

**Maharashtra State Electricity Distribution Co. Ltd.'s  
Consumer Grievance Redressal Forum  
Nagpur Zone, Nagpur**

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**Case No. CGRF(NZ)/14/2017**

Applicant : M/s.RSR Mohota Spinning & Weaving Ltd.  
Hinganghat  
Dist.Wardha.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
O&M Circle,MSEDCL, Wardha.

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Applicant's Representative :- Shri Shah,

Respondent by:- 1) Shri Sadawarti,E.E.Wardha circle.

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Quorum Present : 1) Shri Shivajirao S.Patil  
CHAIRMAN

2) Mrs.V.N.Parihar  
Member/Secretary

3) Shri N.V.Bansod,  
Member

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**ORDER PASSED ON 21.03.2017.**

1. The applicant filed present grievance application before this Forum on 30.01.2017 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).

2. Applicant's case in brief is that applicant having contract demand of 2560 KVA (year 2010) and availed power supply at 11 KV express feeder. During the period of claim i.e. since April-2010 to November-2012, applicant had excess contract demand over the SOP limit for 11KV level by 1060 KVA. On this express feeder applicant was only sole consumer drawing power. In case only one connection exits on the

dedicated feeder, applicant should have been charged tariff on the basis of consumption recorded by meters installed at the source of supply [MSEDCL sub-station] and the consumer's end (premises), whichever is higher, without levy of any voltage surcharge 2%.

3. As per MERC's order in case no.71/2009 2% voltage surcharge can not be made applicable if the power connected on dedicated on the express feeder (only one connection on the said feeder). Levy of 2% extra units was applicable after 05-03-2010 only till consumer is connected on non-dedicated feeder ( more than one connection on one feeder). As such 2% voltage surcharge should not have been charged for the period April-2010 upto September-2012.

4. For the first time applicant submitted their request to Superintending Engineer, MSEDCL for refund of 2% voltage surcharge as per letter dated 11-11-2013. Thereafter applicant sent several reminders. Finally applicant filed grievance application IGRC, Wardha on 10-11-2016 vide case no.1076 but IGRC rejected the grievance application. Being aggrieved by said order of IGRC applicant approached to this forum.

5. Applicant's claim refund of 2% voltage surcharge ( alongwith FAC and other charges) which was recovered from the applicant during the period April-2010 to November-2012 so also claimed interest, compensation of Rs.50,000/- and requested to take action against the concerned officers.

6. Non-applicant denied the applicant's case by filing reply dated 13-02-2017. It is not disputed that applicant is consumer of MSEDCL with a sanctioned demand of 2560 KVA (Year 2010) and avail power supply at 11 KV express feeder.

7. It is submitted that in MERC case no.71 of 2009, the MSEDCL submitted

petition on 13-11-2009, under Regulation 14 & 15 of the MERC ( standard of performance of distribution licensee, period for giving supply and determination of compensation) Regulation 2005, seeking approval for levy of voltage surcharge to consumers who are supplied power at voltages lower than that prescribed as per SOP Regulations. In case no.71of 2009 Hon'ble MERC held that MSEDCL should ensure that supply is released in accordance with the voltage specified in the SOP Regulations for release of electricity supply connections. However in certain circumstances as highlighted by MSEDCL and there could be a need to release the supply connection at lower voltage.

8. Hon'ble MERC, considering the distribution losses, including transformation losses on account of supply to consumers at voltage lower than specified in the SOP Regulations. Accordingly, till such time as the detailed technical study is undertaken and the Hon'ble Commission approves MSEDCL's request for interim relief seeking permission to levy voltage surcharge of 2% additional units to be billed, for supply to the consumers at voltage level lower than that specified in the SOP Regulations. It is clarified that this voltage surcharge shall apply from the date of issue of this order, till such time as the Commission issues further order.

9. As per the SOP Regulation the specified voltage level to be adopted for serving various quantum of loads were as under,

Sl	Total Load	Voltage level
1	Above 67.5 HP but up to 1500 kVA	11 kV/22kV
2	i) Above 1500kVA but up to 3000 kVA ii) Above 1500 kVA but up to 5000 kVA	At 22 kV if 33 kV system does not exist in the area 33 kV
3	Above 5000 kVA	EHV

10. The details of applicant/consumer are as under,
- 1) Name of consumer : M/s. RSR Mohota Spinning & Weaving Ltd.
  - 2) Consumer No. : 51001-900004.2
  - 3) Date of connection : 10-04-1953
  - 4) Connected load : 3280 KW upto Oct.,2011  
After reduction in the month of Nov.2011  
i.e.3170 KW existing.
  - 5) Contract demand : 2410 KVA up to Oct.2011  
2310 KVA from Nov.2011
  - 6) Feeder voltage : 11 KV
11. In view of the above, the reason of "Non-availability of prescribed voltage level infrastructure" to release supply at lower level than SOP is applicable from April-2010 to November-2012 to levy 2% voltage surcharge, hence applicant request for refund of voltage surcharge for the past period can not be considered. Therefore application deserves to be dismiss.
12. Forum here the arguments of both sides and perused the record.
13. There is difference of opinion amongst all 3 members of Forum. Therefore final decision is based on majority view of Hon'ble Chairperson and Hon'ble Member/Secretary of the Forum whereas dissenting note of Hon'ble Member(CPO) is noted in the last portion of the judgement and it is part and partial of the judgement.

**Reasoning of majority view of Hon'ble Chairperson and Hon'ble Member/Secretary of the Forum.**

14. In this case applicant claimed refund of 2% voltages surcharge calculated during the billing period from April-2010 to November-2012 on the basis of

clarificatory order passed by Hon'ble MERC in case no.52/2010 dated 09-11-2010. Therefore cause of action arosed on the date of clarificatory order of Hon'ble MERC dated 09-11-2010. **According to Regulation 6.6 of MERC ( CGRF & E.O.) Regulation 2006 "The Forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen"**. As we have already pointed out, cause of action arosed on 09-11-2010 on the date of clarificatory order passed by Hon'ble MERC in case no.52/2010. Therefore it was necessary for applicant to file grievance application before this forum within 2 years from 09-11-2010 i.e. on or before 09-11-2012 but present grievance application is filed before this forum on 30-01-2017 and therefore it is hopelessly barred by limitation. Secondly applicant claimed refund of 2% voltage surcharge for the period April-10 to November-2012. Therefore at the most cause of action arose in November-2012 and hence it was necessary to file grievance application within 2 years i.e. on or before November-2014. But present grievance application is filed on 30-01-2017 and therefore it is hopelessly barred by limitation. It is also admitted fact that applicant even filed grievance application before IGRC vide case no.1076 on 10-11-2016 and that application was also barred by limitation.

14. Therefore present grievance application is barred by limitation according to mandatory provision and the mandate laid down under Regulation 6.6 of the said Regulation and on this only count, grievance application deserves to be dismiss. Needless to say that Law and Regulation help only to those persons who are alert for their rights and never help to the person who sleep over years together and then awake from the sleep after passing number of years and attempt to bring their time barred cases within limitation. It is not permissible at Law. There is about 5 years

delay in filing this case. If such cases are admitted and allowed, it will be contrary to Regulations passed by Hon'ble MERC and whole purposes of framing Regulation 6.6 of the said Regulation will be defeated and frustrated and furthermore it may also be contempt of said Regulation passed by Hon'ble MERC. Therefore solely on the ground of limitation application deserves to be dismiss.

**15. In case no.71/2009 decided on 05-03-2010 Hon'ble MERC on page no.11/12 and 12/12 held as under,**

*“MSEDCL should ensure that supply is released in accordance with the voltages specified in the SOP Regulations for release of electricity supply connections. However, in certain circumstances as highlighted by MSEDCL and reproduced below, there could be a need to release the supply connection at lower voltages:*

- (i) Space constraint for construction of EHV sub-station*
- (ii) Time required for construction of EHV sub-station*
- (iii) Right of way/Way Leave/clearance problems*
- (iv) Non-availability of prescribed voltage level infrastructure*

*It is clarified that even in the above instances, the electricity supply may be released at lower voltages only under exceptional circumstances, and that too only as an interim solution and the distribution licensee has to ensure that the supply is given at the specified voltage at the earliest.*

*It is further clarified that the cost of EHV sub-station and the consumer's inability to afford the EHV sub-station can not be a ground for releasing supply at lower voltages, as the SOP Regulations do not make any allowances in this regard and more consumers may claim non-affordability as a ground for release of supply at*

lower voltages.

Further, the Commission is presently in the process of amending the SOP Regulations and one of the amendments being proposed is in the context of the specified voltages depending on the different loads required to be sanctioned. Hence, the applicability of the Voltage Surcharge would depend on the supply voltages specified in the final notified amended SOP Regulations.

At the same time, it can not be denied that the distribution losses, including transformation losses, will increase on account of supply to consumers at voltages lower than that specified in the SOP Regulations. Accordingly, till such time as the detailed technical study is undertaken and the Commission approves the levy of Voltages Surcharges based on detailed deliberations in this regards, the Commission approves MSEDCL's request for interim relief seeking permission to levy voltage surcharge 2% additional units to be billed, for supply to the consumers at voltage lower than that specified in the SOP Regulations. It is clarified that this voltage surcharge shall apply from the date of issue of this order, till such time as the Commission issues further order."

16. As per the SOP Regulation the specified voltage level to be adopted for serving various quantum of loads were as under,

Sl	Total Load	Voltage level
1	Above 67.5 HP but up to 1500 kVA	11 kV/22kV
2	i) Above 1500kVA but up to 3000 kVA ii) Above 1500 kVA but up to 5000 kVA	At 22 kV if 33 kV system does not exist in the area 33 kV
3	Above 5000 kVA	EHV

*The details of applicant/consumer are as under,*

- 1) *Name of consumer : M/s. RSR Mohota Spinning & Weaving Ltd.*
- 2) *Consumer No. : 51001-900004.2*
- 3) *Date of connection : 10-04-1953*
- 4) *Connected load : 3280 KW upto Oct.,2011*  
*After reduction in the month of Nov.2011*  
*i.e.3170 KW existing.*
- 5) *Contract demand : 2410 KVA up to Oct.2011*  
*2310 KVA from Nov.2011*
- 6) *Feeder voltage : 11 KV*

*In view of the above, the reason of "Non-availability of prescribed voltage level infrastructure" to release supply at lower level than SOP is applicable from April-2010 to November-2012 to levy 2% voltage surcharge, hence applicant request for refund of voltage surcharge for the past period can not be considered. Therefore the request for refund of Voltage Surcharge for the past period of M/S. RSR Mohota Spinning & Weaving Ltd. Hinganghat can not be considered.*

**17. In case no.52/2010 decided on 09-11-2010 Hon'ble MERC on page no.5/11 & 6/11 held as under,**

*" The petitioner further submitted that from the prayers of MSEDCL in case No.71 of 2009 and the Order of the Commission, it is very clear that in case of express feeder or dedicated feeder having one connection, the meter reading at the source of supply (EHV Level) is to be taken, and the billing will be on the basis of consumptions, whichever is higher. In case of Express Feeder, the meter readings taken at the source of supply (EHV level) then the distribution and transformation*

*losses are accounted in the meter reading.*

*Hence, in such cases, levy of Voltage Surcharge will result in double levy of Surcharge, which is illegal and against the Order of the Commission.”*

18. In the case in hand there is nothing on record to show that applicant who is consumer on express feeder and dedicated feeder having one connection filed any application to MSEDCL for installation of the meter with request to have billing on the basis on consumption whichever is higher. As per the directives of Hon'ble MERC, in case of express feeder, meter reading taking at the source of supply (EHV level) then the distribution and transformation losses are counted in meter reading. In this case there was no application by applicant for installation of separate meter. On this count also there is no possibility of levy of voltage surcharge can result is double levy in surcharge and therefore this recovery of the surcharge is not against order of the Commission. Therefore we have also to consider this important aspects of the matter that connected load of the applicant was 3280 KW up to October-2011 and after reduction in the month of November-2011 i.e.3170 KW existing likewise contract demand was 2411 kVA upto October-2011 and 2310 kVA from November-2011. Secondly feeder voltage was 11KV. We have already pointed out that as per SOP Regulation this specified voltage level to be adopted for service various quantum of load. In such circumstances, it was necessary for applicant to file specific application before MSEDCL for installation of separate meter to take meter reading at the source of supply (EHV level) is to be taken. But applicant failed to do so and therefore now he is not entitle to claim refund of 2% voltage surcharge.

19. In view of the above, the reason of “Non-availability of prescribed voltage level

infrastructure” to release supply at lower level than SOP is applicable from April-2010 to November-2012 to levy 2% voltage surcharge, hence applicant’s request for refund of voltage surcharge for the past period can not be considered.

20. For these reasons we hold that grievance application deserves to be dismissed.

21. **Dissenting note of Hon’ble Member(CPO) is as under;**

“1. It is not out of context to place Apex Court’s view on electricity Boards (MSEDCL) for guidance of non-applicant officers & Engineers.

2. “SCI 2005 Ltd 1077 – P.S.E.B Ltd. V/s.Zorasing – State Electricity Board – Constitution of India – Article 12 & 14-

MSEDCL – A state within Article 12 of the constitution must Act fairly and bonafide. It can not act for a purpose which is wholly unauthorise not germane for achieving the object it professes whether under a statute or otherwise.

The electricity Board is a statutory authority and A state, it is expected to discharge its statutory function within a reasonable time having regard to the fact that undertakes an important public utility service.”

Its inaction besides being governed by the electricity (supply) Act & Regulations framed there under, it must also fulfill the tests of reasonableness as envisioned under the article 14 of the constitution of India.”

3. Applicant filed present grievance application and prayed for refund of 2% levy of voltage surcharge levied on his connection which is on express feeder illegally for the period April-2010 to November-2012 with interest as per section 62(6) of Electricity Act 2003 and compensation u/s.8.2(c) of MERC (CGRF & EO) Regulation 2006 for loss of man power, harassment and mental agony and other expenses upto Rs.50000/-.

4. Applicant contended in his application that as per section 45 of Electricity Act 2003 that prices to be charged by a distribution licensee for supply of electricity shall be accordance with such tariff fixed from time to time within the provision of Act and Regulation made in this behalf by concerned state commission. As per applicant, MERC has not authorize non-applicant to charge such excess units consumption exceeding the tariff determined by commission (MERC) and further said, MERC did not permit non-applicant by any specific order to levy 2% surcharge on express/dedicated feeder from consumer after March-2010.

5. Applicant said that MERC's order dated 05-03-2010 in case no.71/2009 and clarificatory order dated 09-11-2010 in case no.52/2010 i.e. voltage surcharge was permitted by MERC after 05-03-2010 to the consumers connected on non-dedicated feeder (2 or more consumers on single feeder) having non SOP load requirement say CD > 1500 KVA on 11KVA feeder and applicant had excess contract demand over SOP limit for 11 KV level by 1060 KVA only. Applicant sent letter no.2243 dated 11-11-2013 and further cross correspondence continued till receipt of rejection letter sent by Chief Engineer (Commercial) to Superintending Engineer, MSEDCL, Wardha dated 1/6/2015 i.e letters of dated 11/11/2013, 27/1/2014, 25/6/2014, 9/7/2014, 22/7/2014, 19/9/2014 & 1/6/2015 and then to applicant and applicant filed grievance before IGRC on 10-11-2016 and after hearing, IGRC rejected the application of applicant vide order dated 06-01-2017. Hence the applicant filed the grievance before CGRF Nagpur and contention before IGRC and CGRF are almost same and identical.

6. Non-applicant in his parawise reply admitted para no.4 i.e. contention of the applicant regarding MERC clarificatory order dated 09-11-2010 in case no.52/2010.

In reply to para no.5 non-applicant admitted the applicant is his consumer sanction demand of 2560 KVA (Year 2010) and availed power supply at 11 KVA express feeder).

7. Non-applicant relied on order of MERC in case no.71/2009, on their own petition on 13-11-2009 seeking approval for levy of voltage surcharge to consumer was supplied power at voltages lower than prescribed as per SOP Regulations. Non-applicant further said in certain circumstances highlighted by non-applicant and reproduced in reply to para 5 i.e Non-applicant said reason of non availability of prescribed voltage level of infrastructure to release supply at lower level than SOP, is applicable from April-2010 to November-2012 to levy 2% voltage surcharge and rejected the request of applicant for refund of 2% levy charges. Non-applicant solely relied on the guidelines issued by Chief Engineer (Commercial) in letter no.PR/III/Tarff/24743 dated 01-06-2015.

8. Applicant in re-joinder reply to the submission of non-applicant categorically stated that non-applicant submitted reply to para 4 to 8 of the application only and excluded reply on point no.1,2,3 (especially important grievance application). I am of the opinion that Non-applicant has not controverted the averments intentionally because the facts stated in para no.1,2,3 of the applications are acceptable to the consumer.

9. Hon'ble Supreme Court of India in case of Smt. Nashim Bano appellant V/s. State of Uttar Pradesh and other report DIR 1993 Supreme Court 2593. Hon'ble Appex Court opined, averment not controverted by Respondent and Hon'ble High Court shall proceed on basis that averment admitted by the Respondent. On point no.4 of the application, non-applicant has not disputed the contention of applicant it

means that MSEDCL principally agreed claim for refund of 2% voltage surcharge.

10. The points for my consideration are;

- 1) Whether non-applicant is entitle to recover 2% voltage surcharge from the applicant having power supply on express feeder (having single supply consumer) ? No
- 2) Whether applicant is entitle for refund of 2% voltage surcharge for period April-2010 to November-2012 with interest as per section 62(6) of the Electricity Act 2003? Yes
- 3) Whether applicant is entitle for compensation under Regulation 8.2(c) of MERC (CGRF & EO) Regulation 2006 for harassment and mental agony loss of upto Rs.50,000/-? Yes
- 4) Whether the present grievance application is filed within the limitation?

**Point No.1 & 2:- Non-applicant** in reply to the application of **applicant in para 5** **has admitted that applicant consumer** with sanctioned demand of 2560 KVA (Year 2010) availed power supply at 11 KVA express feeder. To resolve the controversy between contention of the applicant and non-applicant it is mentioned here below the orders of MERC as under –

**Case no.71 of 2009 order dated 05-03-2010 – para 17**

Applicant has availed the power supply on express feeder as single consumer on 11 KVA line and whole contention is whether the 2% voltage surcharge i.e. additional unit is applicable to the express feeder consumers. As per non-applicant they relied on so called later of Chief Engineer(Commercial) dated 01-06-2015 and rejected request of the applicant which is absolutely illegal in the light of the clarificatory order of MERC and contention in petition of non-applicant.

MERC case no.52 of 2010 in the matter of petition filed by M/s R.L.Steels Ltd. about the Commissions clarificatory direction on its order dated 05-03-2010 in case no.71 of 2009, regarding levy of voltage surcharge and its interpretation & implementation by MSEDCL. MERC in clarificatory order dated 09-11-2010. – Case No.52 of 2010 on page no.4 &5 – in prayer para 4, in the petition MSEDCL in case no.71 of 2009 is as under;

**Para 4:-** *It was further prayed that the Hon'ble Commission may be pleased to grant by way of Interim Relief, to continue levy of 2% of monthly consumption of energy consumed by the consumer in terms of extra units to the consumers whom the energy is supplied at lower voltage than prescribed voltage till the approval of 15% voltage surcharge.*

*The above referred Interim Relief may be continued for the consumers connected on Non Express Feeders (More than one connection on the said feeder).*

*It is further prayed by way of Interim Relief to allow to continue to charge on the basis of consumption recorded by the meters installed at the source of supply (EHV level) and at the consumer's end (Premises) which ever is higher, in case only one connection is on the said dedicated feeder."*

11. On perusal of above prayer it is clear beyond doubt that 2% voltage surcharge to be charged on consumers connected on non express feeder (more than one connection on the said feeder).

12. MSEDCL's further prayer, supports the contention of applicant that in his case he should be charged on the basis of consumption recorded by the meters installed at source of supply (EHV level) and at the consumer's end (premises) whichever is higher in case only one connection is on the said dedicated feeder and hence

charging of 2% levy of voltage surcharge is prima facie appears to be illegal, arbitrary by putting blind reliance on circular of Chief Engineer (Commercial) dated 1/6/2015 against their own prayer clause which was not approved by MERC.

13. Secondly MSEDCL has not taken any efforts to act & implement the clarificatory order of MERC dated 9/11/2010 in case no.52 of 2010.

14. Further illegalities of MSEDCL are proved beyond doubt by further orders of MERC as under,

**Para-11:**

*“ In view of the above, the commission clarifies that under its Order dated March 5, 2010 the levy of 2 % extra units cannot be made if the power supply is connected on dedicated feeder (only one connection on the said feeder.) levy of 2% extra units on the monthly energy consumed is applicable if the consumer is connected on non-dedicated feeder (more than one connection on the said feeder). The commission in its Interim relief in the Order dated March 5, 2010 in case No. 71 of 2009 has clarified that the levy of 2 % additional Voltage surcharge to the consumers connected on Non Express Feeders (more than one connection on the said feeder) shall be applicable from the date of issue of order, i.e. March 5, 2010. The relevant extract of the Operative part of Order is reproduced below:*

*“It is clarified that this Voltage Surcharge Shall apply from the date of issue of this Order, till such time as the Commission issues further orders.”*

*In this regard it may be noted that Maharashtra Rajya Veej Grahak Sanghatana had in the aforesaid Case No. 71 of 2009 had raised the following issue – “ The Commission has never approved any levy on retrospective basis. Accordingly, MSEDCL’s prayers for retrospective application of Voltage Surcharge should not be considered.” The Commission at para 17 of the aforesaid order held as follows-*

*“It is clarified that this Voltage Surcharge shall apply from the date of issue of this order, till such time as the commission issues further orders.”*

In View of the above, the Commission clarifies that levy of additional 2 % Voltage Surcharge on consumers on Non Express feeder has not been permitted for any period to March 5, 2010 thus levy with retrospective effect is not permissible.”

15. In MERC case No.31/2011 order dated 02-06-2011 commission’s view as under,

“c) The commission in its Order dated September 12, 2010 in Case No. 111 of 2009 also clarified in 5.3(d) regarding levy of surcharge which is reproduced below:

The commission approves MSEDCL’s request for permission to levy Voltage Surcharge of 2% additional units to be billed, for supply to the consumers at voltages lower than that specified in the SoP Regulations. Further, the commission has accepted MSEDCL’s request in the above-said petition, and it is hereby clarified that the above Interim Relief is applicable for the consumers connected on Non Express Feeders (more than one connection on the said Feeder), and “in case only one connection exists on the said dedicated Feeder, the tariffs should be charged on the basis of consumption recorded by the meters installed at the source of supply (EHV level) and at the consumer’s end (premises), whichever is higher, without any levy of voltage surcharge.”

Above ruling of the commission has already clarified that. Levy of 2% voltage surcharge is not applicable for consumers connected on Express Feeder.

d) The commission opined that the responsibility of installing meters of same class of accuracy at both the substation and consumer ends rests with MSEDCL. The petitioner cannot be held responsible for the same and as meters have been placed at the both the ends, MSEDCL should not find any problem in billing the higher of the either meter readings.

e) As the petitioner is fed from the Express feeder, the commission directs MSEDCL to refund amount collected from the petitioner against the voltage surcharge from April 2010 to October 2010 within 30 days from the issue of this Order. The Respondent shall report compliance to the commission within seven days after making the refund as directed.

f) In View of the above, at this stage no order is required to be made imposing penalty as the Respondent has been directed to make the necessary refund. However, if the Respondent does not comply with this order then the petitioner will be

at liberty to file an appropriate application seeking penal action, if required. “

16. MERC case no.151/2013 order dated 12-03-2014 MERC has made following observations from direction par 8 & para 9.

“In view of above submissions made by both the parties, the commission observed that Opponent MSEDCL has assured to refund the amount as mentioned in CGRF order and hence, the complainant is not pressing for penal action for non-compliance of the CGRF Order. The grievance for which the complainant has approached the Commission has been resolved. Hence, the present complaint needs to be disposed of. However, opponent MSEDCL is hereby directed to ensure and report compliance of CGRF, Kalyan Zone Order dated 29 July, 2013 to the Commission.”

17. In view of the above referred prayer clause 4 of MSEDCL in case no.71/2009 order of MERC dated 05-03-2010 and clarificatory order dated 09-11-2010 and further orders in different cases, it is clear that the contention of MERC before allowing non-applicant to recover 2% voltage surcharge is on the consumer those who are not on dedicated supply or express feeder having more than one consumer supply. It is admitted in reply by the non-applicant that applicant supply is on express feeder (single consumer). Hence non-applicant was not at all entitle to levy 2% voltage surcharge on the applicant and the action of non-applicant is arbitrary, illegal as well as without application of mind and the basic contention in prayer 4 in their own petition. Therefore applicant is entitle for refund of 2% levied amount of voltage surcharge for period April-2010 to November-2012 with interest as stipulated in section 62(6) of the Electricity Act 2003 with interest equal to Bank rate or to adjust the refund amount in subsequent billing cycle from date of order.

**Point No.3:-** Applicant claimed Rs.50,000/- compensation for loss suffer by the consumer, say for the harassment, mental agony, loss man hours, travelling

expenses upto Rs.50,000/-.

Seeing the bulky correspondence by the applicant and delay of long 2 years to inform the applicant to reject his claim of refund of 2% levy charges and further to approach to IGRC and then to CGRF Nagpur. I am of the opinion that to meet the end of justice, it will proper to grant compensation of Rs.25000/- to the applicant.

**Point No.4:-** Present claim is for refund of illegal levy of 2% extra unit, ( voltage surcharge from April-2010 to Nov-2012) applicant stated that non-applicant installed the check meter at substation on 10-09-2012, and thereafter discontinued 2% additional surcharge bill recover for normal consumption without any additional units. As per MERC order in case no.71/2009 non-applicant raised various contingencies and in the same order it was directed by the MERC that it is the responsibility of non-applicant to install meters of same class of accuracy at both substation & consumer ends rests with MSEDCL. Hence the responsibility of installing / maintaining energy meter at MSEDCL / EHV substation rests with MSEDCL only irrespective of dedicated or non dedicated feeder.

18. There is a cross correspondence mentioned below which is admitted by the non-applicant.

- i) Our letter no.2243 dt.11.11.2013
- ii) SE MSEDCL's letter no.478 dt.27-01-2014, 25-06-2014
- iii) Our letter to SE Wardha no.919 dt.09-07-2014
- iv) Letter of SE MSEDCL no.5148 dt.19-09-2014
- v) Our letter no.5148 dt.22.11.2014
- vi) Letter from CE Comm. To SE Wardha dt.01-06-2015

19. During hearing issue cooked up regarding the point of limitation as per

Regulation 6.6 of MERC and applicant's representative categorically argued that the cause of action first arrived from the month of April-2010 when non-applicant started recovery 2% voltage surcharge illegally and it continued till November-2012 when non-applicant installed meter at the substation. Hence cause of action is continues since April-2010 and further continued by the positive cross correspondence till rejection of the letter of the applicant dated 11-11-2013 till 01-06-2015 & grievance is filed before IGRC on 10-11-2016 & Regulation dated 6/1/2017 & present petition on 16/1/2017. It is always for consumers to wait till they get final reply from MSEDCL and then to file grievance to avoid unnecessary conflict with service provider and without rejection of the consumer grievance, it can not be a consumer dispute as per CPA 1986 as well as The Electricity Act 2003 & MERC (CGRF & EO) Regulation 2006.

Supreme Court of India – state of Harayana V/s. Chandramani & others CPR 2003(3) 45 NCRDC AIR 1996 SC 1623 laid down the ratio that by keeping mum over statutory period & then rejecting claim on ground of limitation would constitute deficiency in service. Further as per 6.6 of the MERC (CGRF & EO) Regulation 2006. The limitation of cause of action further continued from 01-06-2015 onwards till 2 years.

20. Applicant filed the application before IGRC on 17-11-2016 and rejection decision was conveyed to him on 06-01-2017.

The High Court of Bombay vide order dated 19-01-2012 in writ petition no.9455/2011(M/s.Hindusthan Petroleum Ltd. V/s MSEDCL and others has laid down the following ratio.

“High Court observed that terms MERC (CGRF &EO) Regulatory 2006. After

referring to several provisions of MERC (CGRF & EO) Regulation 2006. The High Court concluded that the consumer can not directly approach the forum in timely manner. High Court further concluded that the cause of action submitting the grievance arises when IGRC does not redress the grievance.” Hence application is not bar by limitation.

21. The decision of the High Court is binding on forum in Maharashtra and it is applicable to this case also and request of the applicant was finally rejected by non-applicant on 01-06-2015 as well as IGRC rejected the grievance vide their order dated 06-01-2017 and the applicant filed the grievance before the forum on 16-01-2017. Hence the application filed by applicant is within limitation as cause of action has taken places on various dates as mentioned earlier & it is continuous.

22. It will not be out of context to mentioned that Hon'ble Ombudsman(Electricity) Nagpur also has relied on the judgement of above said writ petition filed in case of Shilpa Steel V/s NUC, MSEDCL and vice president SNDL Nagpur. They allowed this ratio of the Hon'ble High Court.

On the aspect of cause of action – wrong tariff – the Hon'ble Ombudsman (Electricity) Nagpur – in representation no.45/2016 order dated 10/10/2006 in case of Ashok Kishanchand Virwani V/s. S.E.,MSEDCL.

23. In this respect, the forum observed that cause of action arose on 1/7/2015.

It may be noted that cause of action arose for 1<sup>st</sup> time when wrong tariff was applied. Thereafter cause of action arose every month when the electricity bills were issued. The cause of action lastly arose on 1/7/2015 when appellant applied for refund of the difference between commercial & residential tariff. “

24. In reply non-applicant is absolutely silent on the point of limitation and hence I am of firm view that it is not proper for the forum to create new issue other than contention of the applicant and over silence of non-applicant.

25. It is observed that non-applicant is absolutely mum over basic contention in, MERC order dated 05-03-2010 in case no.71/2009 & its correct interpretation prayer clause (4) of their petition and order dated 09-11-2010 in case no.52/2010. I am of view that it is deliberate attempt of the non-applicant to recover the amount illegally from pocket of the consumer.

26. Hence I direct non-applicant to refund the amount of 2% voltage surcharge from April-2010 to November-2012 i.e. approximately Rs.50,90,704/- from the date of its receipt till its payment alongwith interest at bank rate as per section 62(6) of the Electricity Act 2003 or adjust the same in the subsequent bill and further directed to pay compensation of Rs.25000/- for harassment mental agony, cost of litigation as well as man hours loss, for travelling etc. Rs.25000/- to meet the end of justice as per Regulation 8.2(c) of MERC (CGRF & EO) Regulation 2006.”

22. **Concluding opinion of majority view of Hon’ble Chairperson and Hon’ble Member/ Secretary of the Forum,**

“For these reasons we hold that there is about 5 years delay for filing present grievance application therefore it is barred by limitation according to mandatory provision laid down in Regulation 6.6 of the said Regulation. Furthermore the reason of “ Non-availability of prescribed voltage level infrastructure” to release supply at lower level that SOP is applicable from April-2010 to November-2012 to levy 2% voltage surcharge, hence applicant request for refund of voltage surcharge for time barred past period can not be considered.” Grievance application deserves to be

dismiss.

23. Hence we proceed to pass the following order.

**ORDER**

Grievance application is dismissed.

Sd/-  
(N.V.Bansod)  
**MEMBER**

sd/-  
(Mrs.V.N.Parihar)  
**MEMBER/SECRETARY**

sd/-  
(Shivajirao S. Patil),  
**CHAIRMAN**