

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 16 OF 2021

In the matter of refund of infrastructure cost

M/s. Ch. Tirupati Magavasvargiya Ind. Co-op. Society Ltd.Appellant

V/s.

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

Appearances:

Appellant : Pratap Hogade, Representative

Respondent : (i) Prashant L. Masal, Executive Engineer
(ii) N.P. Nalavade, Law Officer


Coram: Deepak Lad

Date of hearing: 28th April 2021

Date of Order : 17th May 2021

ORDER

This Representation is filed on 3rd March 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 31st December 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kolhapur Zone (the Forum).



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2. The Forum, by its order dated 31.12.2020 has rejected the grievance application in Case No. 39 of 2019-20 by majority.


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

- (i) The Appellant is a HT Industrial consumer (No.250499007940) from 03.03.2008 having Sanctioned Load (SL) of 142 KW and Contract Demand (CD) of 150 KVA at Gat No.416, Mangaon Wadi, Tal. Hatkanangale, Dist. Kolhapur.
- (ii) The Appellant had applied for fresh power supply on 04.10.2007 for connected load of 142 KW and CD of 150 KVA for its industrial unit.
- (iii) The Respondent (then SE Kolhapur) had approved the said application vide its sanctioned letter No.9235 dated 16.10.2007 on 33 kV level under Dedicated Distribution Facility (DDF) Scheme with payment of 1.3 % Supervision Charges to the Respondent. The work has to be done by the Appellant. The estimate under DDF Scheme was sanctioned for an amount Rs.21,87,500/- with major scope of work such as 3.15 km 33 KV HT line and the concerned infrastructure work along with metering infrastructure work as per specification approval of the Respondent.
- (iv) The Appellant has paid 1.3% supervision charges of Rs.28,100/- on 20.10.2007.
- (v) The infrastructure installation work done by the Appellant along with material was completed in the month of February 2008 as per the sanctioned estimate and under supervision of the Respondent.
- (vi) Thereafter, the Respondent issued load release letter dated 03.03.2008 and the load was also released on 03.03.2008.
- (vii) The issue of refund of infrastructure cost was pending due to stay given by the Hon'ble Supreme Court in Civil Appeal (CA) No. 4305 of 2007 filed by the Respondent. The Hon'ble Supreme Court dismissed the said CA and then it became clear that the Appellant can claim for refund of all expenses done for the Non DDF infrastructure works with / or metering works.


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- (viii) The issue of refund of infrastructure cost was pending due to stay given by the Hon'ble Supreme Court in Civil Appeal (C.A.) No. 4305 of 2007 filed by the Respondent. The Hon'ble Supreme Court dismissed the C.A. and then it became clear that the Appellant can claim for refund of all expenses done for the Non DDF infrastructure works and / or metering works.
- (ix) 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 12.10.2017 and the Amendment Circular on 29.12.2017, the Appellant applied for refund of the above-mentioned estimate along with interest on 31.07.2019 with the Respondent.
- (x) Till today, the Appellant has not received any response or refund from the Respondent.
- (xi) The Appellant has filed its grievance with Internal Grievance Redressal Cell (IGRC) on 19.08.2019 which was rejected by order dated 24.10.2019. Thereafter, the Appellant approached the Forum on 16.12.2019 and the Forum, by its order dated 31.12.2020 has rejected its grievance. 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.
- (xii) **Details of the facts giving rise to the Representation:**
- (a) **Work done:** - The work done as per the estimate is the extension or tapping or conversion of the existing HT 33 kV line up to its premises. The scope of the work was laying of 3.15 km HT 33 kV line along with 52 poles and all the concerned infrastructure work and Metering Work.
- (b) **Meter / Metering Work:** - As per the Commission's order dated 08.09.2006 in Case No. 70 of 2005 regarding Schedule of Charges and corresponding MSEDCL Circular No. 43 dated 27.09.2006, meters are to be installed by the Licensee-Respondent. Also, if the cost of metering is recovered, it is to be refunded to the consumer as per the Respondent's own circulars (Circular No. 21560 dated 09.05.2017 and No.34307 dated 03.09.2007).
- (c) **33 KV Feeder details:** The name of the feeder is 33 kV Arvind Feeder which is emanating from 220 / 33 kV EHV Tilwani Substation. Feeder from


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the MSEDCL substation was existing and only the further extension work of the existing feeder was done. Besides there are many other consumers which are connected and fed power supply from the same 33 kV Arvind Feeder.

(xiii) **Commission's Order dated 16.02.2008 in Case No. 56 of 2007:**

Only the extension and / or tapping work was done by the Appellant and many other consumers are getting supply from the same feeder. *"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.

(xiv) **Work Non DDF:** - It is clear from the definition of DDF in the Regulations and clarifications given by the Commission, the feeder and the work done by the Appellant is clearly Non DDF. Hence, the Appellant is fully entitled for the refund of the total amount of Rs.21,87,500/- along with interest as per the Respondent's own office estimates.


(xv) **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 Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) and also Service Line Charges (SLC), Cost of Meter which are at variance from the order of the Schedule of Charges dated 08.09.2006. 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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- (xvi) **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 noncompliance of its earlier order dated 17.05.2007 and directed MSEDCL for compliance.
- (xvii) **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.”*
- (xviii) **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.
- (xix) **Respondent MSEDCL Circular dated 21.12.2009:** MSEDCL has issued further Circular bearing No. DIST/D-III/Refund/Circular No. 39206 on 21.12.2009 regarding refund of the infrastructure cost, which is applicable to both LT and HT


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connections. It is pertinent to note here that it is clearly stated in the circular that the work may get executed under DDF and the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.

- (xx) **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.
- (xxi) **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.
- (xxii) **MSEDCL Circular dated 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. Thereafter, the Respondent had issued further Circular No. 31793 on 29.12.2017 stating the amendment in refund period. 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 20.05.2008.
- (xxiii) **MSEDCL Circular dated 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.
- (xxiv) **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



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Secretary
Electricity Ombudsman Mumbai



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 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.”


- (xxv) **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.
- (xxvi) The Appellant stated that its expenditure on 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 the above-mentioned grounds, the Appellant is eligible to get the refund of the MSEDCL’s own estimate amount of Rs.21,87,500/-along with the interest thereon at the bank rate from September 2017 up to the actual date of repayment.
- (xxvii) **Compensation:** The Appellant’s complaint is a complaint other than bills. Hence, as per Regulation 7.6 of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014), *“In other cases, the complaint shall be resolved during subsequent billing cycle.”* The Appellant has filed complaint on 31.07.2019. It was necessary and binding on MSEDCL to have resolved it in subsequent billing cycle means up to the end of August 2019. But MSEDCL has failed to do so, hence, the Appellant is eligible for SOP compensation of Rs.100/- per week or part thereof from September 2019.
- (xxviii) **SLC, ORC & DDF all are Infrastructure Charges under different names:** All these 3 types of charges are the charges towards infrastructure cost. ORC was allowed up to 20.01.2005 i.e., up to the date of Supply Code Regulations. SLC was allowed up to 08.09.2006 i.e. up to the date of Schedule of Charges. DDF is allowed from 20.01.2005 but in the cases only where the connection is actually


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



DDF as per Supply Code Regulations and as per MERC Clarificatory Order dated 16.02.2008. In this case, the connection is totally Non DDF. And as per MERC Regulations and Orders, in case of all Non DDF connections, infrastructure costs cannot be recovered from the consumers. Hence, the Appellant is fully eligible for refund.

- (xxix) **IGRC & the Forum`s Order and Limitation:** 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. The Appellant has completed the infrastructure work in the period from October 2007 to February 2008. Load release letter is dated 03.03.2008. The cause of action has arisen on 12.10.2017 after the declaration of 1st circular of refund by MSEDCL. Thereafter, the Appellant applied for refund to the Respondent on 31.07.2019 and submitted application to Internal Grievance Redressal Cell (IGRC) on 19.08.2019 for refund. Refund demand is well within the limitation period of two years as per Regulation 6.6. Hence, there is no issue of any limitation. The orders of the IGRC and the Forum are totally wrong, illegal and both orders need to be quashed and set aside. It should also be noted that.
- (xxx) The Respondent has itself represented before various Courts that the Judgment towards refund of ORC is pending before the Hon`ble Supreme Court.
- (xxxii) Any excess or illegal recovery is against the provisions of Section 62 (6) and the licensee has no right to retain it with itself on any grounds. There is no limitation for Section 62 (6) provisions. Hence, this recovery 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.
- (xxxii) The nature of relief sought from the Electricity Ombudsman are as below: -
- (a) The Appellant`s connection should be declared as Non DDF connection on the basis of Supply Code Regulations, concerned Commission orders and concerned MSEDCL circulars.



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Secretary
Electricity Ombudsman Mumbai



- (b) The expenditure amount as per MSEDCL's own estimate Rs.21,87,500/- should be refunded along with interest at bank rate from March 2008 till the date of repayment or alternatively 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 01.09.2019 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.


4. The Respondent has submitted its reply by letter dated 05.04.2021 stating in brief as under:

- (i) The Appellant is a HT Industrial consumer (No.250499007940) from 03.03.2008 having Sanctioned Load (SL) of 142 KW and Contract Demand (CD) of 150 KVA at Gat No.416, Mangaon Wadi, Tal. Hatkanangale, Dist. Kolhapur.
- (ii) At the outset, it is stated that without prejudice to its right to defend all the claims and aversions made by Appellant are denied in toto and generally except which are specifically admitted by the Respondent.
- (iii) The Appellant vide its application dated 04.10.2007 applied for releasing the new HT connection. Due to its urgency, Appellant was willing to carry out the required work of infrastructure cost. Therefore, the Appellant exercised the option of DDF Scheme (i.e.1.3% Supervision Charges payment to Respondent only) and had given the consent for exercising the option of DDF for execution of work.
- (iv) In the consent letter, it is clearly mentioned that Appellant is ready to carry out the required infrastructure work at his own cost along with 1.3 % supervision charges to licensee. The consent is not given conditionally. MSEDCL has not given any assent for refund of cost of work carried out by the Appellant. It is noteworthy that there was no compulsion by MSEDCL to the Appellant to give such consent. On the contrary the consent was given voluntary and free consent as per will and wishes of the Appellant. Therefore, it has binding force on the Appellant.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- (v) Accordingly, the Respondent vide its letter No.9235 dated 16.10.2007 sanctioned the HT supply with sanctioned load of 142 KW and CD of 150 KVA. The estimate was prepared and sanctioned on 16.10.2007 under DDF with 1.3% supervision charges. The estimate was agreed by the Appellant and in response to the same, it deposited the amount of Rs.2,62,800/- towards the security deposit and 1.3% supervision charges, etc. If the Appellant was not agreed with the estimate, he should have raised grievance but, on the contrary, the Appellant, in response to estimate dated 31.08.2007 paid the supervision charges. The estimate amount of Rs.21,87,500/- was not deposited with MSEDCL in respect of works which was carried out under DDF Scheme.
- (vi) It is submitted that Appellant demanded supply of 150 KVA and it was technically feasible on the present 11 KV infrastructure. However, Appellant opted for 33 KV supply and it was essential to enhance the present infrastructure of 33 KV system for giving supply at 33 KV level. This involved more higher cost than at 11 KV level and Appellant opted to erect infrastructure required for 33 KV level supply on their own. Hence, as the petitioner have opted to erect the infrastructure by their own cost therefore MSEDCL is not liable to refund the infrastructure cost at all.
- (vii) The Appellant voluntarily agreed to bear all the charges for connecting the supply and he did not lodge any protest or does not reserve any right to seek the refund of charges. The Appellant also did not raise any grievance about MSEDCL forcing it to carry out the work at its own. Therefore, it is clear that the Appellant had willingly carried out the required infrastructure for connecting the supply.
- (viii) The Appellant has filed its grievance with IGRC on 19.08.2019 for refund of infrastructure which was rejected by its order dated 24.10.2019. Thereafter, the Appellant approached the Forum on 16.12.2019. The Forum by its order dated 31.12.2020 has rejected the grievance by majority being time barred as per Regulation 6.6 of the CGRF Regulations 2006.
- (ix) The Forum has rightly dismissed the case on the point of limitation. The Appellant ought to have filed the grievance within two years from the date of cause of action. Therefore, the present appeal/ representation is liable to be dismissed.


(Dilip Dumbre)
Secretary
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- (x) That the case laws submitted by the Appellant are not at all applicable to the facts of present case and is trying to make futile efforts to bring its case within limitation.
- (xi) That the Regulation 3.3.8 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 provides the option to the consumer to carry out the work through licensed electrical contractor and in that case, the licensee allowed the Appellant to carry out the work at its own under its supervision by paying appropriate supervision charges as per rules. The Commission, in its tariff order in Case No. 19/2012 approved the schedule of charges wherein MSEDCL was allowed to recover 1.3% supervision charges. It is also stated that consumer has not deposited the Service Connection Charges with the MSEDCL.
- (xii) It is submitted that the claim of the consumer is time barred and beyond limitation as per Regulation 6.6 of Consumer Grievance Redressal Forum & Electricity Ombudsman Regulations, 2006 which 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 clause, claim of the consumer is not maintainable. Consumer has filed complaint in respect of sanction letter dated 16.10.2007. The cause of action to file complaint was aroused on 16.10.2007 when the MSEDCL sanctioned the supply and estimate. There is no relevance between issue before Supreme Court in Civil Appeal No. 4305/2007 and issue of declaring consumer under DDF/ NDDF. Both issues were altogether different. Consumer was free to raise this issue earlier even before the decision of Hon'ble Supreme Court's decision in Civil Appeal No. 4305/2007 regarding said issue. Therefore, consumer ought to have taken recourse of Grievance Forum or any other means. Consumer was not estopped by any court of law or any other forum for the same. Moreover, the prayer for declaring the work done by him as NDDF instead of DDF is raised before Forum in 2019 for the first time. Hence, as per law of law of limitation, said prayer needs to go through limitation bar. Therefore, prayer of consumer for declaring its work as NDDF is not within limitation and liable to be dismissed. In this view of the matter, the grievance of


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the consumer beyond two years and granting relief beyond two years is not in consonance with Regulation 6.6 of CGRF Regulations 2006. The consumer is not claiming refund towards the SCL or ORC.

In support of above-mentioned contention of limitation, the Respondent referred the Judgment dated 21.08.2018 passed by Hon'ble Bombay High Court, Aurangabad Bench in Writ Petition No. 6859-62 of 2018 in respect of MSEDCL V/s. Jawahar Shetkari Sahkari Sut Girani Ltd. It is stated in the Judgment that the litigation journey must reach Forum within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

It is to bring to your kind notice that the Commission in Case No. 82 of 2006 and 56 of 2007 is dealing with issue of refund of ORC, SLC and meter cost recovered during the period from 08.09.2006 to 30.04.2007. The matter before Hon'ble Supreme Court vide C.A. No. 4305 of 2007 and stay order to refund is in respect of recovery of SLC charges during above period only. In the present matter, the Appellant is asking for refund of cost of DDF infrastructure. Both matters are totally distinct. The major points of differences between two matters are: -

- (a) Matter before Hon'ble Supreme Court was dealing with specific period only, whereas present matter has no such binding.
 - (b) Stay order granted by Hon'ble Supreme Court only for specific period for refund of ORC, SLC etc. This shows that, current matter and the matter before Hon'ble Supreme Court has no relevance.
- (xiii) That the Appellant has misread and misinterpreted the order passed by the Commission in Case No.82/2006 & 56/2007 and wrongly and without any justified cause filed the present Appeal. This is nothing to do with work carried out under DDF Scheme.
- (xiv) The Appellant has quoted circulars issued by MSEDCL. In furtherance of same, it is to bring to your kind notice that, said circulars also speak about specific period of refund to be given in respect of SLC, ORC and meter charges. With aforesaid


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discussion it is very much crystal clear that, present matter and matter before Hon'ble Supreme Court are very much distinct.

- (xv) The Appellant carried out the estimated work through licensed electrical contractor and supply was released on 03.03.2008. The said extended supply line and Transformer was dedicated to the consumer and it is DDF supply.
- (xvi) As per Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014),

“Dedicated distribution facilities” means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises;”
.....*Emphasis added*

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

- (xvii) That the Appellant has vehemently submitted that it is the responsibility of the Respondent to create the infrastructure work for connecting the supply. However, this may be true in regard to infrastructure work from transmission boundary to Distribution main, but it is not applicable for the infrastructure from distribution main to consumer premises. The Commission in Case No.70/2005 has refused the MSEDCL from recovering SLC charges i.e. charges of infrastructure from transmission boundary to distribution main. It is submitted that the Commission has allowed the MSEDCL to recover SCC charges i.e. infrastructure from Distribution main to consumer premises.
- (xviii) It is submitted that the Regulation 3.3.2 of the Supply Code Regulations 2005 provide that where the provision of supply to an Appellant entail work of laying of service line from the distribution main to the Appellant's premises the Distribution licensee shall be authorized to recover all expenses reasonably incurred on such


(Dilip Dumbre)
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Electricity Ombudsman Mumbai



works from the Appellant based on the schedule of charges approved by the Commission under Regulation 18.

- (xix) Regulation 3.3.8 of the Supply Code Regulations 2005 allowed the Appellant with the permission of the distribution licensee to carry out works under Regulation 3.3 through licensed Electrical contractor and distribution licensee is allowed to recover the supervision charges at such rate as may be approved in the schedule of charges under Regulation 18 not exceeding 15 percent cost of the labour charges.
- (xx) **The Respondent referred following Regulations of Supply Code Regulations:**

“3.3 Recovery of expenses for giving supply

3.3.1 The Distribution Licensee shall recover the expenses referred to in Regulation 3.2(a) above, in accordance with the principles contained in this Regulation 3.3 and based on the rates contained in the schedule of charges approved by the Commission under Regulation 18:


Provided that the Distribution Licensee may, with the approval of the Commission, in case of any category of consumers, recover such expenses on the basis of an average or normative rate for providing the electric line or electrical plant for the purpose of giving supply.

3.3.2 Where the provision of supply to an applicant entails works of laying of service line from the distributing main to the applicant’s premises, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18:

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

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

3.3.4 Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.

3.3.8 Where the Distribution Licensee permits an applicant to carry out works under this Regulation 3.3 through a Licensed Electrical Contractor, the Distribution Licensee shall not be entitled to recover expenses relating to such portion of works so carried out by the applicant:

Provided however the Distribution Licensee shall be entitled to recover, from the applicant, charges for supervision undertaken by the Distribution Licensee, at such rate, as may be approved in the schedule of charges under Regulation 18, not exceeding 15 per cent of the cost of labour that would have been employed by the Distribution Licensee in carrying out such works.”

- (xxi) It is submitted that a “Consumer Grievance” contemplated under the Regulation is basically a complaint about fault or inadequacy in quality of performance of the licensee. The grievance raised by the Appellant is not within the corners of grievance as defined in the Regulation, so complaint is liable to be dismissed. Hon. Bombay High Court Nagpur bench in W.P. No. 2031/2011 (MSEDCL V/s. M/s.Kaygaon Paper Mills Ltd.) while dealing with the issue ‘as to refund of amount’ can be called grievance or not, has held that the dispute between the parties is of civil nature and would not be covered by the term grievance and finally held that the CGRF which has passed the impugned order apparently did not have jurisdiction to entertain a complaint of this nature.
- (xxii) The Respondent cited the Judgment dated 21.01.2020 of Hon’ble Bombay High Court, Nagpur Bench in W.P. No.1588/2019 in case of MSEDCL V/s Electricity Ombudsman Nagpur for granting refund of infrastructure cost. The said order of Electricity Ombudsman Nagpur is set aside by the Bombay High Court and considered the Regulation 6.6 holds that complaint is time barred and further


(Dilip Dumbre)
Secretary
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observed that conduct of the consumer is inappropriate and unethical as he first agreed for creating the infrastructure and after enjoying the supply, he claimed for the infrastructure cost. Therefore, it is now very much clear that Appellant are not entitled for refund of infrastructure cost.

(xxiii) Therefore, the Respondent prays that, the Representation of the Appellant be dismissed.

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


6. During the hearing, Mr. Pratap Hogade, Consumer Representative at the outset has categorically said that there appears to be similarities in submission of the Respondent with that of the finding of the Forum. The Forum appears to have been influenced by the Respondent. Mr. Hogade further argued that the work of infrastructure in releasing supply to the Appellant does not fall under DDF as many other consumers are connected on the same line. He also stated that a single line diagram has been submitted to show that there are many other consumers who are getting power supply from the same 33 KV Feeder on which the Appellant is connected. The Appellant was asked by the licensee to carry out the work under the provisions of DDF. The licensee, being monopoly in supply of power in the area where the Appellant is situated, the work was carried out by the Appellant by submitting consent for carrying out the work at its own expenses. Therefore, such consent is not a free consent. 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 Appellant further stated that it is a HT Industrial consumer (No.250499007940) from 03.03.2008 having SL of 142 KW and Contract Demand (CD) of 150 KVA at Gat No.416, Mangaon Wadi, Tal. Hatkanangale, Dist. Kolhapur. It had applied for fresh power supply on 04.10.2007 for connected load of 142 KW and CD of 150 KVA for its industrial unit. The Respondent had approved the said application vide its sanctioned letter No.9235 dated 16.10.2007 on 33 kV level under Dedicated Distribution Facility (DDF) Scheme with payment


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



of 1.3 % Supervision Charges to the Respondent. The work has to be done by the Appellant. The estimate under DDF Scheme was sanctioned for an amount Rs.21,87,500/- with major scope of work such as 3.15 km 33 KV HT line and the concerned infrastructure work along with metering infrastructure work as per specification approval of the Respondent. The Appellant has paid 1.3% supervision charges of Rs.28,100/- on 20.10.2007. The infrastructure installation work done by the Appellant along with material was completed in the month of February 2008 as per the sanctioned estimate and under supervision of the Respondent. Thereafter, the Respondent issued load release letter dated 03.03.2008 and the load was also released on 03.03.2008. The Appellant filed the complaint with the Respondent for refund of the estimate amount of Rs.21,87,500/- along with interest on 31.07.2019. The Respondent did not refund the infrastructure cost which is carried out as per sanctioned estimate under supervision of the Respondent. The Appellant filed the grievance in IGRC on 19.08.2019 and then with the Forum on 16.12.2019. Therefore, cause of action / limitation does not occur since it is well within the period of two years from the date of cause of action. The Appellant argued that as per Judgement of Hon'ble Supreme Court, the cause of action starts when one party assures and another party denies. The Appellant pointed out that the Judgement dated 08.01.2020 passed by the Hon'ble High Court, Nagpur Bench in W.P. No 1588 of 2019 in Case of MSEDCL V/s Electricity Ombudsman, Nagpur and M/s Mahamaya Agro Industries Ltd., are different types of Judgements where Law points were not laid properly, hence the same is not applicable in the instant case. The Appellant prays that the Respondent be directed to refund the expenditure incurred by the Appellant towards infrastructure cost along with interest.

7. The Respondent argued its case in line with its written submission and further stated that the Appellant vide its application dated 04.10.2007 applied for releasing the new HT connection. Appellant had shown its willingness to carry out the required work of infrastructure cost due to urgency. Therefore, exercised the option to carry out the work with its own cost under DDF Scheme (i.e. 1.3% payment of supervision charges). The Respondent cited the judgement dated 08.01.2020 of the Hon'ble High Court, Nagpur Bench in W.P. No 1588 of 2019 in Case of MSEDCL V/s Electricity Ombudsman, Nagpur and M/s Mahamaya Agro Industries Ltd. against the order passed by the Electricity Ombudsman Nagpur granting



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



refund of infrastructure cost wherein the said order of Electricity Ombudsman Nagpur is set aside by Hon'ble Bombay High Court and considered the complaint is time barred in view of Regulation 6.6 and further observed that conduct of the consumer is inappropriate and unethical as he first agreed for creating the infrastructure and after enjoying the supply, he claimed for the infrastructure cost. Therefore, it is now very much clear that Appellant is not entitled for refund of infrastructure cost. The Respondent also referred the Commission order dated 05.09.2020 in Case No.5 of 2020 of Case of Shri. Vitthal Vasant Gurav on behalf of M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others on non-compliance of the Commission's Order dated 17 May 2007 in Case No. 82 of 2006, Commission's letter dated 20 July, 2017 and Order dated 27 September, 2019 in Case No. 113 of 2019. The extract of this order is reproduced below: -

- "16. The Petitioners have not submitted any documentary evidence that they were forcibly asked to lay the 33 kV line themselves. Per contra, the Petitioners have enjoyed the electricity supply from 2006 till date without filing a single letter seeking refund of the infrastructure or protested for forcible action of MSEDCL before any forum, i.e. the Petitioners stayed dormant since 2007. Therefore, the question arises why the Petitioners after the lapse of the 15 years have raised the disputed issues, which are patently barred by the Law of the Limitation. The submission and argument made by the Petitioner are not supportive to their case. The burden of proof lies with the Petitioners to prove their case, and nothing has been placed on record backing their claim. Therefore, their demands cannot be entertained at this stage without any supportive documents and after the lapse of 15 years. The Petitioners now referring to the Commission's Order dated 27 September, 2019 in Case No. 113 of 2019 which was dismissed, are following up with MSEDCL for refund of the amount and subsequently praying before the Commission on the non-compliance of the Order in Case 82 of 2006 and Commission letter dated 20 July, 2017 in respect of refund of ORC and SLC amount which is barred by limitation.*
- 17. The Hon'ble Supreme Court, in the case A.P. Power Coordination Committee Vs. Lanco Kondapalli Ltd. while disposing of the Civil Appeal No, 6036 ,6061, 6138 of 2012, 9304 of 2013, and 6835 of 2015 dated 16 October, 2015 (2016) 3SCC 468, (Para 30), has held that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the Civil Court. The relevant extract of the Order is reproduced below:*

"In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86(1)(f) also appears to be for speedy resolution so that a vital developmental factor - electricity and its supply is not adversely affected by delay in adjudication of even ordinary civil disputes by the Civil Court. Evidently, in absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court."


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Commission holds that the law of limitation is the legal provision of the rules of prudence requiring any party to be vigilant to protect its rights. i.e. the law would not assist a sleeping litigant.

18. *Additionally, MSEDCL has submitted the recent Order passed by the Hon'ble Bombay High Court, Judicature at Nagpur in W.P. No 1588 of 2019 dated 8 January, 2020 (MSEDCL V/s Electricity Ombudsman, Nagpur and M/s Mahamaya Agro Industries Ltd). The Hon'ble High Court has quashed the Order passed by the Electricity Ombudsman, Nagpur, in which the EO had directed MSEDCL to refund the cost of infrastructure of 0.4 km H.T. line to M/s Mahamaya Agro Industries Ltd. Commission find that the ratio of the said case before the Hon'ble Bombay High Court, Judicature at Nagpur would apply to the facts of the present case. The relevant extract of the Hon'ble Bombay High Court, at Nagpur bench Order is reproduced below:*


“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 store room 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.

29

30. *In view of the above, the first Petition No.1588/2019 filed by the company is allowed in terms of prayer clause (1).The impugned order dated 17.10.2018 shall stand quashed and set aside to the extent of the challenge and the conclusions arrived at by the forum by its order dated 25.06.2018 are sustained.”*

19. *Thus, the reasoning and the ratio of the judgment of the Hon'ble Bombay High Court, Judicature at Nagpur in the case of MSEDCL V/s Electricity Ombudsman, Nagpur and M/s Mahamaya Agro Industries Ltd, squarely applies to the present case i.e. the Petitioners voluntarily agreeing to construct 33 kV Line in 2006 and then turning around in 2019 after the Petitioners enjoyed the electricity supply all along, is inappropriate.”*

The Respondent also referred Review Order in Case No. 5 of 2020 of the Commission in Case No. 201 of 2020 in Case of Shri. Vitthal Vasant Gurav on behalf of M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others. All are grievances are not maintainable in view of limitation. Considering all above facts, the Respondent prays that, the Representation of the Appellant be dismissed.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Analysis and Ruling

8. Heard the parties and perused the documents on record. I divide the case in two parts.

Part A

Sanction of the Appellant's load on higher voltage on 33 kV level instead of 11 kV level as per the SOP Regulations.


Part B

The Schedule of Charges Order of the Commission, and subsequent legal cases thereon till the final Judgment of the Supreme Court in C.A. No. 4305 of 2007.

Now let us discuss these parts.

Part A: Sanction of the Appellant's load on higher voltage on 33 kV level instead of 11 kV level as per the SOP Regulations.

- a) The Appellant's CD is 150 KVA, however, record shows that the estimate was for 800 KVA CD with connected load 750 KW. There is no submission from either of the party as to how there is mention of 800 KVA CD and why the load is finally released with 150 KVA CD. Respondent's record also shows that the Appellant has submitted a letter on its letterhead requesting the Appellant to release supply on 33 kV with 800 KVA for foundry and CNC. This letter is without any number or date and does not bear any stamp of receipt. On enquiry, the Respondent, telephonically informed on 12.05.2021 that the letter does not bear stamp of receipt as it was part of the entire case submitted by the Appellant for load sanction. It further informed that this letter is on the letterhead of the Appellant and duly rubber stamped under the signatory of the said letter, which is available with it.
- b) When supply is released at the higher voltage than what is envisaged under the SOP Regulations, expenses towards the changes that are required for erection of infrastructure are to be borne by the consumer. During the hearing, the Appellant argued that if there is some letter like this from the Appellant then it will withdraw


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the complete case. Inter-alia the Appellant said that it has not submitted such letter. Notwithstanding this argument of the Appellant, there is no propriety for the Respondent, which is public utility, to release supply at higher voltage than what is envisaged in the SOP Regulations.

- c) It is also important to note here that even if it is assumed that the said letter has not been given by the Appellant then question still remains why anyone including the Appellant would go for spending more on 33 kV infrastructure than what he would have incurred on laying 11 kV line, because the infrastructure is erected by the Appellant. No sane person would spend more when its purpose is served by spending less. There are obvious reasons for going on 33 kV in the year 2007.

I am, therefore, convinced that supply is released at 33 kV at the specific request of the Appellant. It therefore follows that the Appellant is supposed to pay on infrastructure or in other words, it has to erect the infrastructure at its own cost.


Part B: The Schedule of Charges Order of the Commission, and subsequent legal cases thereon till the final Judgment of the Supreme Court in C.A. No. 4305 of 2007.

- (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: -


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



“18. In view of the above, it is clear that the “Service Line Charges” as proposed by the appellant are being allowed to be recovered through tariff. If the aforesaid proposal on “Service Line Charges” made by the appellant is accepted it will amount to doubling of the recovery of the expenses from the consumers. The appeal is accordingly dismissed.”

(c) The Commission’s order dated 17.05.2007 in **Case No. 82 of 2006**

[In the matter of refund of monies collected by MSEDCL towards Outright Contribution Charges (ORC) and cost of meter while providing new connections against the Order dated September 8, 2006 in Case No. 70 of 2005 (Schedule of Charges Order)].

Operative part of order in Case No. 82 of 2006 is reproduced below: -

“9. Having considered the material.....

(a)

(b)

(c)

(d) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of amounts collected from all consumers towards ORC, cost of meter and ‘CRA’, together with interests, **on and from September 8, 2006 (which the date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007.**

(e) MSEDCL should submit a detailed compliance report under affidavit, with respect to refund of the amount of Rs. 6500/- (collected under the head ‘CRA’) and the interest amount collected towards ORC, cost of meter and ‘CRA’ from Devang Sanstha.....

The Commission observes with concern that primarily incidences of collection of amounts towards ORC, cost of meter and ‘CRA’ post the operation of the Order dated September 8, 2006 in Case No. 70 of 2005 and the issuance of the Commercial Circular No.43 on September 27, 2006, are demonstrative of severe anomalies in the functioning of MSEDCL. The said acts have been overtly mechanical on the part of errant and negligent officials who have not paid adherence to the revisions in the erstwhile schedule of charges which have been mandated under the Order dated September 8, 2006. The Commission further observes that the stand taken by MSEDCL that their field officers should gain clarity on the implementation procedure enunciated under the Order dated September 8, 2006 within two weeks from April 13, 2007, is misconceived. The Commercial Circular No. 43 issued by MSEDCL themselves on September 27, 2006 provides for enough clarity on the import of the said Order. On the issues raised in the complaint as to refund of the depreciated value of amounts spent on DDF, as per Regulation 3.3.3 of the Supply Code having not yet materialised in favour of various consumers, the Commission observes that the position of law is well settled under the Supply Code.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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


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

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

Relevant portion of the order is reproduced below: -

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

11. MSEDCL shall submit to the Commission their statutory auditor’s certificate to the effect that the amounts collected illegally together with interest, as held at


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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;”


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




It is clear from this defined term that mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as a facility solely or clearly dedicated for giving supply. Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers. The transformer or the substation can also form a part of Dedicated Distribution Facility if it is provided exclusively for giving supply to these consumers and no other consumer is fed from the said transformer/substation. Also, Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek Dedicated Distribution Facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Section 43 of the EA 2003 read with the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. In fact, the licensee should take advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfil 'Universal Service Obligation' as per the spirit envisaged in the EA 2003 and the Regulations made thereunder.

It is also necessary to point out certain specific portions of the Supply Code Regulations dealing with Dedicated Distribution Facilities, as under:

“3.3.5 Where the Distribution Licensee has recovered the expenses referred to in Regulation 3.3.3 above at any time after the notification of these Regulations, the consumer shall be entitled to the depreciated value of such dedicated distribution facilities, upon termination of the agreement or permanent discontinuance of supply in accordance with these Regulations:

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

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



retain facilities of such depreciated value as to cover such sums due from such consumer to the Distribution Licensee.”

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

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

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


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

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

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

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

(3) *With reference to the prayers of the Petitioners to direct refund of ORC and such other head based charges, the Commission is of the view that taking into account the submissions of the MSEDCL that there have been many instances where there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities) though different nomenclatures may have been used, hair splitting will not be possible in the present petition in this regard. It will not be appropriate to direct refund under this Order as the Order dated August 31, 2007 passed by the Hon’ble Supreme Court in Appeal No. 20340 of 2007 is still in force as the term SLC which is subject matter of appeal has purportedly been charged by MSEDCL herein using the nomenclature of*


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.”


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (h) The Commission's order dated 08.12.2014 in **Case No. 105 of 2014**
(In the matter of Petition of MRVGS for penal action against MSEDCL for breach of provisions of law in respect of new electricity connections to Agricultural consumers, and non-compliance of certain other directions).

The relevant portion is reproduced below: -

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

17. The Commission has noted MSEDCL's submission regarding compliance of directions to review its Circulars and practices in the context of DDF, service connections, etc.

18. MSEDCL's Reply in the present proceedings is silent on submission of a Schedule of Charges for DDF. While there may be complexities in such an exercise, the Commission directs MSEDCL to make its submission to the Commission on this matter before the TVS to be held on its pending MYT Petition, since the Schedule of Charges would also be addressed in those proceedings.


19. The Commission is of the view that, while there has been no breach of the provisions of law or the Commission's Orders as contended in some matters, with regard to the remaining no useful purpose would be served by invoking Sections 142 and 146 of the EA, 2003 in view of the foregoing." (Emphasis added)

- (i) Supreme Court judgment dated 10.11.2016 in **Civil Appeal No. 4305 of 2007** filed by MSEDCL. Relevant portion of the judgment is reproduced below: -

"Ms. Rimali Batra, the learned counsel, appearing for the appellant has argued vehemently and has made all submissions, which could have been made. However, we are unable to agree with her submissions. The impugned judgement does not require any interference.

The Civil Appeal is dismissed. Pending application, if any, stands disposed of."

- (j) **Letter No.3955 dated 20.07.2017 from the Commission addressed to MSEDCL** for compliance of Commission's directives regarding refund of amount recovered


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



other than approved schedule of charges by the MSEDCL, after the Judgment dated 10.11.2016 of the Supreme Court dismissing Civil Appeal No. 4305 of 2007.

Relevant portion of the letter is quoted below:-

“6. With dismissal of MSEDCL’s Appeal, stay granted on refund of amount becomes non exist. Hence, MSEDCL needs to comply with the Commission’s order dated 17 May, 2007 and 21 August, 2007 and refund the amount to the consumers.

7. In view of above, MSEDCL is required to submit compliance of the Commission’s orders dated 17 May, 2007 and 21 August, 2007.”


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


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

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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

- (iv) Supreme Court stayed the Judgement of ATE by order dated 31.08.2007 thereby staying the refund, and further on 14.09.2007 the Supreme Court issued directions that until further orders, interim order issued by it shall continue to operate.
- (v) MRVGS filed petition with the Commission on 05.11.2007 through Case No. 56 of 2007 seeking compliance of directions issued by the Commission in its order dated 17.05.2007 in Case No. 82 of 2006. The Commission in this order said that it will not be appropriate to direct MSEDCL for refund in view of the pendency of Civil Appeal in the Supreme Court. It also clarified the issue of DDF. It means that no refund can be ordered for the cases falling between 08.09.2006 to 30.04.2007, on account of stay granted by the Hon’ble Supreme Court.
- (vi) At this stage, in view of above development, MSEDCL issued Circulars on 09.05.2007 for refund of meter cost, and on 20.05.2008 regarding guidelines for releasing new connections and augmentation. In this Circular MSEDCL framed policy for recovery of charges towards development of infrastructure.
- (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.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



(ix) On close scrutiny of the legal travel of the case, it is noted that the issue of SLC was taken up at ATE and then in Supreme Court by MSEDCL. The Commission has also accepted the reality that there has been an overlap between ORC and SLC. The Commission, in its order dated 17.05.2007 in Case No. 82 of 2006 has stipulated period of refund for amount collected towards ORC, Cost of Meter and CRA from 08.09.2006 to 30.04.2007. However, this refund could not take place because of specific order of the Commission dated 16.02.2008 in Case No. 56 of 2007 due to Civil Appeal No. 4305 of 2007 pending in Supreme Court and stay thereon.

9. It is important to note that barring the consumers from whom the amount towards ORC, Cost of Meter and CRA is collected by MSEDCL during 08.09.2006 to 30.04.2007, rest of the consumers, if any, and have paid such amount, they were having an option to adopt the grievance redressal mechanism under the Regulations of the Commission for redressal of their grievance with respect to refund. This is very much clear from para 19 of the Commission's order dated 01.09.2010 in Case No. 93 of 2008 which is quoted above at Para No.8 (g). Moreover, the Commission, in its order dated 08.12.2014 in Case of 105 of 2014 has specifically said that it is satisfied with the action of MSEDCL in compliance of its order in Case No. 82 of 2006. The Commission in this order has specifically said that "***Any remaining consumers can also approach MSEDCL, and the CGRFs if they do not get a response.***" The relevant paragraph of the Commission's order is captured at Para No. 8 (h) of this order.

10. 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 8 (c), 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*


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




date of enforcement of the Order dated September 8, 2006 in Case No. 70 of 2005) up to April 30, 2007;”

11. 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.

12. On conjoint reading of all the Orders of the Commission, the Judgment of the Hon’ble Supreme Court and more particularly, the Commission’s order dated 08.12.2014 in Case 105 of 2014, the refund to the eligible consumer needs to be done on the criteria of date of payment of those charges by the individual consumer and in this case, by the Appellant. The Appellant in the instant representation has paid the supervision charges on 20.10.2007 which is after 30.04.2007, the cut-of date of the matrix.

13. This apart, the Appellant is trying to link its case with Schedule of Charges Order of the Commission in the year 2006 and subsequent legal proceedings at various forums including at the Apex Court. Appellant paid the supervision charges on 20.10.2007 and there was stay on refund by the Hon’ble Supreme Court in C.A. No. 4305 of 2007 which was subsequently vacated. As it fell from the various orders of the Commission, period for payment by various consumers is between 08.09.2006 to 30.04.2007. The Appellant paid supervision charges after 30.04.2007. The Appellant is now contesting that the work of the infrastructure is not DDF and he was forced to carry out the work at his own cost. When it knew that the Respondent is forcing him to carry out the work under DDF due to monopolistic position of the Respondent (as alleged by itself), then he should have agitated the matter before the grievance redressal mechanism available under the Act. However, the Appellant filed its grievance before the Forum on 16.12.2019 which is almost 12 years from the cause of action. The Appellant came into action for refund of infrastructure cost after 12 years and that too, after passing the Judgment by the Hon’ble Supreme Court, until such time, he was a fence sitter who after having erected the infrastructure at its own cost under the specific request made by himself to the Respondent, reaped the benefits whatever at a higher voltage than was allowed to it under the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




SOP Regulations. In short, the Appellant has reduced itself to an opportunist who looked for the appropriate time to jump the bandwagon. Therefore, action of the Appellant to approach the Forum after 12 years from the cause of action is barred by limitation imposed under Regulation 6.6. of the CGRF Regulations 2006.

14. It is expected that the consumer should approach IGRC in a reasonable period from the cause of action though there is no such limit provided under the Regulations. This needs to be harmoniously read with Regulation 6.6 of CGRF Regulations which ultimately puts two years limitation period for CGRF to admit the case from the date of cause of action. This principle and logic are upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon'ble. Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the judgment is quoted below: -

“37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




39. *In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.*

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

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

44. *Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.*

45. *As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.*


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”

This has become a settled position of law as far as limitation under Regulation 6.6 is concerned. If this is not followed in practice, then the consumer might rack up the issue at any point of time from the cause of action and there would be complete chaos. If the consumers allowed to exhume old cases without putting any time limit as is provided in Regulation 6.6, then no decision would take place in the Regulatory setup and the entire system will collapsed. Therefore, the provision under Regulation 6.6 has assumed a significant importance in the Regulatory framework.


15. The Appellant was at liberty to have agitated the matter before the grievance redressal mechanism at the time of payment or within two years therefrom before the Forum under CGRF Regulation 2006. However, it approached the Forum on 16.12.2019. Therefore, the case does not stand scrutiny on limitation prescribed under Regulation 6.6 of CGRF Regulations 2006.

16. The Appellant has cited the judgment of Bombay High Court bench at Nagpur dated 30.07.2015 in WP. No. 4595, 4745 of 2014 which is not relevant for obvious reason. The Respondent has cited the Commission's order dated 05.09.2020 in Case No.5 of 2020 of Case of Shri. Vitthal Vasant Gurav on behalf of M/s. Jaygangatara Magaswargiya Co-op. Ind. Ltd and 12 Others. This order of the Commission substantiates the argument of the Respondent.

17. In view of the above discussion, I do not find it necessary to interfere with the order of the Forum.

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

Sd/-
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Secretary
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