

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 45 AND 46 OF 2020

In the matter of refund in infrastructure cost

- 1) Shri. Chandrakant Eknath Bhandare 45 of 2020
- 2) Smt. Sunita Mahadev Kore 46 of 2020.....Appellants

V/s.

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

Appearances:

For Appellants : Mr. Pratap Hogade, Representative

For Respondent : Mr. Sachin Korde, Dy.Ex. Engineer, Ichalkaranji

**Coram: Deepak Lad**

Date of hearing: 17<sup>th</sup> July 2020

Date of Order : 27<sup>th</sup> August 2020

Order

This Representation is filed on 16<sup>th</sup> March 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 13<sup>th</sup> January 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kolhapur Zone (the Forum).



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2. The Forum, by its order dated 13.01.2020 has rejected the common complaint of Shri Chandrakant Eknath Bhandare and Smt. Sunita Mahadev Kore in Case No. 21 of 2019-20 (now the Appellants). The Forum observed that the complainant Shri Chandrakant Eknath Bhandare has made grievance application in the Internal Grievance Redressal Cell (IGRC) on 08.09.2018 for requesting refund of Rs.46,965/- along with interest paid towards ORC(P) scheme for getting connection of 63 HP for power loom, and the interest be calculated from the date of payment at the rate of 12% per annum. The IGRC, by its order dated 05.11.2018 has rejected the grievance. Not satisfied by the order of the IGRC dated 05.11.2018, the complainant approached the Forum on 02.01.2019 with a different prayer for refund of expenditure of Rs.4,08,831/- carried out under ORC(P) scheme along with interest, and interest be calculated from the date of payment at the rate of 12% per annum. The Forum, being the Appellate Authority has rejected the grievance on the ground of different prayer in IGRC and Forum. The complainants (Shri. Chandrakant Eknath Bhandare and Smt. Sunita Mahadev Kore) again filed an application with the IGRC on 28.06.2019 with joint signatures in X form with a prayer to refund of infrastructure cost carried out jointly under ORC(P) scheme along with interest, and interest be calculated from the date of payment at the rate of 12% per annum. The IGRC, by its order dated 30.08.2019 has rejected the grievance.

3. Aggrieved by the order of the Forum, the Appellants have filed the representations independently. The issues being similar in nature, and common grounds are raised for the purpose of this order, these two representations are clubbed together. The details of which are as follows:

(i) **Representation No. 45 / 2019 - Consumer No. 250380191187**

Shri. Chandrakant Eknath Bhandare

- a) The Appellant, is a LT power loom consumer from 13.10.2005 having sanctioned load of 63 HP and Contract Demand is 52 KVA at present, situated at H.No.1192, W.No.13, Gat No.461/1, Guru Kannannagar, Ichalkaranji.
- b) The Appellant applied for new electric connection for 63 HP in the year 2005. The Respondent has sanctioned a combined estimate of Rs. Rs.4,27,831/- on

  
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31.08.2005 along with the other Appellant (Smt. Sunita Mahadev Kore) in Representation No. 46/2020 for infrastructure work under Out Rate Contribution (Pvt.) [ORC (P)] scheme.


- c) The work involved was laying
- 0.3 KM HT line,
  - 0.06 KM LT Line,
  - erection of 100 KVA Distribution Transformer,
  - metering works and other related works.
- d) Both the Appellants have commonly paid Distribution Transformer Centre (DTC) metering charges of Rs.19000/- on 31.08.2005 as per sanctioned estimate. The Appellants have to carry out infrastructure work of its own cost as per the direction of the Respondent. The Appellant commonly paid the supervision charges on 09.09.2005. The Appellants carried out the works of the said infrastructure as per the MSEDCL estimate and direction. The electric connection was released on 13.10.2005.

(ii) **Representation No. 46 / 2019 - Consumer No. 250380190288**

Smt. Sunita Mahadev Kore


- a) The Appellant is a LT power loom consumer from 28.03.2005 having sanctioned load of 19 HP at present situated at H.No.1192, W.No.13, Gat No.461/1, Guru Kannannagar, Ichalkaranji.
- b) The Appellant applied for load enhancement from 10 HP to 19 HP. The Respondent has sanctioned a combined estimate of Rs.4,27,831/- on 31.08.2005 along with the other Appellant (Shri. Chandrakant Eknath Bhandare) in Representation No. 45/2020 for infrastructure work under ORC (P) scheme. The Appellant commonly paid the supervision charges on 09.09.2005. The Appellants carried out the works. The enhancement of additional load from 10 HP to 19 HP was released on 13.10.2005.

(iii) The total combined refundable infrastructure cost for representation No. 45 and 46 is Rs. 4,27,831/- (=4,08,831/- + 19000/-) along with interest.

  
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- (iv) The issue of refund of infrastructure cost was pending due to Civil Appeal No. 4305 of 2007 filed by MSEDCL with the Hon. Supreme Court of India. There was a stay on refund. Finally, the Hon. Supreme Court of India dismissed the C.A No. 4305 of 2007 on 10.11.2016. Thereafter, it became clear that the Appellants are eligible and can claim for refund of all the expenses done under ORC (P) for the infrastructure works.
- (v) After the final decision of the Hon. Supreme Court in C.A. No.4305 of 2007 dated 10.11.2016, MSEDCL issued its first Refund Circular on 12.10.2017.
- (vi) The Appellants filed complaint dated 08.09.2018 in the IGRC which is acknowledged on 10.10.2018 demanding refund of infrastructure expenses with interest under ORC (P) from the date of payment till the date of repayment. This was overlooked by the IGRC and rejected on wrong ground on 05.11.2018. The Appellants approached the Forum on 02.01.2019 but it rejected on 17.06.2019 since the demand of refund of infrastructure cost was not before the IGRC. Once again, the Appellants approached the IGRC on 01.07.2019 which was rejected on other grounds on 30.08.2019. Against the second order of IGRC, the Appellants again approached the Forum on 14.10.2019 wherein the Forum ruled that the same demand cannot be considered by the Forum. This ruling itself is wrong since for the first time, the Forum had rejected on technical grounds. The issue of merit was not admitted, nor heard or decided by the Forum. Hence, both the orders of the Forum need to be quashed and set aside by the Hon. Electricity Ombudsman.
- (vii) As per the order dated 08.09.2006 of the Maharashtra Electricity Regulatory Commission (the Commission) in Schedule of Charges in Case No.70 of 2005 and corresponding MSEDCL Circular No. 43 dated 27.09.2006, meters are to be installed by the licensee. Also, if the cost is recovered, it is to be refunded to the consumer as per MSEDCL's own circulars.

  
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- (viii) The name of the feeder is 11 KV Chandur Road Feeder which is emanating from 33/11 Awade Mala Substation, Ichalkaranji. There are many other HT and LT consumers getting power supply from the same 11 KV Chandur Road feeder.
- (ix) HT line, LT line, DTC, concerned work and Metering work was done by the Appellants and many other consumers are getting supply from the same feeder. The Commission's order dated 16.02.2008 in Case No. 56 of 2007 clarifies that "*Mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility (DDF)*". It is clear from the definition of DDF in the Regulations and clarifications given by the Commission, the feeder of the Appellants and the work done by the Appellants is clearly Non DDF. Hence, the Appellants are fully eligible for refund of all the above-mentioned amount of Rs.4,27,831/- along with interest thereon as per the MSEDCL's own office estimates.
- (x) The Commission, in its order dated 17.05.2007 in Case No. 82 of 2006 has given clear directions that MSEDCL must refund to all the consumers all overcharged amounts along with the 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 SLC, Cost of Meter which are at variance from the Order dated 08.09.2006 of the schedule of charges. 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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- (xi) 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.
- (xii) 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.
- 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.”*
- (xiii) It is also clear from the orders of the Commission quoted as below:-
- (a) *“the directions of the Commission to MSEDCL were to refund amounts that never belonged to them as they were collected illegally.”*
- (b) *“the consumers should not be burdened with infrastructure costs which are the liability of MSEDCL”.*
- (xiv) After the order dated 16.02.2008 in Case No. 56 of 2007, the MSEDCL issued circular dated 20.05.2008 in which guidelines for release of new connections on the basis of abovementioned orders of the Commission were given. The circular itself clarifies that all the Non DDF connections are refundable. It is also clearly stated that in case of all LT Industrial individual or group consumers, all the

  
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infrastructure will be created by MSEDCL and only SCC will be recovered from the consumers.


- (xv) MSEDCL has issued further Circular bearing No. DIST/D-III/Refund/Circular No.39206 dated 21.12.2009 regarding refund of infrastructure cost. It is pertinent to note here that, it is clearly stated in the circular that the work may be executed under Non DDF and the refund will be by way of adjusting 50% of the monthly bill amount till clearance of the total expenditure.
- (xvi) In the meanwhile, MSEDCL has impleaded this issue of refund in C.A. No. 4305 of 2007 (earlier Stamp No. 20340/2007) in which the Hon. Supreme Court had ordered stay on refund on 31.08.2007. Hence, all refunds were stopped.
- (xvii) Finally, the Hon. Supreme Court vide its Judgment dated 10.11.2016 has dismissed the C.A No.4305 of 2007 in toto.
- (xviii) After the order of the Hon. 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. In this case, it is named as ORC (P), which is clearly ORC. In ORC cases, MSEDCL had collected money from the prospective consumers and had completed the works. In ORC (P), MSEDCL used to give estimate to prospective consumers and consumers have to complete the works as per MSEDCL estimate and directions. Hence, the Appellants are fully eligible to get the refund along with the interest thereon.

  
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- (xix) MSEDCL had in its first refund circular dated 12.10.2017 stated the refund period from 20.01.2005 to 30.04.2007. Thereafter, MSEDCL issued Amendment Circular dated 29.12.2017 wherein the refund period is revised from 20.01.2005 to 20.05.2008. The Appellants' estimate and work done period is September 2005 and October 2005, hence, are eligible for refund.
- (xx) 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. In the Appellants' cases, the work is named as ORC (P) which is nothing but one type of 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."*
- (xxi) 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.
- (xxii) 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 ground, the Appellants are eligible to get the refund of all the above mentioned MSEDCL's own estimate amount total Rs.4,27,831/- along with the interest thereon at bank rate from 13.10.2005 up to the actual date of repayment.

  
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- (xxiii) Compensation: - The Appellants states that their complaint is a complaint other than bills. Hence, as per Regulation No.7.6 of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014) *“In other cases, the complaint shall be resolved during subsequent billing cycle.”* The Appellants have filed the complaint before IGRC initially on 10.10.2018 hence it was necessary and binding on MSEDCL to resolve it in subsequent billing cycle means upto the end of November 2018 or in the bills received in December 2018. But MSEDCL failed to do so. Hence, the Appellants are eligible for SOP compensation of Rs.100/- per week or part thereof from 01.12.2018.
- (xxiv) SLC, ORC/ORC (P) & DDF/DDS are not different – Observations of IGRC are totally wrong. IGRC has noted that the work is done under ORC(P)-and MSEDCL has not recovered money, hence not refundable. In fact, SLC, ORC/ORC (P) and DDF/DDS 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 only in the cases where the connection is actually DDF as per the Supply Code Regulations and as per MERC Clarificatory Order dated 16.02.2008. In the Appellants’ case, the connection is ORC (P). ORC is having two parts-(1) MSEDCL creates the infrastructure and recovers the cost from the consumer under the head ORC and (2) Consumer creates the infrastructure as per MSEDCL estimate and directions, which is known as ORC (P) and this name ORC (P) is used only in Kolhapur district. As per the Commission regulations and orders, in case of ORC connections, infrastructure costs must be refunded to the consumers. Hence, the Appellants are fully eligible for refund.
- (xxv) Limitation – MSEDCL has raised the issue of limitation which is totally wrong and illegal. The SLC, ORC, DDF issue was impleaded by MSEDCL before the Hon. Supreme Court in C.A. No. 4305 /2007. Its final order was issued on 10.11.2016

  
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and on that date, the stay on refund is vacated. Thereafter, MSEDCL issued the circular on 29.12.2017 in which the refund period stated is 20.01.2005 to 20.05.2008. The Appellants state that their expenditure period is within the period dated 09.09.2005 to 13.10.2005, hence, they are fully eligible for the refund. Thereafter, the Appellants applied for refund with the IGRC on 10.10.2018. Therefore, there is no issue of limitation. It should be noted that the MSEDCL had also represented before various courts that the judgment towards refund of ORC is pending before the Hon. Supreme Court. Also, it should be noted that any excess or illegal recovery is against the provisions of Section 62 (5) 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.

(xxvi) Any such consent or agreement which is not in consonance with the law or statutory regulations or orders of the Commission has no binding effect in law. MSEDCL cannot impose the conditions which would defeat the regulations or orders. This verdict is given by the Hon. Supreme Court and by the various Hon. High Courts in many cases. One such order dated 18.01.2017 in W.P. No. 2798 of 2015 of the Hon. Bombay High Court. Also, this case is also of similar issue of DDF and Non DDF.

(xxvii) The Appellants' nature of relief sought from the Electricity Ombudsman is as below: -

- (a) The Appellants' connection should be declared as ORC connection given in the specified refund period 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.4,27,831/- should be refunded along with interest at bank rate from 13.10.2005 up to the date of repayment or alternatively all the total amount be credited in their further bills.

  
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(c) SOP Compensation for delay in resolution of complaint, an amount of Rs.100 per week from 01.12.2018 should be awarded.

4. The Respondent MSEDCL filed its reply dated 26.05.2020 stating briefly as under: -


- (i) Shri Chandrakant Eknath Bhandare had applied on 13.04.2005 for 63 HP power loom connection at 13/1192, Gat No. 461, Guru Kannannagar, Ichalkaranji, and Smt. Sunita Mahadeo Kore (C.No.25038190288) had applied for load enhancement of 9 HP from existing 10 HP for its power loom connection. Thus, total load of 19 HP at Gat No. 461/1, Guru Kannannagar, Ichalkaranji.
- (ii) As per the estimate of Division Office, Ichalkaranji vide EE/ICH/ORC(P)/104/2005-06 dated 31.08.2005 sanction was given. As per the estimate, supply was connected on 13.10.2005 to Chandrakant Bhandare (C.No.250380191187) for 63 HP Power loom connection and Smt. Sunita Kore (C.No.25038190288) for load enhancement from 10 HP to 19 HP.
- (iii) As per the said estimate, the Appellants had given approval for doing the infrastructure works on their own and did not show that they are doing under protest.
- (iv) The estimate was approved under ORC(P) scheme hence, no refund is applicable to the Appellants. The Appellants have also completed their works as per the Regulation No. 3.3.8.
- (v) The Appellants have made the payments for the connections as below: -

S.N.	Particulars	Rep. No. 45 of 2020 Chandrakant Eknath Bhandare	Rep. No. 46 of 2020 Sunita Mahadeo Kore
1	Service Connection Charges cum 15% labour charges	1650	3500
2	C.T. Operated Meter charges	23000	2250 meter charges
3	Capacitor testing	100	100
4	15% supervision charges as per the estimate	4695	7000 SLC
5	D.T.C. Meter charges	19000	20 Agreement letter
6	Total	48715	12870
7	Receipt No.	1489584 dt.9.9.2005	5459021 dt.9.3.2005 (Prior to application for load enhancement)

  
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- (vi) As per the application dated 18.01.2018 submitted by Chandrakant Bhandare considering the cost of the CT Operated meter as Rs.23000/-, interest at the rate of 6% for the period from 09.09.2005 to 30.04.2007 was calculated and total amount of Rs.25292/- was refunded to him through the bill of April 2018.
- (vii) Similarly, the Appellant, Sunita Mahadev Kore paid Rs. 7000/- towards amount of Service Line Charges (SLC) and Rs.2250/- towards meter cost totaling Rs.9250/-. Interest at the rate of 6% was calculated on this amount. Thus, the amount of Rs.9902/- and Rs.7335/- was adjusted through electricity bills of April 2018 and March 2019 respectively.
- (viii) It is to be noted that as mentioned in the estimate, an amount of Rs.3,64,116/- towards infrastructure cost has not been paid to the Respondent. The Appellants have readily done the infrastructure works without any protest and has given an undertaking for it. The said work was completed in the year 2005 i.e. 14 years ago.
- (ix) Hence, the grievances are time barred as per Regulation 6.6 of the CGRF Regulations in both the representations. The Appellants should have approached the grievance mechanism within two years from the initial cause of action.
- (x) The Appellants, Chandrakant Bhandare and Sunita Kore had approached the IGRC on 08.09.2018 when they asked for refund Rs.46965/- whereas when they approached the Forum on 02.01.2019, their demand for refund is Rs.4,08,831/- as per the amount approved in the estimate. The demand before the Forum was not made in the IGRC. As per Regulation 6.7 of the CGRF Regulations, the prayer should be made to the IGRC first.
- (xi) The Appellants have referred the case of Complaint No.16/2018 dated 28.05.2018 which is a Non DDF CCRF for refund of infrastructure cost whereas in the instant representation, the estimate is sanctioned under ORC (P). Hence, the order for Complaint No.16/2018 does not apply here.
- (xii) The Commission in Case No. 82 /2006 has mainly referred that the amount through ORC are to be refunded but nothing about infrastructure cost is mentioned. The present Appellants have been approved estimate under ORC (P) scheme, hence, refund under this scheme is not applicable to them.

  
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- (xiii) Similarly, in Representation No.189 and 190 of 2018, the Electricity Ombudsman (Mumbai) has given order in SLC, ORC and Meter Cost refund but has not mentioned anything about infrastructure cost since it is not filed within the time limit, hence it is time barred.
- (xiv) In the same way, the Judgment of the Supreme Court in C. A. No. 4305 /2005 and the Circular No.25079 dated 29.12.2017 states that refund is applicable to those consumers who have paid SLC, ORC and Meter Cost to MSEDCL for the period 20.01.2005 to 20.05.2008. The present Appellants do not fit in this case since their case come under ORC (P) scheme which is different issue from the Supreme Court Judgment.

5. The hearing could not be conducted due to onset of Covid-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence, hence the hearing was scheduled on 17.07.2020 on e-platform after the consent from the parties.

Appellants' arguments during the hearing.

6. During the hearing, the representative of the Appellants argued in line with their written submissions at length. Both the Appellants are LT Industrial Power loom consumers of the Respondent situated in H.No.1192, W.No.13, Gat No.461/1, Guru Kannannagar, Ichalkaranji at present. In Representation No. 45, the application was for fresh power of 63 HP and in Representation No. 46, there was enhancement of load from 10 HP to 19 HP. Their applications were sanctioned under ORC(P) scheme with combined estimate of Rs. Rs.4,27,831/-dated 31.08.2005 by the Respondent, Division Office, Ichalkaranji. Sanctioned letter with estimate of work under ORC (P) was issued to the Appellants who paid the supervision charges on 09.09.2005, and the Appellants carried out the works of the said infrastructure as per the estimate and directions. The infrastructure work was handed over to the Respondent and then the load was released on 13.10.2005. The Appellants argued that while submitting the application for connection, they never mentioned that the connection be released under ORC(P). However, since the Appellants were at receiving end, whatever, MSEDCL officials who are in a dominant position, asked the Appellants to submit, the same was complied with.

  
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This includes submission of undertaking that the work will be done by the Appellants under 1.3% supervision charges.

7. The Appellants explained various orders of the Commission and circulars issued by MSEDCL from time to time. The issue of refund of overcharged amount was impleaded by MSEDCL before the Hon. Supreme Court. After the final decision of the Hon. Supreme Court in C.A. No.4305 of 2007 dated 10.11.2016, MSEDCL issued its first Refund Circular on 12.10.2017. The Appellant states that the circular refers the word ORC whereas all their expenses is under ORC(P). This term ORC(P) is generated only in Kolhapur division. There are two types of ORC. In ORC cases, MSEDCL collect money from the prospective consumers and execute the works. In ORC (P), MSEDCL used to give estimate to prospective consumers who in turn has to execute the works as per MSEDCL estimate and directions. Hence, the ORC (P) is nothing else but ORC only, making the Appellants fully eligible to get the refund along with the interest thereon. On the basis of the Commercial Circular dated 12.10.2017, CT Operated meter cost of Rs.23000/- was refunded to Shri Bhandare. SLC and meter cost of Rs. 7000 and Rs.2250/- respectively was refunded to Smt. Sunita Kore. In both the cases, the amount was refunded with interest through electricity bills.

8. The Appellant also referred the following orders and circulars:-

- a) Commercial Circular No. 546 dated 24.03.1995 regarding the payment of SLC charges. (first circular on ORC). The said circular states that *“Where the estimated cost is more than the SLC, the difference between the estimated cost and the SLC worked out on the above basis should be treated as interest free advance from the consumer and it would be refundable without interest after a period of 2 years from the date of connection.”*
- b) Circular No. 586 dated 07.02.1996 states that to identify such ORC work estimate register with two distinctive columns are executed by Board and by consumer should be maintained.
- c) Circular dated 23.11.2001 states that generally works of following minor and major nature are carried out under ORC in which supply to new HT consumers / laying express feeders for existing HT consumers and supply to complexes and / or electrification of layouts, residential and commercial complexes for LT/HT

  
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connections. This circular lay down the guidelines for the estimates to be prepared when (1) The work under ORC is to be executed by the consumer and (2) The work under ORC is to be executed by the Board. In this respect, to distinguish the two types, Kolhapur division has given the name ORC(P) to the work executed by the consumer and the name ORC to the work executed by the Board.

- d) The Commission's order dated 16.02.2008 in Case No. 56 of 2007 clarifies that "Mere extension or tapping of the existing line (LT or HT) cannot be treated as Dedicated Distribution Facility (DDF)". It is clear from the definition of DDF in the Regulations and clarifications given by the Commission, the feeder of the Appellants and the work done by the Appellants is clearly Non DDF. Hence, the Appellants are fully eligible for refund of all the above-mentioned amount of Rs.4,27,831/- along with interest thereon as per the MSEDCL's own office estimates.
- e) Judgment dated 17.01.2020 in W.P. No.5681, 4197, 4225, 5682, 5684 of 2010 of High Court of Bombay, Nagpur Bench.

The Respondent's arguments during the hearing.

9. The Respondent argued in line with its written submission and further argued that the Appellants' have executed the work at their own sweet will by paying supervision charges as they intended to have connections immediately. The estimate for the works of the Appellants have been sanctioned under ORC(P). This ORC (P) head is on account of the work done by the parties by incurring expenditure at their own level and it is DDF in nature. They have not paid amount of ORC to MSEDCL and MSEDCL has not executed the work. Therefore, they are not entitled for any refund as such on this account. The representations have no nexus with the Supreme Court Judgment in C.A. No. 4305 of 2007. The Respondent have refunded the amount of SLC and the cost of meter to the Appellants which they have paid to MSEDCL. These refunds are as per the MSEDCL Circulars. The Appellants have filed the case on the same subject twice and therefore, the Forum has rightly rejected the same.

10. Post hearing, Mr. Pratap Hogade, the representative of the Appellants sent an email dated 19.07.2020 providing information about manipulation in the field. In the said email he submitted that after the hearing, the MSEDCL authorities, Shri Sachin Korde, Dy. Executive


  
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Engineer, A subdivision, MSEDCL Ichalkaranji has claimed in its revised say dated 14.07.2020 that and also during hearing that connections given to Chandrakant Bhandare and Sunita Kore are DDF and hence ORC(P) amount is non-refundable. On behalf of the Appellants, Single Line Diagram, Site map, Details of connections and concerned bills were submitted. There are 5 connections on 200 KVA Bhandare Transformer bearing No. 4710075 and Kore is connected on 200 KVA Rasal Transformer bearing No. 4710263 with other 6/7 consumers. Also submitted bills of all 5 consumers on 200 KVA Bhandare Transformer. Same DTC number 4710075 is clearly visible on all 5 Bills including Bhandare. Then on 18.07.2020 i.e. Saturday afternoon at 2 pm, DyEE, Shri Sachin Korde of MSEDCL A subdivision sent MSEDCL staff to Bhandare unit. These wiremen namely Shri Viraj Petkar and Shri Rupesh Meshram shifted Manwade 2 consumers on nearby Bargeer Transformer and Chougule 2 consumers on nearby Bajaj Transformer. Both these Transformers are shown in the single line diagram sent by the Appellant. The only 3 HP connection of Chandrakant Bhandare is continued on 200 KVA Bhandare Transformer to show, record and prove that his connection is DDF connection. The Appellant also submitted that they have proof of photos and audio recordings of concerned wiremen. The representative of the Appellants has spoken with Shri Koli, Executive Engineer of Ichalkaranji Division on 18.07.2020 in the evening about these facts in detail. He assured me that the exact factual situation will be restored and facts will be placed before the Ombudsman. The site map of the changes done by MSEDCL staff on orders of DyEE Korde is attached herewith for information. This is nothing but the forgery of the evidence. This is a serious offence of change in connections and manipulation of facts, which should be kindly noted by the Hon. Electricity Ombudsman and serious action should be taken on the concerned DyEE Sachin Korde. They might correct these connections again due to EE directions. The Appellants do not know or imagine what will happen till 21.07.2020 by the MSEDCL persons before filing final submissions. Hence, the Appellants felt and found it suitable and proper to inform all the facts, developments and happenings at the ground level.

11. In pursuance of the directives of the undersigned during the hearing, the Respondent MSEDCL submitted its written arguments on 21.07.2020 through email stating in brief as under: -

  
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- (i) Initially, the supply was released to both the Appellants on 13.10.2005 on dedicated 100 KVA transformer. Subsequently, it was changed to 200 KVA transformer on 19.01.2012 under Infra-Phase-II scheme. Total cost required for this was borne by the Respondent. The important point is that 100 KVA transformer was augmented by the Respondent with 200 KVA capacity and thereafter, released other connections. With due respect, the Respondent express apology that it was mistakenly mentioned in the previous say that there are no other connections than Shri Chandrakant Bhandare and Smt. Sunita Kore on Bhandare transformer.
- (ii) It is politely submitted that MSEDCL has released other connections on the DDF transformer of the consumer by augmentation of the capacity and now if it is deemed to fit, then MSEDCL is ready to rectify the mistake by shifting the other released connections to other transformer to provide the dedicated supply to the Appellants. This will protect the DDF right of the Appellants. Also, the SLC and meter cost refunded to the Appellants, the Respondent be allowed to recover from the Appellants again.
- (iii) It is respectfully submitted that the Supreme Court decision was passed on 10.11.2016 in C.A. No.4305 / 2007in C.A. No. 4305 / 2007, therefore, the Appellants ought to have raised the grievance before the Forum within two years from the decision of the Supreme Court. Hence, on this ground, the appeal is liable to be dismissed.
- (iv) The other important point to be mentioned here is that the Appellants filed two cases before IGRC and the Forum on the same subject matter. The first complaint to IGRC was on 10.10.2018 demanding refund of infrastructure cost of Rs.46965/-. Then the complaint was filed with the Forum on 03.01.2019 for refund of infrastructure cost of Rs.4,08,831/-. There was the differentiation in the amount demanded in both the complaints. The Forum vide its first order dated 10.06.2019 dismissed the first complaint No.71/2018.-19 where first time demanded refund of infrastructure cost of Rs.4,08,831/- and hence rejected it. Thereafter, the Appellants ought to have filed the appeal against the said order within 60 days i.e. on or before 10.08.2019 before the Electricity Ombudsman. Therefore, second complaint itself

  
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is bad in the eyes of law and therefore appeal filed against second complaint is not tenable and liable to be dismissed.


- (v) It is submitted that the Forum vide its order dated 13.01.2020 dismissed the second complaint No.21/2019-20 on the ground that consumer has filed the second complaint on the same subject matter as earlier decided by the Forum. So, the order passed by the Forum is correct, proper and legal and there is no need for interference in the said order. It is submitted that second complaint is not maintainable according to the principle of Res Judicata i.e. when a matter in dispute in subsequent case had earlier directly and substantially in issue between the same parties and it had been heard and finally decided, second complaint is not maintainable as it causes multiplication of litigation, agitation and re-agitation of the same dispute between the same parties and there is unending litigation. Therefore, the appeal filed against the said decision is also not tenable and liable to be dismissed.
- (vi) It is respectfully submitted that supply to these consumers were released on 13.10.2005 i.e. after passing of MERC (Conditions of Supply) Regulation 2005 but before approval of Schedule of Charges by the Commission. It is submitted that Section 46 of the Act and Regulation 3.3 of the Supply Code allows the MSEDCL to recover the amounts reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.
- (vii) It is submitted that Smt. Sunita Mahadeo Kore applied for load extension of 9 HP i.e. from 10 HP to 19 HP which needed to augment the distribution system. The consumer applied for additional load of 9 HP which was 90% of the existing load. Shri Chandrakant Bhandare applied for the load of 63 HP. As both the consumers were applied to the same Gat Number i.e. 461/1 and interested in carrying the required infrastructure by their own cost. Therefore, MSEDCL had sanctioned the estimate for supply to these consumers as per provision of Regulation 3.3.4 which provide that cost of incremental capacity of augmentation will be borne by the Appellants. So, the Appellants are not entitled to claim the refund of infrastructure cost.
- (viii) It is submitted that Regulation 3.3.2 of the Supply Code Regulations authorizes the distribution licensee to recover from the consumer all expenses reasonably incurred

  
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in laying down service line from the distribution main to applicant's premises. Service connection is interpreted as a link between the Licensees nearest distribution point to the point of supply at consumer premises, which also includes other accessories i.e. any apparatus connected to any such line for the purpose of carrying electricity.

- (ix) It is submitted that Regulation 3.3.8 provides the option to the consumer with the permission of licensee to carry out the work as provided in Regulation 3.3 through licensed electrical contractor and in that case, licensee is allowed to recover the supervision charges not exceeding the 15% cost of labour.
- (x) It is politely submitted that the present Appellants have spent the amount voluntarily for creating the infrastructure for connecting their supply from nearest distribution main of MSEDCL to their premises by depositing the 15% supervision charges with the MSEDCL as stated in Regulation 3.3.8. Therefore, the Appellants are not entitled to claim the refund of infrastructure cost.
- (xi) It is submitted that the Appellants were urgently in need of supply and consequently agreed to bear all the charges for establishing the connection and did not lodge any protest or did not refund any right to seek the refund of charges.
- (xii) It is submitted that the conduct of the Appellants is inappropriate as they were by their own will created the infrastructure and enjoyed the electricity supply and after running out more than 14 years of span now desire that infrastructure cost should be borne by the MSEDCL is not at all acceptable. Therefore, the representation of the Appellants is liable to be dismissed. The stale claim of the Appellants is not tenable as per Regulation 6.6 of the CGRF Regulations and hence is liable to be dismissed.
- (xiii) It is submitted that considering the provision of Regulation 3.3.2, 3.3.4 and 3.3.8, MSEDCL allowed the Appellants as per their request for carrying out the infrastructure through their own cost for connecting supply. Therefore, the Appellants are not entitled to claim the refund of infrastructure cost incurred for augmentation and for connecting the supply from the distribution main.
- (xiv) MSEDCL in support to their case also relied on the order of the High Court of Bombay, Nagpur Bench in W.P. No. 1588 /2019 wherein the High Court set aside

  
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the order passed by the Electricity Ombudsman, Nagpur granting the refund of infrastructure cost . The said order is squarely applicable to the facts of the present case. Therefore, considering the same, the present case is liable to be dismissed.

- (xv) Without prejudice to rights of MSEDCL to defend the matter, it is humbly submitted that if the Electricity Ombudsman comes to the conclusion that, refund to be given by MSEDCL, then said refund be calculated as per actual work done (WCR) and not as per estimated cost as claimed by the Appellants.

12. The Appellants have filed rejoinder vide email dated 28.07.2020 in response to the Respondent's submission dated 21.07.2020 as per the direction given during the hearing. The Appellants, during the e-hearing on 17.07.2020, have explained all grounds and the details with respect to their representations and the revised say of MSEDCL dated 14.07.2020. For the sake of clarity, the Appellants wish to bring few important points to the notice of the Hon. Ombudsman as below: -


- (a) The major submission of the Appellants in this email is replication of what has been stated in the representations and what has been recorded as an argument advanced by them during the hearing.
- (b) Other important points in this email are as below:-
- DDF established on 20.05.2008 – On 20.01.2005, the Commission published Supply Code Regulations. MSEDCL was not aware of the DDF concept at that time. Hence, they continued to use SLC, ORC, ORC(P) in order to impose cost of infrastructure on consumers. MERC has clarified 'DDF' in detail on demand of MSEDCL itself vide its order dated 16.02.2008 in Case No. 56/2007. Thereafter MSEDCL issued 1st circular regarding DDF on 20.05.2008. Thereafter, DDF/N-DDF started officially. Considering these facts, MSEDCL Board has accepted & declared Refund period from 20.01.2005 up to 20.05.2008. Hence, it is clear that to claim any connection in this specified period as 'DDF' instead of 'ORC' is nothing but an afterthought, which is totally false & cannot be allowed.
  - EO (M) Orders in Case No. 189 & 190 of 2018 – MSEDCL in its revised say dated 14.07.2020 at Para No. 7 & 10, has claimed that Honourable

  
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Ombudsman has rejected these cases. It is a fact that EO has rejected the refund claim in above mentioned cases. But the facts & grounds are totally different. In these representations the claim of refund was for the expenditure done in the year 2009 and 2010. The specified period for refund as per MSEDCL's own circular dated 29.12.2017 is from 20.01.2005 up to 20.05.2008. In the Appellants' cases, the sanction date is 31.08.2005 and the date of connection is 13.10.2005. Hence, the claim of the Appellants is for the works in the specified period. So, this claim cannot be denied. Also, MSEDCL has already refunded meter costs and SLC. Hence, ORC refund cannot be denied.

- H. C. Nagpur Order dated 08.01.2020 in W.P. No.1588/2019 - MSEDCL in its letter dated 14.07.2020 at Para No. 8 has claimed that Appellant's demand should be rejected on the basis of H.C. Nagpur order mentioned above. This is not correct & applicable in this case. The Bombay High Court, Nagpur Bench order is on two issues. First is the limitation which is not applicable in the Appellant's case. Another issue is regarding HT connection. Hon. Bombay High Court has not taken cognizance of the Electricity Act, 2003 (the Act) provisions, Schedule of charges, the Appellate Tribunal for Electricity (ATE) and the Supreme Court decisions in SLC, ORC, Meter Cost refund cases. The order was issued on "User to Pay" principles which is not applicable considering the Supreme Court decision. Also, the order is for HT connection and the Appellant connections are LT connections.
- Also attached is the copy of the order of the same Bombay High Court, Nagpur Bench dated 17.01.2020 with respect to 6 petitions. In this order, the Bombay High Court used the words 'Infrastructure Costs' and MSEDCL itself had accepted the refund in all cases on the basis of Hon. Supreme Court Order. Also, it should be noted that this order is the later order by the same bench.
- The estimate is sanctioned under ORC(P) on 31.08.2005. The DDF concept was not in existence at that time. MSEDCL issued first circular on DDF on

  
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20.05.2008. Hence, to say Bhandare and Kore as DDF is nothing but an afterthought. After erection of the Transformer, Manwadi & Chougule connections were connected on the same transformer. Thereafter, MSEDCL replaced the transformer in 2012 but this replacement and its cost issues are not related to these representations.

- The Appellants never asked for DDF connection. Even today it is not desirous to have any DDF facility. Hence this say is non-existent.

### **Analysis & Ruling**


13. Heard the parties. Perused the documents available on record. The Appellants have filed these two representations separately. I have noted the following issues in these two representations: -

- (a) Only one estimate is prepared for both the works put together.
- (b) The work has been done by both the Appellants together and their contribution to the expenditure incurred by them is not on record.
- (c) The record submitted with this office has only one receipt dated 09.09.2005 of Rs.48715/- in the name of Shri Chandrakant Bhandare only. No other receipts in the name of the other Appellant is submitted.
- (d) The demand for refund of infrastructure cost as it fell from both the representations is joint one and for Rs.4,27,831/-.

14. During the hearing, the undersigned asked the Respondent to submit the following information by 21.07.2020.

- (a) What is the position in field with respect to infrastructure of the Appellants? Whether it is DDF or otherwise?
- (b) How did scheme named ORC(P) came into being and what are the relevant documents in that respect?
- (c) If the work is not DDF, why did it refund meter cost and SLC?

In response to the above queries, the Respondent submitted that the Appellant demanded DDF and therefore, an undertaking to that effect had been submitted by them. The work has been done by them after payment of supervision charges to the Respondent. It further argued

  
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that the work which is done by the consumers by payment of supervision charges is termed as ORC (P) where (P) denotes work to be done privately under the supervision of the Respondent.

It further argued that as per the MSEDCL circular dated 12.10.2017, ORC, meter cost and SLC charges were to be refunded and therefore, the same are refunded with interest through energy bills of the Appellants.

15. 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)].

  
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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.

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

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(Commercial) of MSEDCL, should the directives issued to MSEDCL under this Order not be complied with.” **(Emphasis added)**

(d) The Commission’s order dated 21.08.2007 in Case No. 82 of 2006

(In the matter of compliance by MSEDCL of directions issued under Order dated 17.05.2007.)


Relevant portion of the order is reproduced below: -

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

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

**(Emphasis added)**

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

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

The above interim stay was continued by the Supreme Court vide its order dated 14<sup>th</sup> 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

  
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*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 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:*

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

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


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

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

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

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

  
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direction contained in the Order dated May 17, 2007 to refund the cost of meter, which stipulates as under:

“5. ....The refunding should be made by MSEDCL in a lumpsum and at one go, and not via adjustments in future energy bills.”

**(Emphasis added)**

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

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

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

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


**(Emphasis added)**

(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.

  
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***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.*

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

16. 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 the MSEDCL in Supreme Court in Civil Appeal No. 4305 of 2007.

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

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

(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


  
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it will not be appropriate to direct MSEDCL for refund in view of the pendency of Civil Appeal in the Supreme Court. It also clarified the issue of DDF. It means that no refund can be ordered for the cases falling between 08.9.2006 to 30.04.2007, on account of stay granted by the Hon. Supreme Court.

- (vi) At this stage, in view of above development, MSEDCL issued Circulars on 09.05.2007 for refund of meter cost, and on 20.05.2008 regarding guidelines for releasing new connections and augmentation. In this Circular MSEDCL framed policy for recovery of charges towards development of infrastructure.
- (vii) In the meantime, on 10.11.2016, the Supreme Court dismissed Civil Appeal No. 4305 of 2007 which was filed by MSEDCL against ATE judgment. Therefore, the stay got automatically vacated and the Commission's order in Case No. 70 of 2005 dated 08.09.2006 became operative.
- (viii) The Commission issued letter dated 20.07.2017 to MSEDCL for compliance of Commission's directives regarding implementation of its order dated 17.05.2007 and 21.08.2007 both in Case No. 82 of 2006.
- (ix) On close scrutiny of the legal travel of the case, it is noted that the issue of SLC was taken up at ATE and then in Supreme Court by MSEDCL. The Commission has also accepted the reality that there has been an overlap between ORC and SLC (for Dedicated Distribution Facilities). The Commission, in its order dated 17.05.2007 in Case No. 82 of 2006 has stipulated period of refund for amount collected towards ORC, Cost of Meter and CRA from 08.09.2006 to 30.04.2007. However, this refund could not take place because of specific order of the Commission dated 16.02.2008 in Case No. 56 of 2007 due to Civil Appeal No. 4305 of 2007 pending in Supreme Court and stay thereon.

17. 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. 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.15 (g). Moreover, the Commission, in its order dated 08.12.2014 in

  
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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.


18. 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.

19. 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;"*

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

21. The date of payment being the only criteria identified by the Commission, the Appellant, Shri Chandrakant Bhandare paid the amount on 09.09.2005 towards the total supervision charges for the combined estimate prepared by the Respondent. If the work was supposed to have been done by the Respondent, the Appellants would have paid all charges under ORC on 09.09.2005 only, after which the Respondent would have started the work and completed it. Therefore, the date of 09.09.2005 is reckoned for the purpose of deciding the representations.

22. The connections had been released on 13.10.2005 which is much prior to 08.09.2006 which is the starting date for the period 08.09.2006 to 30.04.2007. Therefore, the works under both the representations do not fall in the period 08.09.2006 to 30.04.2007. The Appellants were at liberty to have agitated the matter before the grievance redressal mechanism at that point of time i.e. in the very beginning of the cause of action which they have not resorted to.

  
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This is notwithstanding the final circular dated 29.12.2017 issued by the Respondent MSEDCL for refund from 20.01.2005 to 20.05.2008. The prayers of the Appellants do not stand scrutiny in the face of Regulations and Orders of the Commission. It is important to note that the Appellants' case is prior to the issue of the Commission's order dated 08.09.2006 in Case No. 70 of 2005 which is the Schedule of Charges Order. The issue of refund of money collected illegally by the Respondent has genesis in this Schedule of Charges Order and its subsequent legal travel. The Representations are time barred in view of the CGRF Regulations 2003 as well as the CGRF Regulations 2006. The Appellants have cited certain Judgments of the High Court. However, I am of the opinion that the ratio of the Judgments is not applicable in the instant representations as the entire case is a result of the Supreme Court Judgment in C.A. No. 4305 of 2007

23. The Appellant through its email dated 19.07.2020 has levelled serious allegations against the Respondent official for manipulating the physical configuration of the distribution network so as to prove its point of having released the connections of the Appellants under DDF. It is further alleged that when this matter was reported to the Executive Engineer, Ichalkaranji, the physical manipulations in network was restored back to its original position. This being the serious allegations which tantamount to tampering the evidence while the representations are being decided, the Chief Engineer, Kolhapur Zone, Kolhapur is hereby directed to inquire into the allegations and suitable action as deemed fit may be taken against the erring officials.

24. The Representation Nos. 45 of 2020 and 46 of 2020 are therefore rejected and disposed of accordingly.

25. The secretariat of this office is directed to send a copy of this order to the Chief Engineer, Kolhapur Zone, Kolhapur.

Sd/  
(Deepak Lad)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

