

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NOS. 82, 83, 84 & 85 of 2020

In the matter of refund of infrastructure cost

- | | | |
|-----------------------------------|-----------------------|------------|
| 1. D'décor Home Fabrics Pvt. Ltd. | (C. No. 003019030640) | 82 of 2020 |
| 2. ,, | (C. No. 003019034160) | 83 of 2020 |
| 3. ,, | (C. No. 003019022430) | 84 of 2020 |
| 4. ,, | (C. No. 003019024100) | 85 of 2020 |

V/s.

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

Appearances:

For Appellants: (i) Mr. Pratap Hogade, Representative
(ii) Mukund Mali, Representative

For Respondent: (i) Kiran H. Nagoankar, Superintending Engineer
(ii) Yuvraj J. Jarag, Executive Engineer
(iii) Rajiv B. Vaman, Asst. Law Officer
(iv) Tushar Bhagit, Assistant Engineer

Coram: Deepak Lad

Date of hearing: (i) 10th December 2020
(ii) 22nd January 2021

Date of Order : 26th February 2021

ORDER

This Representation is filed on 20th October 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 17th August 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).



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2. The Forum, by its common order dated 17.08.2020 has dismissed the grievance applications in its Case Nos 1994, 1995, 1996 and 1998 of 2019-20 which are now registered as Representations No. 83, 85, 84 and 82 of 2020, respectively.


3. Aggrieved by the common order dated 17.08.2020 of the Forum, the Appellants have filed these representations independently, which are clubbed together for the purpose of this order as the matter is similar. These representations in brief are as follows: -

1. Representation No. 82 of 2020 (Forum Case No. 1998 of 2019-20)

- (i) The Appellant is HT Industrial consumer (No.003019030640) from 31.08.2007 at Plot No. F-6, MIDC Tarapur Boisar, Taluka & District Palghar with presently Connected Load (CL) of 4650 KW and Contract Demand (CD) 3100 KVA.
- (ii) The Respondent (then SE Vasai/Palghar) issued sanction letters along with estimates of work under Dedicated Distribution Facility (DDF) Scheme. The Appellant paid the supervision charges, completed all the concerned infrastructure works and / or the metering works as per the estimates and directions of the Respondent.
- (iii) The details of the works done, and refund claimed along with the concerned sanctions, estimates and scope of work are given as below: -

Sr.No.	Consumer No.	Estimate No. & Date	Works	Estimate Amount	Load Release Date
1	003019030640	3696 dt.29.06.2007	HT line with 15 poles & metering.	16,68,210.00	DOC- 31.08.2007
2		2112 dt.15.06.2018	Shifting of point of supply & metering	8,28,185.00	
3		2113 dt.15.06.2018	Load enhancement HT line with 8 poles.	10,58,615.00	05.12.2018
Total				35,55,010.00	

2. Representation No. 83 of 2020 (Forum Case No. 1994 of 2019-20)


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- (i) The Appellant is HT Industrial consumer (No.003019034160) from 18.01.2009 at Plot No. F-6/1, MIDC Tarapur Boisar, Taluka & District Palghar with present CL of 4890 KW and CD 3200 KVA.
- (ii) The Respondent (then SE Vasai/Palghar) issued sanction letters along with estimates of work under Dedicated Distribution Facility (DDF) Scheme. The Appellants paid the supervision charges, completed all the concerned infrastructure works and / or the metering works as per the estimates and directions of the Respondent.
- (iii) The details of the works done and refund claimed along with the concerned sanctions, estimates and scope of work are given as below:-

Sr.No.	Consumer No.	Estimate No. & Date	Works	Estimate Amount (Rs.)	Load Release Date
4	003019034160	2115 dt.15.06.2018	HT line with 4 poles & metering	8,19,350.00	26.10.2018
Total				8,19,350.00	

3. Representation No. 84 of 2020 (Forum Case No. 1996 of 2019-20)

- (i) The Appellant is HT Industrial consumer (No.003019022430) from 13.10.1999 at Plot No. G-15/1, MIDC Tarapur Boisar, Taluka & District Palghar with present CL of 4423 KW and CD of 2110 KVA.
- (ii) The Respondent (then SE Vasai/Palghar) issued sanction letters along with estimates of work under Dedicated Distribution Facility (DDF) Scheme. The Appellants paid the supervision charges, completed all the concerned infrastructure works and / or the metering works as per the estimates and directions of the Respondent.
- (iii) The details of the works done and refund claimed along with the concerned sanctions, estimates and scope of work are given as below:-


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Sr.No.	Consumer No.	Estimate No. & Date	Works	Estimate Amount	Load Release Date
5	003019022430	1152 dt.06.02.2008	ORC- HT line with 2 poles.	1,19,520.00	04.03.2008
6		03294 dt.14.05.2008	HT line with 11 poles & metering.	15,36,840.00	05.07.2008
Total				16,56,360.00	


4. **Representation No. 85 of 2020 (Forum Case No. 1995 of 2019-20)**

- (i) The Appellant is HT Industrial consumer (No.003019024100) from 05.09.2002 at Plot No. G-15/2, MIDC Tarapur Boisar, Taluka & District Palghar with present CL of 3048 KW and CD of 1800 KVA.
- (ii) The Respondent (then SE Vasai/Palghar) issued sanction letters along with estimates of work under Dedicated Distribution Facility (DDF) Scheme. The Appellants paid the supervision charges, completed all the concerned infrastructure works and / or the metering works as per the estimates and directions of the Respondent.
- (iii) The details of the works done, and refund claimed along with the concerned sanctions, estimates and scope of work are given as below: -

Sr.No.	Consumer No.	Estimate No. & Date	Works	Estimate Amount	Load Release Date
7	003019024100	2518 dt. 26.07.2018	Load enhancement & metering,	7,30,928.00	21.08.2018
Total				7,30,928.00	

Note:

- (a) Estimates 1, 5 & 6 are the estimates of the year 2007 -2008 eligible for refund as per the refund circulars dated 12.10.2017 and 29.12.2017.
- (b) Other estimates 2,3, 4 & 7 are the estimates in the year 2018. The claim for refund under these estimates falls well within the limitation period of two years and hence, eligible for refund.
- (iv) Hence, the total refundable amount is
- (a) Principal amount Rs. 67,61,648.00
- (b) Interest at bank rate from the date of payment till the date of repayment as per Section 62 (6) of the Electricity Act, 2003 (the Act).
- (v) After the final decision of the Hon'ble Supreme Court in C.A. No.4305 of 2007 dated 10.11.2016, MSEDCL issued its first Refund Circular on


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12.10.2017 and the Amendment Circular on 29.12.2017. The Appellants applied for refund of all above-mentioned estimates on 18.06.2019 with the Respondent.

- (vi) Till today, the Appellants have not received any response or refund from the Respondent. The Forum has also rejected the demands. Hence, the Appellants have filed these representations.
- (vii) The Appellants have submitted their grievances in all these individual cases with IGRC on 19.07.2019 which were rejected by order dated 05.11.2019. Thereafter, the Forum has also rejected the grievances. This denial of refund is totally wrong, illegal and against the orders of the Hon'ble Supreme Court, the Commission, and the Respondent's circulars itself. Other detailed submissions in this regard are given in the following paragraphs: -

(a) **Work Done:** - The works done as per the estimates are the extension or tapping or conversion of the existing HT 33 KV line up to their premises. The scope of the work was laying of 33 KV line and all the concerned infrastructure work and Kiosk Metering Work. The Metering Work was done by the Appellants in some incidences out of the total 7 estimates. As per the Commission's order dated 08.09.2006 regarding Schedule of Charges in Case No. 70 of 2005, meters are to be installed by the licensees. Also, if the cost is to be recovered, it is to be refunded to the consumer as per the Respondent's own circulars. (Circular No. 21560 dt.09.05.2017 & No.34307 dt.03.09.2007).

(b) **Feeder details:** - The name of the feeder for

- Plot Nos. F-6 (Rep.82/2020) & F-6/1 (Rep.83/2020) is 33 kV Feeder No.6 which is emanating from Substation 132/33 MIDC-1 Substation in MIDC Tarapur, Boisar.
- Plot No. G-15/1 (Rep.84/2020) is 33 kV Feeder No.7 which is emanating from the same substation.
- Plot No. G-15/2 (Rep.85/2020) is connected on 33 kV Feeder No.8 which is emanating from 220 / 132 / 33 kV Khairpada Substation.

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On all the above-mentioned feeders, the Appellants have completed necessary line extension / tapping and infrastructure work as per the Respondent.

- (c) **Other consumers:** There are many other consumers getting power supply from the same 33 KV Feeder No. 7 as well as Feeder No.6.
- (d) **Commission's Order dated 16.02.2008 in Case No. 56 of 2007:** Only the extension and / or tapping work was done by the Appellants and many other consumers are getting supply from the same meters. "*Mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility (DDF)*" is the clarification given by the Commission in Case No. 56 of 2007.
- (e) **Work Non DDF:** It is clear from the definition of DDF in the Regulations and clarifications given by the Commission, their feeders and the works done by the Appellants are clearly Non DDF. Hence, the Appellants are fully entitled for the refund of the total amount Rs.67,61,648/- along with interest as per the Respondent's own office estimates.
- (f) **Commission's Order dated 17.05.2007 in Case No. 82 of 2006:** The Commission has given clear directions that the Respondent must refund to all the consumers all overcharged amounts along with interest thereon that have been collected towards ORC, ORC-P or such other head-based charges which are not allowed in the Supply Code Regulations and also SLC, Cost of Meter which are at variance from the order of the Schedule of Charges dated 08.09.2006. Few extracts of this order are as below: -
- Para 4 – "*MSEDCL must refund to all consumers all over charged amounts that have been collected towards ORC or such other head- based charges, including cost of meter, at variance from the order dated September 8, 2006.*"
- Para 5 – "*The Commission directed MSEDCL to refund to Devang Sanstha, and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests.*"
- Para 9 – "*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.*"

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- (g) **Commission's Order dated 21.08.2007 in Case No. 82 of 2006:** The Commission has again issued further Order dated 21.08.2007 in the same Case No.82 of 2006 imposing penalty on MSEDCL due to non-compliance of its earlier order dated 17.05.2007 and directed MSEDCL for compliance.
- (h) **DDF Clarifications:** Again Case No.56 of 2007 was filed by the same petitioner before the Commission for the compliance of directions issued on 17.05.2007 in Case No. 82 of 2006. In this case, issues of ORC, DDF and Non DDF were fully discussed by the Commission. In this order dated 16.02.2008, the Commission has clarified the concept and issued detailed clarification on DDF on request of MSEDCL itself. Few extracts of this order are as below:
- Para 9 – *“The Commission observed that consumers should not be burdened with infrastructure costs which are the liability of MSEDCL.MSEDCL may seek the recovery of the same as an annual revenue requirement.”*
- Para 12 – *“It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility.”*
- Para 12 – *“Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers.”*
- Para 12 – *“Also Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Sector 43 of the Electricity Act, 2003 read with SoP regulations.”*
- (i) **Respondent MSEDCL Circular 20.05.2008:** After the order dated 16.02.2008 in Case No. 56 of 2007, the Respondent issued circular dated 20.05.2008 in which guidelines for release of new connections on the basis of above-mentioned orders of the Commission were given. The circular itself clarifies that all the Non DDF connections are refundable. Respondent MSEDCL has issued circular only for LT connections and the Commission's order is for both LT & HT connections.

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- (j) **MSEDCL Civil Appeal in Supreme Court:** In the meanwhile, MSEDCL has impleaded this issue of refund in Civil Appeal No. 4305 of 2007 (earlier Stamp No.20340/2007) in which the Hon'ble Supreme Court had ordered stay on refund on 31.08.2007. Hence, all refunds were stopped.
- (k) **Hon'ble Supreme Court Order dated 10.11.2016:** Finally, the Civil Appeal filed by MSEDCL came for final hearing in the year 2016. The Hon'ble Supreme heard the matter, issued final order dated 10.11.2016 and dismissed the Civil Appeal in toto.
- (l) **MSEDCL Circular 12.10.2017:** After the order of the Hon'ble Supreme Court, it is binding on MSEDCL to implement concerned orders of the Commission in letter and spirit. MSEDCL issued circular for refund of SLC, ORC and meter cost after 11 months vide its Circular No. CE/Dist/D-IV/MERC No.25079 dated 12.10.2017. In this circular, MSEDCL has denied refund in DDF cases which is correct as per the definition in Supply Code Regulations and as per detailed clarification given by the Commission in its order dated 16.02.2008. But if the connection is actually Non DDF and it is named as DDF by MSEDCL for its own convenience or in order to avoid any refund, then it is nothing but ORC. Hence, the Appellants are fully eligible to get the refund along with the interest thereon.
- (m) **Supply Code Regulations:** After the Supply Code Regulations till today, MSEDCL has sanctioned many Non DDF connections in the name of DDF in order to avoid the repayment of the infrastructure cost incurred by the consumers. With the use of the words 'DDF', MSEDCL used to impose the condition on the consumers that all the infrastructure work should be done by the concerned consumers at their own cost. Actually, using the word 'DDF' and imposing cost on consumers is totally illegal and against the orders of the Commission. Actually, such works are nothing but ORC. Such act and such conditions of MSEDCL



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are against the Supply Code Regulations. Regulation 19.1 reads as below: -

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

- (n) **Interest:** As per provisions of Section 62 (6) of the Act, it is binding on the licensee to refund the excess recovered amount to the concerned person / consumer along with interest equivalent to the bank rate.
- (o) The Appellants stated that their expenditure on all the concerned work is more than the estimate of MSEDCL but logically and reasonably, can claim the estimate amount only. Hence, on the basis of all above mentioned grounds, the Appellants are eligible to get the refund of all the above mentioned MSEDCL's own estimate amount totaling to Rs.67,61,648/- along with the interest thereon at the bank rate from the corresponding work completion / load release date up to the actual date of repayment.
- (p) **MSEDCL Circular dt. 07.11.2017:** In this circular, MSEDCL had clearly stated that various offices had taken various stands and it should be corrected on the basis of Hon'ble Supreme Court's final verdict and the cases should be withdrawn.
- (q) **MSEDCL Refund Circular dt.21.12.2009:** In this circular, MSEDCL had clearly stated that refund with respect to circular dated 20.05.2008 should be given in all new connections through the bills, 50% amount in each bill, till the clearance of all the expenditure done by the consumer. This circular is clearly applicable to all LT & HT consumers. However, these instructions are not obeyed in the Appellants' cases.
- (r) **Refund Period Circular dt.29.12.2017:** In its first refund circular dated 12.10.2017, MSEDCL has stated the refund period from 20.01.2005 to 30.04.2007. Thereafter, MSEDCL has issued Amendment Circular on 29.12.2017. The refund period is revised from 20.01.2005 up to

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20.05.2008. The Appellants' estimates No.1,5 and 6 are in the year 2007 and 2008, hence are eligible for refund as per MSEDCL's own refund circulars.

- (s) **Other estimates of year 2018:** Other estimates No.2,3,4 and 7 are the estimates in the year 2018. Cause of action in all these estimates is within the period of 2 years as per the CGRF Regulations 2006. Hence, all these estimates amounts are eligible for refund. It should also be noted that the Forum has held such amounts eligible for refund and ordered accordingly in similar cases in Palghar circle. Hence, MSEDCL Palghar office and IGRC is well aware of these orders.
- (t) **New Refund Circulars for New Connections:** MSEDCL has issued two new Refund circulars again after the Judgment of the Hon'ble Supreme Court. First circular is dated 16.04.2018 regarding the refund of meter cost in all HT/EHV cases. Another circular is dated 19.03.2019 regarding the refund of infrastructure cost in 5 instalments through bills. It is clearly stated by MSEDCL itself in its circular dated 20.12.2018 that infrastructure development is the sole responsibility of the licensee as per the Act. Hence, in all such non DDF cases, the consumers are eligible for refund along with the interest from the date of payment up to the date of repayment as per Section 62 (6) of the Act.
- (u) **Compensation:** The Appellants' complaints are complaints other than bills. Hence, as per Regulation 7.6 of the SOP Regulations 2014, "*In other cases, the complaint shall be resolved during subsequent billing cycle.*" The Appellants have filed complaints on 18.06.2019. It was necessary and binding on MSEDCL to have resolved it in subsequent billing cycle means up to the end of June 2019 or in the bills received in July 2019. But MSEDCL has failed to do so, hence, the Appellants are eligible for SOP compensation of Rs.100/- per week or part thereof from 01.07.2019.
- (v) **SLC, ORC & DDF all are Infrastructure Charges under different names:** All these 3 types of charges are the charges towards

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infrastructure cost. ORC was allowed up to 20.01.2005 i.e., up to the date of Supply Code Regulations. In the instant case, estimate No. 5, Plot G-15/1 was issued on 06.02.2018, DDF is allowed from 20.01.2005 but in the cases only where the connection is actually DDF as per Supply Code Regulations and as per Clarificatory Order of the Commission dated 16.02.2008. In the Appellants' cases, all the connections are totally Non DDF but the estimates issued under DDF. As per MERC Regulation and MERC Orders, in case of all Non DDF connections, infrastructure costs cannot be recovered from the consumers. Hence, the Appellants are fully eligible for refund.

- (w) **IGRC & CGRF Orders:** The IGRC and the CGRF have observed and noted that the refund demand of estimate dated 29.06.2007 is beyond the period of limitation of 2 years. This observation is totally wrong and illegal. This issue was before Hon'ble Supreme Court in C.A. No. 4305 of 2007 filed by MSEDCL itself. Hon'ble Supreme Court has issued final order on 10.11.2016 and on that date, the stay on refund is vacated. Thereafter, MSEDCL itself has issued circulars for refund on 12.10.2017, 07.11.2017 and 29.12.2017. In the circular dated 29.12.2017, MSEDCL had clarified refund period 20.01.2005 to 20.05.2008. In the Appellants' cases, the estimate Nos. 1,5 & 6 are in the period June 2007 up to May 2008. Hence the Appellants are fully eligible for refund as per circular dated 29.12.2017 and amended refund period declared by MSEDCL itself. The cause of action has arisen on 29.12.2017 after declaration of the refund period. Thereafter, the Appellants applied for refund to MSEDCL on 18.06.2019 and to IGRC Cell on 19.07.2019. It fits well within the limitation of two years as per Regulation 6.6. In case of estimates No. 2, 3, 4 & 7 the work done period is from June 2018 up to December 2018. Hence, there is no issue of any limitation. Hence, the Common Order of the Forum is totally wrong, illegal and needs to be quashed and set aside. It should also be noted that the MSEDCL has itself represented before various Courts that



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the Judgment towards refund of ORC is pending before the Hon'ble Supreme Court.

- (x) It should also be noted that any excess or illegal recovery is against the provisions of Section 62(6) of the Act and the licensee has no right to retain it with itself on any grounds. It must be refunded to the concerned person with interest. The licensee can recover these expenses through ARR as allowed by the Commission in its various orders.
- (y) IGRC and the Forum has observed that for the 2018 connections, the Appellant has opted DDF and not objected at initial stage. Observation is totally wrong and illegal as it is against the Supply Code Regulation No. 19.1. Due to monopoly of MSEDCL, the Appellants have no other option but to accept the illegal conditions imposed on them, to get the sanctions and the connections for all their four units. Also, the complaints are filed within the allowed period of 2 years.
- (z) The Appellants' nature of relief sought from the Electricity Ombudsman are as below: -
- (a) The Appellants' connections should be declared as Non DDF connections on the basis of Supply Code Regulations, concerned Commission orders and concerned MSEDCL circulars.
- (b) The expenditure amount as per MSEDCL's own estimate in total of Rs.67,61,648/- should be refunded along with interest at bank rate from the respective work completion / load release date till the date of repayment or alternatively all the total amounts be credited in their further bills.
- (c) SOP Compensation for delay in resolution of complaint, an amount of Rs.100 per week from 01.07.2019 should be awarded.
- (d) Any other orders may be passed by the Hon'ble Ombudsman in the interest of justice, as it may think fit and proper.
- (viii) The issue of refund of infrastructure cost was pending due to Civil Appeal No. 4305 of 2007 filed by MSEDCL with the Hon'ble Supreme Court of India. There was a stay on refund. Finally, the Hon'ble Supreme Court of India

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dismissed the C.A No.4305 of 2007 on 10.11.2016. Thereafter, the Respondent issued refund circular dated 12.10.2017 and amendment circular on 29.12.2017. Then it became clear that the Appellants are eligible and can claim for refund of all the expenses done for the infrastructure works and metering works.

4. The Respondent MSEDCL filed its reply dated 24.11.2020 for all four representations separately stating as under: -

(i) The refund of infrastructure cost is not "Grievance": -

- (a) The present case has been filed for refund of expenses which was voluntarily incurred by the Appellant for getting supply/ load extension etc., there was no single protest and thereafter suddenly after 11/12 years, it is asking for refund. This conduct of consumer is not equitable and acceptable. Moreover, it will not come within definition of "Grievance" defined under Regulation 2.2 of CGRF Regulations 2006. The Respondent cited the Judgement of Hon'ble High Court of Bombay, Aurangabad Bench dated 01.07.2011 in Writ Petition No. 2032 of 2011, in Case of MSEDCL Rural Circle, Aurangabad V/s. M/s. Kaygaon Paper Mill Limited which held that—

"By no stretch of imagination the grievance of respondent No. 1, mentioned above, would be covered by this definition. A consumer's grievance contemplated under the Regulations is basically a complaint about fault or inadequacy in quality of performance of the Electricity Distribution Company. In this case, admittedly, there is no grievance that performance of the petitioner company, as distribution licensee, had been imperfect or otherwise. The grievance of respondent No. 1 is in respect of breach of statutory obligation allegedly committed by the petitioner-company. So, the grievance would not fall within the four corners of the term "grievance" defined under the Regulations".

In the same Writ Petition No. 2032 of 2011, MSEDCL Vs. M/S. Kaygaon Papers Mill Limited, Hon'ble His lordship held that:-

"Shri H.F. Pawar, learned Advocate for respondent no. 1 then tried to show me certain orders passed by the Maharashtra Electricity Regulatory Commission in the matter of complaint filed by certain consumers of the

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petitioner company for refund of the amount etc. The Commission directed the petitioner-company to refund the amount to the consumer in those cases. I am afraid, even though in similar situation, the petitioner-company was directed by the Commission to refund the amount to their consumers, still such orders are not capable of being utilized is of civil nature and would not be covered by the term "grievance". The Consumer Grievance Redressal Forum, which had passed the impugned order, apparently did not have jurisdiction to entertain a complaint of this nature. Respondent No. 2 — Forum thus could not have decided the dispute of this nature. Therefore the orders passed by the Commission will be of no use to respondent No. 1".

- (b) The Respondent also cited the judgement of the Bombay High Court, Nagpur Bench dated 08.01.2020 in matter of W.P.No.1588 of 2019, in Case of MSEDCL Vs, Mahamaya Agro Industries which upheld the above ruling and hold that the consumer conduct to ask for refund of costs of infrastructure which he voluntarily incurred in order to getting supply is inappropriate and unethical.

1 Representation No. 82 of 2020:-

The Appellant, M/s. Home D'Decor Fabrics Pvt. Ltd. is HT Industrial consumer (No.003019030640) from 31.08.2007 at Plot No. F-6, MIDC Tarapur Boisar, Taluka & District Palghar with present CL of 4650 KW and CD of 3100 KVA.

The details of its estimates with works involved and payment of supervision charges is tabulated below:-



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Representation No.	82 of 2020		
	Denoted as Estimate No.1	Denoted as Estimate No.2	Denoted as Estimate No.3
Consumer No.	003019030640	003019030640	003019030640
Voltage Level (kV)	33	33	33
Name of Consumer	M/s.Decitex Decore (P) Ltd.	M/s.D'Decore Home Fabrics (P) Ltd.	M/s.D'Decore Home Fabrics (P) Ltd.
Load Sanctioned (KVA)	900	NIL	2600 + addl.500
Plot No.	F-6	F-6	F-6
Estimate Sanction No.	SE/VC/Tech/No.3696 dt.29/06/2007	SE/PLG-S/Tech/Shift/No.2112 dt.15.06.2018	SE/PLG-S/T/Tech/No.2113 dt.15.06.2018
Amount (in Rs.)	1668210/-	828185/-	1058615/-
Supervision Charges and date of payment	17510/- after 29.06.2007	7808/- on 18.06.2018	9982/-on 12.07.2018
Work Involved	Fresh HT 33 KV Supply 2000 KW / 900 KVA	Shifting of point of supply with no change of load	Additional HT - 752 kw / 500 KVA
Date of connection (Release of additional Load of -----)	31.08.2007	31.08.2007	31.08.2007 (after July 2018)
	Fresh supply in the name of M/s.Decitex Decore (P)	On request of consumer dated 04.09.2017 and dated 13.04.2018	Load from 3898 KW to 4650 KW / MD from 2600 KVA to 3100 KVA

(ii) Issue of Limitation as per Regulation 6.6 of CGRF Regulation, 2006:

- (a) The Appellants in Grievance totally misconceived fact and law points and misinterpreted the Commission's order in Case No. 82 of 2006 and Case No.56 of 2007.
- (b) The issue of ORC, SLC etc as dealt in Case No. 82 of 2006 and Case No.56 of 2007 & issue of limitation under 6.6 of CGRF Regulations, 2006 are totally different.
- (c) The Commission in Case No.82 of 2006 and Case No. 56 of 2007 is dealing with issue of refund of ORC, SLC etc. recovered during the period from 08.09.2006 to 30.04.2007. The matter before the Hon'ble Supreme Court in Civil Appeal No. 4305 of 2007 and stay order to refund is in respect of recovery of those charges during above period only. The Appellants in present case need not necessarily wait till the decision dated 10.11.2016 of Supreme Court in Civil Appeal No.4305 of 2007.
- (d) The claim of the Appellants is time barred and beyond limitation. Regulation 6.6 of the CGRF Regulations, 2006, provides that the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Therefore, in view of the above-mentioned Regulation, claim of the Appellants are not maintainable.


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Appellant has filed complaint in respect of Estimate No. 3696 dated 29.06.2007. If consumer was not agreed with the estimate, he should have raised grievance etc. but on the contrary consumer in response to the estimate dated 29.06.2007 paid the estimated cost which is inclusive of Fixed Charges, SD, 1.3 Supervision Charges etc., and even single protest letter/ complaint was not filed with MSEDCL till 18.06.2019. The cause of action to file complaint had arisen in June 2007 for which no complaint was filed. In view of this matter, the grievance of the Appellant in respect of this estimate dated 29.06.2007 is beyond two years and granting relief beyond two years is not in consonance with Regulation 6.6 of CGRF Regulations, 2006. Appellant was dormant and choose to sit on fence till somebody else's case came to be decided.


- (e) The Respondent relies on the Judgment dated 21.08.2018 in W.P. No.6859 of 2017 of Aurangabad Bench, Bombay High Court in MSEDCL V/s. Jawahar Shetkari Soot Girni Ltd. On the similar lines, the Electricity Ombudsman, Mumbai through its order dated 16.08.2019 has also dismissed the Rep.No.68, 69 & 71 of 2019 in case of G.M. Syntex V/s. MSEDCL.
- (f) The Bombay High Court, Nagpur Bench in its Judgment dated 08.01.2020 in W.P.No.1588 of 2019, MSEDCL Vs. Mahamaya Agro Industries has upheld the above view and held that limitation to file grievance before the Forum is two years from date of cause of action.

(iii) Reply on merit: -

(a) Estimate No. 1

SE/VC/Tech/No.3696 dated 29/06/2007 for Rs.16,68,210/-

It is submitted that in June 2007 M/s. Dicitex Decor Pvt. Ltd., Plot No. F-6 applied for fresh supply under DDF and accordingly, the estimate was sanctioned on 29.06.2007. After completion of the work by the Appellant, supply was released on 31.08.2007 for 2000 KW. The estimate was agreed by the Appellant, who in response deposited the 1.3% supervision charges


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of estimate. The amount of Rs.16,68,210/- towards the infrastructure cost was not deposited with MSEDCL.

Estimate No. 2

SE/PLG-S/Tech/Shift/No.2112 dated 15.06.2018 for Rs.8,28,185/-

SE/PLG-S/Tech/Shift/No.2112 dtd.15/06/2018

The Appellant, subsequently, within one month, on its own will, applied on 04.09.2017 for shifting point of supply and agreed to bear the cost of shifting of point of supply. The estimate of work for Rs.8,28,185/- was sanctioned vide no. 2112 dated 15.06.2018. The estimate was agreed by the Appellant, who in response deposited the supervision charges of Rs.7808/- of the estimate on 18.06.2018. The amount of Rs.8,28,185/- towards shifting work was not deposited with MSEDCL. The Appellant in pursuance of its own request / undertaking for work to be carried under DDF, incurred expenditure on the works for shifting point of supply. This work of shifting has nothing to do with the Judgment of Hon'ble Supreme Court in Civil Appeal No. 4305 of 2007.

Estimate No. 3

SE/PLG-S/T/Tech/No.2113 dated 15/06/2018 for Rs.10,58,615/-

The Appellant then applied for additional load extension of 752 KW from existing 3892 KW to 4650 KW under DDF and accordingly the estimate of Rs.10,58,615/- was sanctioned on 15.06.2018. The estimate was agreed by the Appellant, who in response deposited the supervision charges of the estimate. The amount of estimate of Rs.10,58,615/- was not deposited with the Respondent. The Appellant carried out the estimated work through licensed electrical contractor at its own and after submission of Work & Completion Report etc. the additional supply was released. The said extended supply line and transformer was dedicated to the Appellant and it is its DDF supply.



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(iv) In view of the definition of DDF and Non-DDF given by the Commission in Case No. 56/2007 on 16.02.2008 in which it states that "*Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)*". This definition was explained by the Commission in year 2008 and present estimates are sanctioned in year 2018 even though Appellant accepted the sanction given by Respondent Utility, paid the 1.3 % supervision charges & carried out the work as per estimate. Appellant entered into the agreement with Respondent Utility. Appellant should have raised the grievance at that time only, but it remained silent and now raised the issue of refund, which is incorrect. The Bombay High Court, Nagpur Bench in its Judgment dated 08.01.2020 in matter of W.P.No.1588 of 2019, MSEDCL v/s. Mahamaya Agro Industries has upheld the above ruling and held that the consumer's conduct to ask for refund of costs of infrastructure which he voluntarily incurred in order to getting supply is inappropriate and unethical. Few Extracts of this Order are as below :

27) It is further pointed out that the estimate as regards the expenses was informed to the consumer by communication. The summary report contains an abstract which is also placed on record which indicates the costs of the 11 KV line, the total labour charges and the supervision charges of the company which is 1.3%. The total amount was Rs.3,97,200/- out of which the consumer has actually paid the company an amount of only 1.30/0. The rest of the amount is utilized by the consumer for purchasing of the infrastructure material and for making payments of the labour charges for installation of the 11 KV line.

28) I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter storeroom and then turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate.

(v) The estimate disputed in present case pertains to the period of year 2007, 2017 and 2018. It is apparent that the liability was passed on to the buyers/ consumers by the complainant as electricity supply was taken/ extended/ used to

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manufacture their products sold in the market, working out the price based on expenditure. It would not be appropriate in the peculiar facts of the case to direct refund to be made by the MSEDCL of the amount recovered by it as it would tantamount to unjust enrichments. The above principle of unjust enrichment in cases of refund by MSEDCL has been upheld by Hon'ble Supreme Court in Reportable decision dated 28.02.2020 Civil Appeal No.4304 of 2007, MSEDCL Vs. Union of India. In Judgment at Para No.27 Hon'ble Supreme Court held as below:

"It is apparent that the liability was passed on to the buyers/consumers by the complainant as electricity supply was taken/ extended/used to manufacture their products sold in the market, working out the price based expenditure. It would not be appropriate in the peculiar facts of the case to direct refund to be made by the MSEDCL of the amount recovered by it as it would tantamount to unjust enrichments."

(vi) The Commission has approved the Schedule of Charges for MSEDCL with effective from 08.09.2006. The case has been filed by Rajaya Veej Grahak Sanghatana vide No. 82 of 2006 for refund of ORC, SLC collected after the Schedule of Charges approved by the Commission with effect from 08.09.2006. The Commission, by its order dated 17.05.2007, directed to refund the ORC, SLC recovered from all consumers for the period of 08.09.2006 to 30.04.2007. The said issue was thereafter raised in the Case No. 56 of 2007, where the Commission clarifies the definition of "DDF".

(vii) Further the Commission passed an order dated 01.09.2010 in Case No. 93 of 2008 in the matter of petition of Akhil Bhartiya Grahak Panchayat. The above referred matter is related to one of its prayer as

"5.0RC amount, meter cost and other charges collected or DDF amount, earlier to 20.05.2008 till 08.09.2006, may be refunded by way of energy bills as per the procedure adopted for cases following circular No. 22197 dated 20.05.2008." On this prayer, the Commission expressed its view in Para 19 (iii) of above order as follows: "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

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2008 for charges levied other than approved Schedule of Charges or publicly appeal either through newspapers or electricity bills, asking the consumers to contact MSEDCL if such charges are levied on them during above period. Thereafter, MSEDCL should adjust the extra charges collected by MSEDCL in the energy bills of the respective consumers. If any consumer has any grievance regarding excess charges levied by MSEDCL and its refund, they may file the same before the concerned Consumer Grievance and Redressal Forum established by MSEDCL under the provisions of Section 42(5) of the EA 2003 read with the "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006".

This directive of refund of excesses recovered charges will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007.

(viii) In above directives by the Commission, it is clearly mentioned that refund will not be applicable to the charges of which refund is stayed by Hon'ble Supreme Court in C.A. No. 20340 of 2007. Now, at this stage it is important to check what is Civil Appeal No. 20340 of 2007 pending with Hon'ble Supreme Court. It is a Civil Appeal filed by MSEDCL against the Hon'ble Appellate Tribunal for Electricity (ATE) in Appeal No.22 of 2007 challenging the Commission's order dated 08.09.2006 which was dismissed by ATE by the order dated 14.05.2007. After referring the Appeal No. 22 of 2007 filed before ATE it becomes clear what are the issues challenged by MSEDCL against the Commission's order dated 08.09.2006. This point is reproduced below from above order dated 14.05.2007:

"This appeal filed by the Maharashtra State Electricity Distribution Company Ltd. (for short 'MSEDCL') is directed against the order passed on 08.09.2006 by the respondent, The Maharashtra Electricity Regulatory Commission (herein after called as 'the Commission' or 'MERC') whereby the 'Commission' did not approve the proposed "Schedule of Charges" including 'Service Line Charges' submitted to the Commission in compliance to Regulation No. 18 of Supply Code Regulations 2005. The aforesaid Service Line Charges (for brevity to be called as 'SLC') as claimed by the appellant is on the basis of normative expenditure to be incurred on the infrastructure which are required to be created for bringing the distribution network closer to the Consumer premises."



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This appeal is dismissed. Against above order the MSEDCL filed Civil Appeal No.20340 of 2007 before the Hon'ble Supreme Court. The Hon'ble Supreme Court made interim order on 31.08.2007, that refund is stayed till the matter comes up for hearing on the date fixed i.e. 14.09.2007, and on that day it passed the following order:

"ORDER

Learned counsel for the appellant is permitted to implead Maharashtra Rajya Beej Grahak Sanghatana as Respondent no.2 in the appeal. Permission to file additional documents is granted.

Delay condoned. Until further orders; interim order passed by this court shall continue to operate."

- (ix) The above points clarifies that the Commission ordered the MSEDCL to refund those excess collected charges between the periods 09.09.2006 to 20.05.2008 which are not stayed by the Hon'ble Supreme Court. The Hon'ble Supreme Court stayed only the order passed by ATE on dated 14.05.2007 in respect SLC charges and not others. The Appellant was not precluded from approaching the Forum to resolve its grievance if at all any charges in contravention of Schedule of charges has been recovered. The Circular issued by MSEDCL after the Judgement of Hon'ble Supreme Court, it covers the refund of SLC, ORC and meter cost only. It does not cover the issue of refund of infrastructure cost recovered under the concept of DDF (may be under misconception). Hence, only the alleged DDF estimates were issued between the period of 09.09.2006 to 20.05.2008 does not itself covers the Appellant case under the purview of Hon'ble Supreme Court Judgement and Circulars of MSEDCL. Appellant is not entitled to claim any refund of DDF charges. Moreover, MSEDCL circular precluded the refund of DDF charges.
- (x) After the dismissal of Civil Appeal in Supreme Court, the MSEDCL has issued various circulars in compliance of the order of the Commission in Case No. 82 of 2006. The case of complainant was not covered in those Circulars. Further, as

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per 3.3.3 & 3.3.4 of Supply Code Regulations, the complainant was liable for expenses for DDF and augmentation as its load exceeds 100% of existing load. Hence, complainant was not liable for any refund at all.

- (xi) The MSEDCL further states that the Appellant has approached the Forum and filed grievance. The Forum has conducted the hearing in the matter and passed order on dated 17.08.2020 and passed the order which is implemented by the Respondent. In view of above, it is requested to reject the Representation.

2 Representation No. 83 of 2020: -

The Appellant is HT Industrial consumer (No.003019034160) from 18.01.2009 at Plot No. F-6/1, MIDC Tarapur Boisar, Taluka & District Palghar with present CL of 4890 KW and CD of 3200 KVA.

Estimate No.4


SE/PLG-S/T/Tech/No.2115 dated 15.06.2018 for Rs.819350/-

Representation No.	83 of 2020
	Denoted as Estimate No.4
Consumer No.	003019034160
Voltage Level (kV)	33
Name of Consumer	M/s.D'Decore Home Fabrics Pvt. Ltd.
Load Sanctioned (KVA)	2700+500=3200
Plot No.	F-6/1
Estimate Sanction No.	SE/PLG-S/T/Tech/No.2115 dt.15.06.2018
Amount (in Rs.)	819350/-
Supervision Charges and date of payment	7727/- on 12.07.2018
Work Involved	Conductoring with 0.2 ACSR, CTs and 4 poles and other hardware for increasing CD by 500 KVA
Date of connection (Release of additional Load of 500 KVA)	18.01.2009 (October 2018)
Remark	Alternate supply and additional load from 3893 KW to 4890 KW / MD from 2700 KVA to 3200 KVA

(i) Details and Reply on merit:-

The Respondent has submitted the 'details' and "reply on merit" on the same lines as that given in Rep. No. 82 of 2020 for Estimates No. 3 and captured above except the dates, amount, nature of works, etc. specific to this Estimate No.4 which has been given in its table. (It is avoided for the sake of repetition).

- (ii) In addition, it has submitted that the consumer has applied for additional HT power supply on 02.12.2017. The MSEDCL has sanctioned supply on


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15.06.2018 under DDF head. The said supply line and transformer was dedicated to the consumer and it is its DDF supply. Besides this, it has quoted Regulation 3.3 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations):-

3.3 Recovery of expenses for giving supply

3.3.1

3.3.2

Provided thatsuch supply is detrimental to the supply to the consumer already connected therewith.

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

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

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

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

In view of the provision, the complainant was not entitled for refund of expenses incurred to carry out work as per estimate dated 15.06.2018.

In view of above, it is requested to reject the Representation.

3 Representation No. 84 of 2020: -

The Appellant is HT Industrial consumer (No. 003019022430) from 13.10.1999 at Plot No. G-15/1, MIDC Tarapur Boisar, Taluka & District Palghar with present CL of 4423 KW and CD of 2110 KVA.

Estimate No.5: SE/VC/Tech/PLG/ORC/2007-08/HT/43/1152 dt.06.02.2008

of Rs.119520/-(Date of Supervision Charges paid: 07.02.2008)



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Estimate No.6: SE/VC/Tech/No.3294 dt.14.05.2008 of Rs.1536840/-

(Date of Supervision Charges paid after 14.05.2008)

Representation No.	84 of 2020	
	Denoted as Estimate No.5	Denoted as Estimate No.6
Consumer No.	003019032730	003019022430
Voltage Level (kV)	33	11
Name of Consumer	M/s.Virender Processors Pvt. Ltd.	M/s.Dicitex Décor Pvt. Ltd.
Load Sanctioned (KVA)	Load 2250 KW / MD 1800 KVA	900
Plot No.	G-15/1	G-15/1
Estimate Sanction No.	SE/VC/Tech/PLG/ORC/2007-08/HT/43/1152 dt.06.02.2008	SE/VC/Tech/No.3294 dt.14.05.2008
Amount (in Rs.)	119520/-	1536840/-
Supervision Charges and date of payment	14480/- on 07.02.2008	16130/- after 14.05.2008
Work Involved	Change of voltage level from 11 to 33 KV	Fresh Supply for Dyeing Unit
Date of connection (Release of additional Load of --- ---)Date of connection	13.10.2009	05.07.2008
Remark	The estimate dated 14.05.2008 & release order dated 05.07.2008 is in r/o M/s. Dicitex Décor Pvt. Ltd., bearing Con.No.003019032730 which was PD on dated 23.10.2009 and aforesaid present application of M/s. D'décor Home Fabrics Pvt. Ltd. (Con.No.003019022430) the aforesaid refund could not be allowed to be claimed.	

(i) Details and Reply on merit:-

The Respondent has submitted the 'details' and "reply on merit" on the same principle as that given in Rep. No. 82 of 2020 for Estimate No.1 and captured above except the dates, amount, nature of works, etc. specific to these Estimates No.5 and 6 which has been given in its table. (It is avoided for the sake of repetition).

(ii) Besides above, the Respondent submitted its reply on merits specific to Estimates No. 5 and 6 which is stated as below:

- (a) The MSEDCL states that M/s. Virender Processors Pvt. Ltd. is HT Consumer having date of Supply 13.10.1999. In the year 2007, M/s. Virender Processor Pvt. Ltd. has applied for shifting of his connection from 11 KV to 33 KV with connected load of 2250 KW and MD of 1800 KVA. The MSEDCL on 02.02.2008 sanctioned the estimate of Rs.1,19,520/- (Estimate No.5) for shifting and after submission of WCR by the Appellant, MSEDCL on 04.03.2008 released existing load on 33 KV line. The estimate dated 14.05.2008 & release order dated 05.07.2008 is in respect of Consumer No.003019032730 which was PD and in the name of M/s. Dicitex Décor Pvt. Ltd. and hence in present application of M/s. D'décor Home Fabrics Pvt. Ltd. (Con.No.003019022430) the aforesaid refund could not be allowed to be claimed. The consumer M/s. Dicitex Décor Pvt. Ltd. applied for fresh supply load of 2060 KW, the estimate was prepared &



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sanctioned on 14.05.2008 for dedicated supply line. The estimate was agreed by the consumer, consumer in response deposited the supervision charges of estimate. The amount of Rs.15,36,840/- (Estimate No. 6) was not deposited with the Respondent. The consumer carried out the estimated work through licensed electrical contractor and after submission of Work & Completion Report etc. the supply was released. The said supply line and transformer was dedicated to the consumer and it is DDF supply.

- (b) In view of the definition of DDF and Non-DDF given by the Commission in Case No.56/2007 on 16.02.2008 in which it states that "*Mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF (Dedicated Distribution Facility)*". This definition was explained by the Commission in year 2008 & present estimates are sanctioned in year 2018 even though consumer accepted the sanction given by Respondent Utility, paid the 1.3 % supervision charges & carried out the work as per estimate. Consumer entered into agreement with Respondent Utility. Consumer should have raised the grievance at that time only, but it remained silent and now raised the issue for refund, which is incorrect. The Bombay High Court Nagpur Bench in its Judgment dated 08.01.2020 in matter of W. P. No. 1588 of 2019, MSEDCL Vs. Mahamaya Agro Industries has upheld the above ruling and hold that the consumer conduct to ask for refund of costs of infrastructure which he voluntarily incurred in order to getting supply is inappropriate and unethical.
- (c) The estimate disputed in present case pertains to the year 2008 only.
- (d) As per Regulation 3.3 of the Supply Code Regulations 2005 the complainant was not entitled the refund of expenses incurred to carry out work as per estimated amount. In this respect, the Respondent referred and relied on the order dated 27.03.2018 in Rep.No.121 of 2017 of E.O, Mumbai.
- (e) It is further stated that the Appellant has approached the Forum on 02.01.2020. The Forum, by its order dated 17.08.2020 has rightly

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rejected the claim of the Appellant on the ground of limitation. In view of above, it is requested to reject the Representation.

4 Representation No. 85 of 2020: -

The Appellant is HT Industrial consumer (No. 003019024100) from 05.09.2002 at Plot No. G-15/2, MIDC Tarapur Boisar, Taluka & District Palghar with present CL of 3048 KW and CD of 1800 KVA.

Estimate No.7


SE/PLG-S/T/Tech/No.2518 dt.26.07.2018 for Rs. 730928/-

Representation No	85 of 2020
	Denoted as Estimate No.7
Consumer No.	003019024100
Voltage Level (kV)	33
Name of Consumer	M/s.D'Decor Home Fabrics Pvt. Ltd.
Load Sanctioned (KVA)	1500+300=1800
Plot No.	G-15/2
Estimate Sanction No.	SE/PLG-S/T/Tech/No.2518 dt.26.07.2018
Amount (in Rs.)	730928/-
Supervision Charges and date of payment	Rs.6893/- on 03.08.2018
Work Involved	Metering cubicles (2 Nos.) & other sundry works.
Date of connection (Release of additional Load of 300 kVA)	21.08.2018
Remark	Load from 2124 KW to 3048 KW / MD from 1500 KVA to 1800 KVA

(i) The Respondent has submitted the 'details' and "reply on merit" on the same lines as that given in Rep. No. 82 of 2020 for Estimates No.3 and captured above except the dates, amount, nature of works, etc. specific to this Estimate No.7 which has been given in its table. (It is avoided for the sake of repetition).

(ii) Reply on merits (other points) :

(a) It is submitted that MSEDCL states that, M/S. D'Decor Exports Pvt. Ltd. is MSEDCL consumer having the date of supply 05.09.2002 at Plot. No. G 15/2, MIDC-Tarapur Boisar, Tal & Dist. Palghar. The Consumer has applied for additional HT power supply on 01.01.2018. The MSEDCL has sanctioned supply on dated 26.07.2018 under DDF head, the consumer has submitted consent to carry out estimated work through his own expenses. The consumer carried out the estimated



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work through licensed electrical contractor and after submission of Work & Completion Report etc. the supply was released. The said supply line and transformer was dedicated to the consumer and it is DDF supply.

- (b) The estimate disputed in present case pertains to the period of year 2018. It is apparent that the liability was passed on to the buyers/consumers by the complainant as electricity supply was taken/ extended/ used to manufacture their products sold in the market, working out the price-based expenditure. It would not be appropriate in the peculiar facts of the case to direct refund to be made by MSEDCL of the amount recovered by it as it tantamount to unjust enrichment of the Appellant. The above principle of unjust enrichment in cases of refund by MSEDCL has been upheld by Hon'ble Supreme Court in Reportable decision dated 28.02.2020 in Civil Appeal No.4304 of 2007, MSEDCL Vs. Union of India.
- (c) As per 3.3 of MERC Supply Code,2005 the complainant was not entitled the refund of expenses incurred for carry out work as per estimated dated 26.07.2018,
- (d) It is further stated that the Appellant has approached the Forum on 02.01.2020. The Forum by its order dated 17.08.2020 has rightly rejected the claim of Appellant. In view of above, it is requested to reject the Representation.


5. The first hearing was scheduled on 09.12.2020 however, it was postponed at the request of the Respondent. Therefore, the hearing was scheduled and held on 10.12.2020 on e-platform through video conferencing. The Appellant argued its case at length completely in line with its written submissions which is already captured above. The Respondent started arguing its case, but the audio and video quality was very poor and therefore it was decided to schedule physical hearing shortly which was agreed by both the parties. However, the Appellant argued that though he has completed his arguments, he be allowed to reply on the arguments of the Respondent during next hearing. The


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physical hearing was therefore scheduled on 13.01.2021 which was again postponed to 22.01.2021 for which notices were issued.


6. During the hearing on 22.01.2021, Mr. Pratap Hogade, Consumer Representative appearing for the Appellants advanced common arguments on all these four representations being identical in nature. Mr. Hogade produced a diagram to show that there are many other consumers who are getting power supply from the same Feeders on which the Appellants are connected. The supply is, thus, not dedicated to the Appellants alone. Further, it is also tapping of the existing lines which is treated as Non DDF as clarified by the Commission. The Consumer was asked by the licensee to carry out the work under the provisions of DDF/ ORC. The licensee, being monopoly in supply of power in the area where the consumers are situated, the work was carried out by the Appellants by submitting consents for carrying out the works at their own expenses. Therefore, these consents are not free consents. There was stay of the Supreme Court regarding refund of expenditure. The Supreme Court finally dismissed the Appeal of MSEDCL on 10.11.2016. The Commission issued directions by letter dated 20.07.2017 to the Respondent regarding refund of amount recovered other than approved schedule of charges. The Respondent also issued Circular on 12.10.2017 and 29.12.2017. The Appellants thereafter applied for refund of amount incurred towards the infrastructure in all these cases on 18.06.2019 with the Respondent. There was no response, hence the grievances were filed before the IGRC. Not satisfied with the order of the IGRC, the Appellants filed cases with the Forum. The Forum rejected the grievances on the ground of limitation and also for some other reasons in Estimate No. 1 (82/2020), Estimate No. 5 and 6 (84/2020). The remaining other Estimates i.e. No. 2 and 3(82 /2020), 4 (83/2020) and 7 (85/2020) are sanctioned in the year 2018. The Forum has rejected the grievances on the ground of consents of the Appellants for carrying out the work at their own by paying supervision charges only. In support of this, the Forum has relied on the Judgment of the Bombay High Court in W.P. No.1588 of 2019 in case of MSEDCL V/s. Mahamaya Agro Industries. However, it has failed to understand the basic issue with respect to the works to be carried out by the licensee. Hence, the ratio of this Judgment is not applicable in these representations. As regards


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refund of infrastructure cost, he referred the Order dated 08.09.2006 in Case No. 70 of 2005 of the Commission and Circular No. 43 dated 27.09.2006 of the Respondent in which it is clarified that SLC and meter cost shall not be recovered from the consumers. He further argued that the cases filed by the Appellant are well within limitation as far as Circulars dated 12.10.2017 and 29.12.2017 of the Respondent are concerned. The Appellants pray that the expenditure incurred by the Appellants in all these representations be ordered to be paid along with interest.

7. The Respondent argued its case in line with its written submission and further stated that the Appellant has already recovered the cost of its production from its own consumers and any refund whatever, if ordered will tantamount to unjust enrichment of the Appellant. Moreover, the Appellant has in every case tendered their consents for carrying out the work at their own expenses. In all these four representations, there are total 7 estimates. Out of these 7 estimates:-
- (a) Estimates No.1, 5 and 6 pertain to the year 2007-08 and payments made during that period only. However, the dates of payments of supervision charges in Estimates No.1, 5 and 6 does not fall in the period matrix of 08.09.2006 to 30.04.2007. Therefore, there is no question of any refund as the Appellants in these estimates ought to have approached the grievance redressal mechanism at that point of time.
- (b) As regards Estimate No.2, it is for shifting of point of supply at the behest of the Appellant. Therefore, here also, there is no question of any refund. All the expenses are supposed to be borne by the Appellant who had made a specific request for shifting of point of supply for the reasons of its own.
- (c) As regards Estimates No.3 and 4, these estimates cover the work for reliable supply to the Appellants through the alternate source. The entire works were done in the interest of the Appellant for alternate supply, Single Line Diagram along with copy of estimates is put on record. This work is again at the request of the Appellants because work for availability of alternate supply is normally not done by the Respondent.
- (d) As regards Estimate No.7, it is for metering cubicle, when the Appellant applied for additional load of 300 kVA to the existing CD of 1500 kVA.


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- (e) In view of the Judgment of the Hon'ble High Court in W.P. No.1588 of 2019 in case of MSEDCL V/s. Mahamaya Agro Industries, ratio of which is fully applicable to the instant representations. In view of above, the Appellants' prayers deserve to be rejected.

Analysis & Ruling

8. Heard the parties. Perused the documents available on record. To decide the case, I perused 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....."


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- (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 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

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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 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

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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:

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.

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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 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**

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(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:-

“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.”

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

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- (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 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


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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'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.
- (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.
10. 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

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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.

11. 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.
12. 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;*”
13. 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.
14. 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.
15. The Appellants under these Representations have agitated the matter of refund of ORC, Metering Cost, etc. which it has incurred / paid for work carried out by them. The


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details of estimates with sanctioned number, amount paid, etc. and my ruling thereon is as below:

Part A

Rep. No.		Consumer No.	Respondent's Estimate No. & Date	Estimate Amount (Rs)	Supervision Charges (Rs.) & Date of Payment	
82/2020	Denoted as Estimate 1	003019030640	SE/VC/Tech/No.3696 dt.29/06/2007	1668210/-	17510/-	After 29.06.2007
84/2020	Denoted as Estimate 5	003019032730	SE/VC/Tech/PLG/ORC/ 2007-08/HT/43/1152 dt.06.02.2008	119520/-	14480/-	07.02.2008
84/2020	Denoted as Estimate 6	003019022430	SE/VC/Tech/No.3294 dt.14/05/2008	1536840/-	16130/-	After 14.05.2008

In view of above, discussion wherein the various orders of the Commission, the Judgments of ATE and then the Hon'ble Supreme Court and subsequent developments, the works under 'denoted Estimate No.1' under Rep. No. 82 of 2020 and 'denoted Estimate No.5 and 6' under Rep. 84 of 2020 does not fall in the bracket of the period 08.09.2006 to 30.04.2007 as contemplated under the orders of the Commission which has been explained hereinabove. The Appellant was at liberty to have agitated the matter before the grievance redressal mechanism at that point of time. Even if it had not chosen to agitate the matter at that point of time, it could have well agitated the issue after the Commission's order dated 08.12.2014 in Case 105 of 2014 wherein it has been made very crystal clear by the Commission at para 16 that "**Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response.**" If it is presumed for the sake of argument that the Appellant has missed this order of the Commission, it could have well filed the grievance before the Forum after issue of circulars by the Respondent's H.O. on 12.10.2017 and 29.12.2017. Instead, it approached the Forum on 02.01.2020 and therefore, does not fit into the regulatory matrix stipulated under Regulation 6.6 of the CGRF Regulations 2006 which says that 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. Arguing at a later stage that the work was not DDF and the Respondent has compelled it to toe its line and to take new connections and change of connectivity from 11 kV to 33 kV and waiting for



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favourable opportunity to agitate like a fence sitter after reaping the benefits whatever does not hold good even in the eyes of law. Therefore, the prayers of the Appellant do not stand scrutiny in the face of Regulations and Orders of the Commission in ‘denoted Estimate No.1’ under Rep. No. 82 of 2020 and ‘denoted Estimate No.5 and 6’ under Rep. 84 of 2020.

Part B

Rep.No.		Consumer No.	Respondent's Estimate No. & Date	Estimate Amount (Rs.)	Supervision Charges (Rs.) & Date of Payment	
82/2020	Denoted as Estimate 2	003019030640	SE/PLG-S/Tech/Shift/No.2112 dt.15/06/2018	828185/-	7808/-	18.06.2018
82/2020	Denoted as Estimate 3	003019030640	SE/PLG-S/T/Tech/No.2113 dt.15/06/2018	1058615/-	9982/-	12.07.2018
83/2020	Denoted as Estimate 4	003019034160	SE/PLG-S/T/Tech/No.2115 dt.15.06.2018	819350/-	7727/-	12.07.2018
85/2020	Denoted as Estimate 7	003019024100	SE/PLG-S/T/Tech/No.2518 dt.26.07.2018	730928/-	6893/-	03.08.2018


- **The work under denoted Estimate 2 in Rep No. 82 / 2020** for Consumer No. 003019030640 is for shifting of point of supply at the behest of the Appellant. In case of shifting of point of supply, there is no nexus, whatever, between Schedule of Charges, subsequent legal travel and MSEDCL circulars for refund of charges. Therefore, there is no question of any refund in ‘denoted Estimate 2’ under Rep No. 82 / 2020 All the expenses are supposed to be borne by the Appellant who had made a specific request for shifting of point of supply on 04.09.2017 for the reasons of its own.
- **The work under denoted Estimate No. 3 in Rep No. 82 / 2020** is for release of additional CD of 500 kVA for Consumer No. 003019030640 and with provision for shifting of load on alternate feeder No.7 emanating from 220/132/33 kV EHV Khairpada substation for better reliability. Normally, this consumer is fed from Feeder No.6 emanating from 132/33 kV EHV MIDC I Boisar substation. As per the Respondent, this work was done at the request of the Appellant as it desired to have maximum reliability. Therefore, in this case also, there is no nexus, whatever, between Schedule of Charges, subsequent legal travel of the case and MSEDCL


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circulars for refund of charges. Notwithstanding, the fact that the Respondent could not bring on record, the specific request of the Appellant for alternate supply for better reliability, the fact cannot be ignored that the Appellant has voluntarily carried out the work at its own expense by paying supervision charges in its own interest. Single Line Diagram along with copy of estimate substantiates this claim. I noted that the Appellant has not contested this submission and argument of the Respondent. The additional load requirement was of 500 kVA only and the estimate is only meant for strengthening the network for better reliability through alternate feeding. Therefore, there is no question of any refund in 'denoted Estimate 3' under Rep No. 82 / 2020.

- **The case in denoted Estimate No. 4 in Rep. 83/2020** for Consumer No.003019034160 is exactly same as that of denoted Estimate No.3 in Rep.No.82/2020. Here also, the estimate covers some strengthening work of the infrastructure and release of additional load of 500 kVA. The arguments advanced by the Respondent are also same. I noted, that the Appellant has not contested the submission and argument of the Respondent that the work in this estimate is also towards strengthening of the infrastructure for better reliability. Therefore, there is no question of any refund as regards to infrastructure cost incurred by the Appellant. The premises of the Appellant being adjacent due to subdivision of original Plot No. F6 into two parts, some work of Feeder No.7 emanating from 220/132/33 kV EHV Khairpada substation is covered in Estimate No.3 and the rest is in Estimate No.4. However, the Appellant has incurred the cost of metering equipment which needs to be refunded to the extent of metering equipment only being HT consumer.
- **The work under denoted Estimate No.7 in Rep. No.85/2020** for Consumer No. 3019024100, is for metering cubicles when the Appellant applied for additional load of 300 kVA to the existing CD of 1500 kVA. This work comes under providing metering infrastructure which is to be provided by the distribution licensee as per the orders of the Commission. It therefore goes without saying that this cost needs to be borne by the Respondent. However, the cost shall be limited to the estimated cost of the metering equipment only being HT consumer. The cost of the metering equipment


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will be the minimum of as considered by the Appellant or as taken by the Respondent from its cost data on the basis of which the estimate has been prepared.

16. Summary of Rulings

- (i) In Rep. No. 82/2020 expenditure on works in denoted Estimate No. 1 is rejected as being time barred.
- (ii) In Rep. No. 82/2020 expenditure on works in denoted Estimate No. 2 is rejected as the work envisaged is for shifting of point of supply at the request of the Appellant.
- (iii) In Rep. No. 82/2020 expenditure on works in denoted Estimate No. 3 is rejected as the work envisaged was for strengthening the infrastructure for availability of alternate feed for better reliability in the interest of the Appellant.
- (iv) In Rep. No. 83/2020 expenditure on works in denoted Estimate No. 4 is partly allowed only to the extent of metering cost which will be as that incurred by the Appellant or as taken in the estimate by the Respondent whichever is less. Remaining part is disallowed as the work envisaged was for strengthening the infrastructure for availability of alternate feed for better reliability in the interest of the Appellant.
- (v) In Rep. No. 84/2020 expenditure on works in denoted Estimate No. 5 and 6 is rejected as being time barred.
- (vi) In Rep. No. 85/2020 expenditure on works in denoted Estimate No. 7 is partly allowed only to the extent of metering cost which shall be considered as that incurred by the Appellant or as taken in the estimate by the Respondent whichever is less. Remaining part is disallowed.

17. In view of above, the Respondent is directed to refund the amount wherever applicable within two months from the date of this order in the ensuing bills of the respective Appellants. The amount shall bear no interest.

18. The order of the Forum is modified to the extent above.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



19. While parting with the order, I will be failing in my duty if I do not point out as to how the Respondent failed to properly analyse the requirement of the Appellant, feeding arrangement, its capacity and other sundry issues. The estimates have been prepared very casually with utter negligence. Estimate sanctioned vide No. 2115 dated 15.06.2018 is issued twice with the same number and date but the contents of the estimate as to the cost are different. The second version of this estimate should have been denoted as Revised Estimate as the cost has increased but nobody bothered to look into this aspect. While dealing with this entire case, I felt that there is more to it than is visible on record.

20. The Representation No. 82 of 2020, 83 of 2020, 84 of 2020 and 85 of 2020 are disposed of accordingly.

21. The Respondent is directed to submit the compliances within one month from such adjustments in the monthly bill has been implemented.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

