

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

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**Case No. CGRF(NZ)/42/2017**

Applicant : M/s. Sandeep Dwellers Pvt.Ltd.  
11-12/3, At.Wanjara.  
3-C,Gulmohar So. Temple Rd. Civil line  
Nagpur-1.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
(DF), NUC, ,MSEDCL,  
Nagpur.

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Applicant :- In person

Respondent by 1) Shri Vairagade, E.E.Nodal, NUC,MSEDCL, Nagpur  
2) Shri Dahashastra, SNDL

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Quorum Present : 1) Shri Shivajirao S. Patil,  
Chairman.  
  
2) Shri N.V.Bansod  
Member  
  
3) Mrs. V.N.Parihar,  
Member, Secretary

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**ORDER PASSED 19.04.2017.**

1. The Applicant filed present grievance application before this Forum dated 16.03.2017 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 he filed the application before IGRC on 25-02-2017 alleging that applicant had applied to SNDL for new service connection at their project in Wanjara, Nagpur. SNDL after necessary inspection orally conveyed that the

connection can not be given from the existing infrastructure and that the distance from existing infrastructure to the place of connection is approximately 10 spans away and that SNDL don't have sufficient budget provisions to carry out these works. Applicant was informed that they need to carry out the said work through their contractor at his own cost. As applicant was urgent needs supply power, applicant gave consent forcibly and accordingly paid supervision charges of 1.3% which comes to Rs.3070 against the value of the estimate of Rs.2,36,227.13. On completion of the work as per the estimate, supply was released to the applicant on 21-02-2013. DDF infrastructure is exclusively for the consumer who have created it. It comes to notice of the applicant that the infrastructure is being misused by SNDL by tapping this line for giving power supply to few other consumers. Applicant informed to SNDL for the first time on 30-01-2017 to stop this practice. SNDL vide their letter dated 02-02-2014 No.175 accepted that they had release a new service connection from DDF net work as per condition of supply MSEDCL 2010 refer condition no.4 sub clause 4.2. As per DDF definition service line can not be part of DDF. Hence the question arises as to how SNDL have approved and sanctioned the same without any statutory legal provision. Therefore applicant claim before IGRC that direction should be given to SNDL to refund amount of Rs.2,36,227.13 alongwith interest.

3. Being aggrieved order passed by learned IGRC in case No.110/2017 dated 08-03-2017 applicant approached to this forum by filing present grievance application and claimed refund of amount of Rs.2,36,227.13 alongwith interest.

4. Non applicant denied the applicant's case by filling reply dated 06.04.2017. It is submitted that it is necessary to confirm the meaning of DDF facility. As per

Regulation 2(g) of MERC's Supply Code Regulations of 2005 and MERC order dated 16-02-2008 in case No.56/2007 of 2007. DDF facility 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 that extension or tapping of the existing line (LT or HT) can not be treated as DDF facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as a facility solely or clearly dedicated for giving supply. Thus, in the distribution system, dedicated distribution facility means a separate distribution feeder or line emanating from a transformer or a sub-station or a switching station laid exclusive for giving supply to a consumer or a group of consumers and no other consumer is fed from such infrastructure.

5. From the definition of DDF, it is clear that the infrastructure of LT line by tapping the existing LT line erected by the applicant is non DDF and hence other consumers can be connected on such infrastructure and hence, the action of connecting other consumers on this line is not illegal. Even though the company has sanctioned the estimate under DDF it does not mean the infrastructure comes under DDF. The definition of DDF defined by MERC needs to be accepted.

6. Now as regards refund of expenditure of Rs.2,36,227/- incurred by the applicant for erection of the infrastructure, it is necessary to verify whether the Company has shown, in writing an inability to erect the required infrastructure for giving supply to the applicant and clearly gave any written letter to the applicant to carry out the required

infrastructure work at his own cost. As a matter of fact, there is no such document on record.

7. On the contrary applicant admitted in his grievance application that he was already aware that as per MERC's Supply Code Regulations 2005, the work has to be carried out by Distribution Licensee but due to urgency applicant had given consent, rather he was forced to give so, for erection of infrastructure at his own cost. It is well known fact that no one can be forced to give any consent. Applicant should have approached appropriate authority to redress his grievance in light of MERC's SOP Regulation 2005 according to which, he could have get connection within 3 months, without paying any cost of infrastructure. Now applicant is not entitled to claim refund of infrastructure amount. Application deserves to be dismiss.

8. Forum heard arguments of both the side and perused record.

9. It is an admitted fact that applicant gave written consent, paid supervision charges 1.3% amounting to Rs.2,36,227.13 p.s. On completion of the work supply was released on 21-02-2013. Therefore so far as claim of refund of infrastructure cost is concerned cause of action arose on 21-02-2013. **According to Regulation 6.6 of the said Regulation "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"**. Cause of action arose on 21-02-2013. Therefore it was necessary for the applicant to file grievance application for refund of infrastructure within 2 years from the date of cause of action arose on or before 21-02-2015 But present grievance application is filed before this forum on 16-03-2017 therefore it is hopelessly barred by limitation. On this sole ground of limitation application deserves to be dismiss.

10. In application to IGRC para No.3 applicant submitted that this infrastructure is

misused by SNDL by tapping this line for giving power supply to few other consumers. It is noteworthy that on the entire record, applicant had not mentioned, on which particular date, supply was given to few others consumers. Connection of the applicant was released on 21-02-2013 and thereafter even if supply is given to other consumers in 2013 or 2014. Even then in that way also another cause of action will arise in 2013 or 2014. Applicant has not given the date of giving the supply to others and alleged dates are intentionally suppressed to bring time barred case, within limitation, on the bogus ground that for the first time applicant informed the case to SNDL on 30-01-2017. Needless to say that cause of action can not arise on the date of first letter to SNDL or first complaint to SNDL but cause of action arose on the date on which alleged illegal Act, if any, has been committed. In this case applicant has not given the dates on which supply is alleged to have given to few other consumers. Furthermore names of those other consumers and their consumer Nos. are also not given. Therefore application is baseless and deserves to be dismissed. Date of first complaint can not be the date of cause of action.

11. It is noteworthy that in the grievance before IGRC dated 25-02-2017 applicant did not complain that there is voltage problem to the applicant due to the reason of given supply to others and this theory of low voltage is attempted to be developed by the applicant afresh for the first time before this forum and it is not permissible at Law.

12. **In case No.56/2007 Hon'ble MERC order dated 16-02-2008 on page no.5/5 held that,**

*“(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) can not 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 can not be considered as a facility solely or clearly dedicated for giving supply. Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers. The transformer or the substation can also form a part of Dedicated Distribution Facility if it is provided exclusively for giving supply to these consumers.”*

13. In application before IGRC applicant simply claimed refund of infrastructure cost of Rs.2,36,227.13 p.s. and therefore same is grievance before this forum and not more than that. In short it is a matter of refund of infrastructure cost.

1. **Hon’ble Electricity Ombudsman Mumbai passed order in case no. 36 of 2012 passed on 4.7.2012.** For the reference, the para from the order is reproduced below:

*” Both parties conceded that the Commission’s order dated <sup>1st</sup> September, 2010, relating to refund of excess amounts, other than approved Schedule of Charges, levied upon consumers, during the period from 9<sup>th</sup> September, 2006 to 20<sup>th</sup> May, 2008, has not been challenged before any court of law and therefore, it remains in force and needs to be complied, without any doubt, irrespective of whether Appellant’s complaint, comes within the jurisdiction of the Forum or not. It is also undisputed that the Respondent directed the Appellant*

*to carry out the work of HT line, DTC, LT line and service connection at his own cost, which is clearly over and above the Schedule of Charges approved by the Commission, during the said period, from 9<sup>th</sup> September, 2006 to 20<sup>th</sup> May, 2008.”*

2. *The above para mentions Hon. Commission’s order 1<sup>st</sup> September, 2010, therefore it becomes prudent to refer this order. This is an order passed in case no. 93 of 2008 in the matter of petition of Akhil Bhartiya Grahak Panchayat, Latur. The above referred matter is related to one of its prayer as “5. ORC amount, meter cost and other charges collected or DDF amount, earlier to 20.05.2008 till 08.09.2006, may be refunded by way of energy bills as per the procedure adopted for cases following circular No. 22197, dated 20.05.2008.” On this prayer, Hon. Commission expressed its view in para 19 (iii) of above order as follows:*

*“Regarding, 10,740 number of cases where MSEDCL has recovered charges other than approved Schedule of Charges; the Commission is of the view that these are only indicative cases found out on the sample checking basis. MSEDCL either has to scrutinise details of all the consumers released during the period of 9th September 2006 to 20th May 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.”***

3. *In above directives by the commission it is clearly mentioned that refund will not be applicable to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007. Now, at this stage it is important to check what is Civil Appeal no. 20340 of 2007 pending with Hon. Supreme Court. It is a Civil Appeal filed by MSEDCL against the Hon. Appellate Tribunal for Electricity (APTEL) in appeal no. 22 of 2007 challenging the Hon. Commission's order dtd. 8.9.2006. This was dismissed by APTEL by the order dtd 14.5.2007.*
4. *After referring the appeal no. 22 of 2007 filed before Hon. APTEL it becomes clear what are the issues challenged by MSEDCL against Hon. Commission's order dtd. 8.9.2006. This point is reproduced below from above order dtd. 14.5.2007:*

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

*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.”*

5. *Against above order the MSEDCL filed Civil Appeal no. 20340 of 2007, before the Hon'ble Supreme Court. The honorable Supreme Court made interim order on 31<sup>st</sup> August, 2007, that refund is stayed till the matter comes up for hearing on the date fixed i.e. 14<sup>th</sup> September, 2007, and on that day it passed the following order:*

**“ORDER**

*Learned counsel for the appellant is permitted to implead Maharashtra Rajya Beej Grahak Sanghatana as Respondent n. 2 in the appeal*

*Permission to file additional documents is granted.*

*Delay condoned.*

*Until further orders; interim order passed by this court shall continue to operate.”*

6. *The above points clarified that the Hon. Commission ordered to MSEDCL to refund those excess collected charges between the period 9.9.2006 to 20.5.2008 which are not stayed by the Hon. Supreme Court. The Hon. Supreme Court stayed the order passed by Hon. APTEL on dtd. 14.5.2007. In this order the Hon. APTEL dismissed the MSEDCL's appeal that Service Line Charges which are the normative expenditure to be incurred on the infrastructure which are required to be created for bringing the distribution network closer to the Consumer premises.*
7. ***In other words the refund of infrastructure cost from the order date which under challenge i.e 8.9.2006 is stayed by the Hon. Supreme Court and the issue is sub-judised before Hon. Supreme Court.***
8. *The above stand is also supported by the Hon. Electricity Ombudsman in his order in case no. 99 of 2010 in para 11 and 12.*

*“11. It is true that the Commission has issued directions for refund of amounts as elaborated above. Subsequently, vide order, dated 16<sup>th</sup> February, 2008 in Case No. 56 of 2007, the Commission, while considering the petition of Maharashtra Rajya Veej Grahak Sanghatna, made following observations:*

*“(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 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.”*

*12. Collective reading of the above orders, make it evident that the Commission felt that there has been an overlap between ORC and SLC (for dedicated distribution facility) though different nomenclatures may have been used for recovery of charges. In view of the admittedly overlapping nature of the charges like ORC with service line charges, which is sub judice before the Hon’ble Supreme Court, the Commission declined to order refund as stipulated in its order, dated*

*17<sup>th</sup> May, 2007, referred to above. It must be understood that the issue of refund of ORC and SLC, etc. as referred to in the above orders, is still pending before the Court. Therefore, the Appellant can not press its prayer for refunding the amount at this stage.”*

*12. The above point also strengthened by the stand taken by Hon. Commission in the order passed on dtd. 18.2.2011 for case no. 100 of 2010 and 101 of 2010 as follows:*

*“Having heard the parties, and after considering the materials placed on record, the Commission is of the view that the present matter is covered by its earlier Order dated 1st September 2010 in Case No. 93 of 2008. Despite the said Order, the Petitioner has chosen to move the Commission asking it to interpret the Hon<sup>’</sup>ble Supreme Court<sup>’</sup>s Order dated 31st August 2007 granting stay on refund. In the Order dated 1st September 2010 Case No. 93 of 2008, the Commission categorically held as follows :- “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.” So obviously therefore the direction to MSEDCL to ask consumers to contact MSEDCL if charges levied other than approved Schedule of Charges during the period of 9th September 2006 to 20th May 2008 or publicly appeal if such charges are levied on them during above period, do not apply to the charges of which refund is stayed by Hon. Supreme Court in Civil Appeal No. 20340 of 2007. Similarly, the Petition filed by Maharashtra Rajya Veej Grahak Sanghatana was dismissed by the Commission<sup>’</sup>s Order dated 29th November 2010 in Case No. 24 of 2007 in view of continuation of the Hon<sup>’</sup>ble Supreme Court<sup>’</sup>s abovesaid stay order.”*

*13. Following orders of Hon High Court also support that matter of refund of infrastructure cost is sub-judice with Hon. Apex Court:*

“IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR WRIT PETITION NBO.988 OF 2011, 7th July, 2011.

*“ In the light of the above, the impugned order dated 6/12/2010 would have to be set aside and is accordingly set aside. However, it is made clear that if the respondent no.2 desires to have a dedicated supply to his Saw Mill, which is outside the Gaathan, the same would be provided, as has been stated on behalf of the petitioner – Company before the CGRF, at the costs of the respondent. In the event, the said cost of the infrastructure is paid by the respondent, needless to say that the same would be subject to the outcome of the proceedings in the Apex Court.*

*Rule is accordingly disposed of in the above terms.”*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH AT NAGPUR, Writ Petition NO. 460/2011, Writ Petition NO. 461/2011, Writ Petition NO. 462/2011, Writ Petition NO. 463/2011, MAY 03, 2011 .

*“Shri Purohit, the learned counsel for the petitioner states that the issue involved in the instant petition is also involved in Spl. Leave Petition bearing no.S 20340/2007 and the Hon’ble Supreme Court has stayed the refund by an adinterim order dated 31.8.2007. It is submitted on behalf of the petitioner that the issue involved in this petition is also involved in a bunch of writ petitions which are admitted by the order dated 6.12.2010. Since the issue involved in writ petition no. 3059/2010 and others is similar to the issue involved in this case and since this court had issued rule in the other writ petitions and has granted stay to the order passed by the Consumer Grievance Redressal Forum, it is necessary to pass a similar order in this writ petition also. Hence, Rule. Adinterim relief granted by this court on 28.1.2011 is continued during the pendency of this petition.*

*The parties are granted liberty to move this court in case the Hon'ble Apex Court decides the Spl. Leave Petition, one way or the other".*

*From above discussion it is clear that the matter of refund of infrastructure is stayed by Hon'ble Apex Court of the land. According to Regulation 6.7(d) of the\_\_Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (here-in-after referred-to-as the said Regulations.) "Forum shall not entertain a grievance where a representation by a consumer, in respect of same grievance, is pending in any proceedings before any Court". Issue of refund of cost of infrastructure is subjudice before Hon'ble Supreme Court and stayed by Supreme Court and therefore, according to regulation 6.7(d) of the said regulation this Forum can not grant relief to the applicant on merits. However after Judgement of Hon'ble Supreme Court, applicant is at liberty to approach to this forum if circumstances, Law and Regulation permits.*

14. *In case No.56/2007 decided on 16-02-2008 on page No.7/7 Hon'ble MERC held is as under,*

*"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.”*

15. For these reasons in our opinion grievance application is barred by limitation, untenable at Law and deserves to be dismiss.

16. 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