismissed the Civil Appeal on 10.11.2016. Therefore, it becomes clear that the Appellant is eligible for refund of all the expenses incurred by it for infrastructure works. Subsequently, the Respondent MSEDCL issued Circular No.25079 on 12.10.2017 for refund of infrastructure charges. The Respondent vide its letter dated 29.12.2017 has amended the refund period from 20.01.2005 to 20.05.2008. The SLC, ORC, ORC (P), Non DDF are these charges towards infrastructure cost. The Appellant carried out work under ORC (P) scheme which is the infrastructure cost. The Respondent has to refund the same. However, not refunded.
- (viii) Thereafter, the Appellant filed the grievance with the Internal Grievance Redressal Cell (IGRC) on 20.07.2019. The IGRC, by its order dated 24.10.2019 has rejected the same. The Appellant approached the Forum on 12.12.2019. The Forum vide its order dated 31.12.2019 rejected his grievance being time barred.
- (ix) The Appellant carried out infrastructure work of Rs.2,73,500/- (Estimate No. ORC-P/70/2006-07 dated 17.06.2006), the same needs to be refunded by the Respondent since the work is carried out during the amended period of 20.01.2005 to 20.05.2008 specified in the Circular dated 29.12.2017.
- (x) The case is not time barred as the Appellant approached the Forum on 12.12.2019.
- (xi) The Appellant prays that the Respondent be directed to refund the cost of infrastructure along with interest till date.

4. The Respondent has filed its reply vide its letter dated 08.04.2021 stating in brief as under:


- (i) The Appellant has filed the representation dated 15.03.2021. The order of the Forum dated 31.12.2020 was received by both the parties on 12.01.2021 vide


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



email which is time barred as per CGRF Regulations 2006 hence the representation deserves to be rejected.

- (ii) The Respondent referred the definition of the Complainant in Regulation 2(c) of CGRF Regulations 2006 (which is factually 2020), and definition of Consumer in Section 2 (15) of the Electricity Act, 2003 (the Act). Hence, Sunil Malayya Swami is not the consumer at present and the representation be rejected on this ground also.
- (iii) The Appellant was a Power loom consumer having sanctioned load of 105 HP (No. 250380193015) at H.No.5/666, C.S.No.17391/1, Pant Mala, Ichalkaranji, Dist. Kolhapur.
- (iv) The Appellant has applied for new connection of 105 HP. Estimate was sanctioned pursuant to its application and the work of infrastructure will be carried out at its own cost. The estimate No. EE/ICH/OC(P)/70/2006-07 was sanctioned by letter No. EE/ICH/OC(P)/137/2006-07 for Rs.2,84,350/-. The work is done as per the estimate as per record.
- (v) The electric connection of the Appellant was released on 19.06.2007.
- (vi) The Appellant filed the grievance with the Internal Grievance Redressal Cell (IGRC) on 20.07.2019. The IGRC, by its order dated 24.10.2019 has rightly rejected the same. The Appellant approached the Forum on 12.12.2019. The Forum vide its order dated 31.12.2019 rejected his grievance being time barred.
- (vii) The infrastructure work was carried out by the Appellant in the year 2007 however, the Appellant approached the grievance mechanism in the year 2019 i.e. after 12 years. The representation is therefore time barred as per Regulation 6.6 of the CGRF Regulations 2006.
- (viii) The electric connection of the Appellant was permanently disconnected in the month of July 2018. Afterwards the Appellant has applied for refund of ORC charges. The Appellant has paid Rs.1,57,500/- under ORC head on 17.06.2006. The Respondent adjusted this refund of Rs.1,57,500/- along with interest of Rs.7767.12 in the bill of October 2018.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (ix) As per the Respondent's Circular No. 25079 dated 12.10.2017 which is issued to pursuant to the Judgment of Hon'ble Supreme Court in CA No. 4305 of 2007, the cost towards SLC, ORC and meter charges cannot be refunded in case of dedicated distribution facility (DDF). Appellant's connection being the only connection from the transformer from which it is fed, it falls under DDF and it is not entitled for refund on this account.
- (x) Respondent has referred the Judgment / orders which are as below:
- Judgment of Bombay High Court, Nagpur Bench in W.P. No. 1588 of 2019 in which the Hon'ble High Court has set aside the order of the Electricity Ombudsman, Nagpur which allowed refund of infrastructure cost.
 - The orders of the Electricity Ombudsman, Mumbai in Representation No. 189 and 190 of 2019 wherein refund of infrastructure cost was rejected being time barred.
 - Order passed by the Electricity Ombudsman, Mumbai in Review Application No. 3 of 2020 in Representation No. 152, 153, 154 and 160 of 2019 in which it has been clearly spelt out that if the date of payment of supervision charges by the Appellant falls within the matrix of period 08.09.2006 to 30.04.2007, then only the consumer is entitled for refund. In the instant case, the Appellant has paid supervision charges on 04.07.2006 hence not entitled for refund.
- (xi) In view of the above submission, the representation needs to be disposed of accordingly.

5. The hearing was held on 28.04.2021 on e-platform through video conferencing due to Covid-19 epidemic and conditions arising out of it.

6. The Appellant argued at length in line with its written submission. The Appellant argued that the work under the estimate of ORC (P) is factually Non-DDF. The application for refund could not be submitted as the litigation with respect to recovery of SLC, ORC, etc. from the consumers in general was pending in Hon'ble Supreme Court which is now


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



dismissed. The case is not time barred as claimed by the Respondent as the actual cause of action started after issuing of Judgment by the Hon'ble Supreme Court and issue of circulars thereafter by the Respondent. In view of the above, the Appellant prays that the Respondent be directed to refund the cost of infrastructure along with interest till date.

7. The Respondent argued that the infrastructure work done by the Appellant is dedicated as it was the sole consumer connected on the transformer supplying power to it. The Appellant carried out the work at its own volition after submitting an undertaking to that effect. The Appellant eventually ended up paying supervision charges only as cost towards ORC component paid by the Appellant has already been refunded along with interest through its electricity bill of October 2018. The work being DDF in nature, question of refund of infrastructure cost erected by the Appellant does not therefore arise. The connection is now permanently disconnected.


Analysis and Ruling

8. Heard the parties and perused the documents on record. There is no doubt that the work is of DDF nature as the Appellant is the only consumer which is connected on the transformer from which power supply was released to it. This transformer was erected by the Appellant only. Collection of ORC / SLC / meter charges, etc. by the Respondent was the subject matter of the litigation pursuant to the Commission's order dated 08.09.2006 in Case 70 of 2005 which is the Schedule of Charges order. This litigation went right up to the Hon'ble Supreme Court which dismissed the CA No. 4305 of 2007 filed by the Respondent. The sequence of events in the legal travel of the case which is necessary to be perused in deciding the instant representation is as 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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.....

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



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



materialised in favour of various consumers, the Commission observes that the position of law is well settled under the Supply Code.

While on the subject, the Commission directs that MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and/or the Order dated September 8, 2006. The Commission further observes that consumer representatives /organisations who/which are invited to attend hearings and/or make submissions, should ensure sufficient co-operation.

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

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

Relevant portion of the order is reproduced below: -


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

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

(Emphasis added)

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

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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 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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



consumer shall be entitled to the depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:

Provided that where such facilities have been provided by the consumer, then such facilities may be retained by the consumer upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:

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

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

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

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


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

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

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

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

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.”

(g) The Commission’s order dated 01.09.2010 in **Case No. 93 of 2008**.

(In the matter of Petition of Akhil Bhartiya Grahak Panchayat, Latur seeking directions against MSEDCL for non-compliance of the Electricity Supply Code Regulations and the Electricity Act, 2003).

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


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

(h) The Commission’s order dated 08.12.2014 in **Case No. 105 of 2014**

(In the matter of Petition of MRVGS for penal action against MSEDCL for breach of provisions of law in respect of new electricity connections to Agricultural consumers, and non-compliance of certain other directions).

The relevant portion is reproduced below: -

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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:-


"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."

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

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

"9 (d) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and 'CRA',


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




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 MSEDCL in Supreme Court in Civil Appeal No. 4305 of 2007.
- (iii) MRVGS filed a complaint through Case No. 82 of 2006 seeking refund of monies collected by MSEDCL towards ORC, cost of meter and CRA. Commission issued order on 21.08.2007 and imposed penalty on MSEDCL. Relevant portion being as below:-

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


- (iv) Supreme Court stayed the Judgement of ATE by order dated 31.08.2007 thereby staying the refund, and further on 14.09.2007 the Supreme Court issued directions that until further orders, interim order issued by it shall continue to operate.
- (v) MRVGS filed petition with the Commission on 05.11.2007 through Case No. 56 of 2007 seeking compliance of directions issued by the Commission in its order dated 17.05.2007 in Case No. 82 of 2006. The Commission in this order said that it will not be appropriate to direct MSEDCL for refund in view of the pendency of Civil Appeal in the Supreme Court. It also clarified the issue of DDF. It means that no refund can be ordered for the cases falling between 08.09.2006 to 30.04.2007, on account of stay granted by the Hon’ble 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.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (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 then 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. 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.

9. It is important to note that barring the consumers from whom the amount towards ORC, Cost of Meter and CRA is collected by MSEDCL during 08.09.2006 to 30.04.2007, rest of the consumers, if any, and have paid such amount, they were having an option to adopt the grievance redressal mechanism under the Regulations of the Commission for redressal of their grievance with respect to refund. This is very much clear from para 19 of the Commission's order dated 01.09.2010 in Case No. 93 of 2008 which is quoted above at Para No.8 (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. The Commission in this order has specifically said that ***"Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response."*** The relevant paragraph of the Commission's order is captured at Para No. 8 (h) of this order.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




10. Now let us examine as to whether the instant representations 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.

11. 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;*"

12. Therefore, it is clear that the amount collected by the MSEDCL during period 08.09.2006 to 30.04.2007 was the subject matter of dispute and which was subsequently ordered to be refunded post dismissal of C.A. No. 4305 of 2007 by the Hon'ble Supreme Court.

13. On conjoint reading of all the Orders of the Commission, the Judgment of the Hon'ble Supreme Court and more particularly, the Commission's order dated 08.12.2014 in Case 105 of 2014, the refund to the eligible consumer needs to be done on the criteria of date of payment of those charges by the individual consumer and in this case, by the Appellant. The Appellant in the instant representation has paid the supervision charges on 04.07.2006 which is prior to 08.09.2006, the date being the date of issue of Schedule of Charges order in Case No. 70 of 2005.

14. The Appellant was at liberty to have agitated the matter before the grievance redressal mechanism at the time of payment or within two years therefrom before the Forum under CGRF Regulation 2006. However, it approached the Forum on 12.12.2019. It is very


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




interesting to note that the Appellant has paid the amount on 04.07.2006 which is prior to the date of Schedule of Charges order of the Commission. The entire legal case is on Schedule of Charges order which is issued on 08.09.2006 and the Circulars and the Commission's directives are issued pursuant to the dismissal of CA No. 4305 of 2007.

15. If the Appellant is allowed to take advantage of the developments subsequent to Judgment in CA No. 4305 of 2007 then anyone who has done the work under DDF or Non DDF prior to 08.09.2006 will have to be given advantage of if such consumers file the applications. It will be a complete state of chaos.

16. Therefore, the case does not stand scrutiny either on merit or on limitation prescribed under Regulation 6.6 of CGRF Regulations 2006. The Appellant appears to have filed the representation without properly appreciating the Judgment of the Hon'ble Supreme Court and the respective orders of the Commission in this context.

17. I therefore reject the representation which is disposed of accordingly.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

