

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

Case No. CGRF(NUZ)/113/2012

Applicant : M/s. Mytri Willas,
Thr:- Rupesh Shah,
Mytri Willas, G-7, Plot No. 3,
Empress Mills No. 3, Empress City,
NAGPUR.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(Distribution Franchisee),
MSEDCL, NAGPUR.

Quorum Present : 1) Shri. Shivajirao S. Patil
Chairman,

2) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED ON 29.12.2012.

1. The applicant filed present grievance application before this Forum on 30.10.2012 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. Applicant's case in brief is that the applicant applied for sanction of electrical load for their commercial / domestic complex

named as “Mytri Willos”, at Empress Mill premises. As per MSEDCL formula for calculating electrical load (5watts/sq.ft. for Domestic and 15 Watts / sq.ft. for commercial complex), load of the applicant was taken as 506 kW by M.S.E.D.C.L. although actual requirement of the applicant was quite less. The applicant came to know that this formula of calculation of load is not approved by the regulatory body i.e. M.E.R.C. Estimate was prepared with load of the applicant as 506 kW by M.S.E.D.C.L. and sanction for Rs.14,08,505 (Rs. Fourteen Lacs Eight Thousand Five Hundred Five only) under DDF (dedicated distribution facility) scheme, 1.3% supervision normative charges were levied by M.S.E.D.C.L. as per Annexure ‘A’ filed with the application. Accordingly, the applicant received demand note from M.S.E.D.C.L. copy of which is enclosed as Annexure ‘B’ with the application. The applicant paid Rs. 18,320/- (Rs. Eighteen Thousand Three Hundred Twenty only) vide M.R. No. 6577454 Dt. 15.12.2007 and the work was executed as per sanctioned estimate. The execution of work was entrusted to M/s. Adinath Incorporation, Electrical Contractors having license No. MC- 19560 who under took the work involving replacement of HT/LT line conductor, erection of 630 kVA transformer along with all associated equipments and laying three (3) circuits of L.T. line. Accordingly the work was completed and transformer was charged along with allied equipments and it is operation since then. On the basis of it M.S.E.D.C.L. has issued electrical connections. All service connections in the premises are released by M.S.E.D.C.L. Presently, total connected load is 446.30 kW as per Annexure ‘D’ filed along with grievance application. Therefore it is requested to issue necessary orders for refund / adjustment of amount of Rs. 14,08,505 along with interest @ 18 % p.a.

which applicant have paid to Electrical Contractor M /s. Adinath Incorporation for above works. Estimate included cost of metering, replacement of HT/LT line conductor (as previous conductor was of less capacity) and provision of 3 circuits of L.T. Line. Out of these 3 circuits 2 circuits are for various consumers at Mytri Willos and third circuit is exclusively for improvement of M.S.E.D.C.L's L.T. system i.e. to improve voltage etc. of MSEDCL's existing consumers as specified in Annexure '4' & '5'.

3. Thus the supply & infrastructure arrangement is not DDP (dedicated distribution facility) as defined by MERC and therefore this supply arrangement can not termed as DDP as per definition of DDF according to MERC electricity supply code & other conditions of supply. Therefore the amount of estimate for which infrastructure works are carried out by the Builder / Developer is refundable / adjustable in monthly energy bills of the consumer as per condition 2(b) of Circular No. CE/DIST/T/III/Cir./22193 Dt. 20.5.2008, which is filed at Annexure 'E' along with grievance application. As per MERC order dated 8.9.2008 in case No. 70/05 Schedule of Charges. As this circular is applicable to all L.T. non-domestic, L.T. residential consumers, having load less than 500 kW. In case of applicant, load of 506 kW was wrongly calculated by M.S.E.D.C.L. considering mentioned formula which is not approved by MERC and which is well above the load the applicant is consuming. Therefore in case of applicant, cost of infrastructure should be refunded / adjusted in monthly bills.

4. Before approaching to this Forum the applicant applied to IGRC NUC, for the same relief which was acknowledged by M.S.E.D.C.L. on 18.12.2010 but nothing was done by IGRC or M.S.E.C.L. in this regard. In a land mark judgment of Hon'ble Electricity Ombudsman Mumbai in this matter of representation No. 36/12, decided on 4.7.2012, Shri Chandrashekhar Revappa Gobbi Vs. M.S.E.D.C.L., it is held that order of MERC Dt. 1.9.2010 relating to refund of excess amount other than approved schedule of charges, levied upon the consumers during the period from 9.9.2006 to 20.5.2008 has not been challenged before any court of law and therefore it remains in force and needs to be complied without any doubt. This authority of Hon'ble Electricity Ombudsman Mumbai is applicable in case of the applicant, as estimate sanction is Dt. 4.12.2007 and demand note payment is Dt. 15.12.2007 and therefore fall within the period from 9.9.2006 to 20.5.2008. Hence refund / adjustment in energy bill should be made to the applicant.

5. Therefore the applicant claimed following relief namely –

- a) The amount of estimate of Rs. 1408505/- for which infrastructure works are carried out by the Builder / Developer is to be refunded / adjusted in the monthly energy bills of the consumer as per condition 2(b) of Circular No. CE/DIST/D-III/Cir./22107 Dt. 20.5.2008 as per MERC order Dt. 8.9.2006 in Case No. 70/2005 schedule of charges.
- b) Interest @ 18% p.a. to be paid / adjusted along with principal amount of Rs. 1408505/-
- c) Issue necessary instructions to all department concerned regarding refund.
- d) Pass any other orders as Forum deems fit.

6. Non applicant M.S.E.D.C.L. denied the applicant's case by filing reply Dt. 6.12.2012. It is submitted that the applicant has paid 1.3 % supervision charges of Rs. 18320/- under DDF scheme of 15.12.2007 and filed application before I.G.R.C. ON 18.12.2010. Thereafter the applicant filed application grievance application before this Forum on 30.10.2012 i.e. after 2 years period. Hence the application filed by the applicant is barred by limitation and deserves to be dismissed. It is further submitted that the applicant applied for sanction of 506 kW load for commercial / residential complex named as "Maitri Willos" at Empress Mills premises Nagpur. Site inspection is carried out and inspection report is prepared on Dt. 10.11.2007 for proposed load of 506 kW and same is duly signed by the applicant. As per the requirement of the applicant the non applicant has prepared the estimate under DDF scheme amounting to Rs. 1408505/- for supply to M/s. Maitri Willows Apartments under Tulsibagh Sub-Division, Mahal Division, MSEDCL, Nagpur and technically sanctioned as per order Dt. 4.12.2007. Demand dated 12.12.2007 for DDF (1.3% supervision) of normative charges amounting to Rs. 18320/- issued to applicant and applicant has paid the same on Dt. 15.12.2007 as per M.R. No. 6577454. Non applicant charged the transformer of 630 kVA after completion of work by the applicant through contractor and it is in operation since then. All the service connections in the premises are released by the non applicant. Supply is provided as per requirement of the applicant under DDF scheme, as the site inspection is already acknowledged by the applicant. Therefore amount of expenditure as per estimate for infrastructure work are carried out by the applicant through licensed electrical

contractor along with interest is not refundable / adjustable in DDF scheme in monthly energy bills as prayed by the applicant. Refund is adjustable in non DDF scheme only as per regulation 3.3.3 of MERC (Electricity Supply Code & Other conditions of supply) Regulations 2005, 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 applicant. Therefore the application may be dismissed.

7. Forum heard arguments of both the parties and perused record.

8. The Quorum of the Forum is only 2 members namely Hon'ble Chairman & Hon'ble Member / Secretary of the Forum. There is difference of opinion amongst members of the Forum. It is specifically provided under regulation 8.1 of the said regulations that "on completion of the proceedings conducted under regulation 6, except where the Forum consists of 1 member, Forum shall take decision by majority of votes of the members of the Forum and in the event of equality of votes, the Chairman shall have second and casting vote". Therefore in this case it is an event of equality of votes and therefore Hon'ble Chairman of the Forum shall have second and casting vote. Therefore decision is based on majority view of Hon'ble Chairman and dissenting note of Hon'ble Member / Secretary is noted at the bottom which is also a part and parcel of the order.

MAJORITY VIEW OF HON'BLE CHAIRMAN

9. On behalf of the applicant, its representative Shri Pramod Verma Vehemently argued that load of the applicant is in fact 446.3 kW and detail particulars of load of the applicant are specifically given in Annexure 'D' which is filed alongwith the grievance application. However, M.S.E.D.C.L. wrongly calculated the load as 506 kW although actual requirement of the applicant was quite less. Formula adapted by M.S.E.D.C.L. for calculation of load is not approved by Hon'ble MERC. Presently total connected load of the applicant is 446.30 kW against sanctioned load of 506 kW as estimated by M.S.E.D.C.L. He further argued that the supply and infrastructure arrangement is not DDF as defined by MERC and therefore this supply arrangement can not be termed as DDF. He specifically argued the definition of DDF. He further argued that excess load is shown by MSEDCL to extract amount of infrastructure. He argued that Hon'ble Commission passed order Dt. 1.9.2010 in case No. 93/2008 and has clearly directed MSEDCL to scrutinize details of all new connections released during the period 9.9.2006 to 20.5.2008 for charges levied other than approved schedule charges, give publicity through news papers and electricity bills to approach its office to get refund such excess amount recovered. He pointed out that order of the commission is Dt. 1.9.2010. The applicant filed grievance application before I.G.R.C. on 18.12.2010 but no order is passed either by IGRC or by MSEDCL. He filed an application to the I.G.R.C. on 18.12.2010 within 2 years from the order of the commission Dt. 1.9.2010 and therefore present grievance application is within time and not barred by limitation.

10. Mr. Pramod Verma representation of the applicant placed his reliance on landmark judgment of Hon'ble Electricity Ombudsman, Mumbai in representation No. 36/12 in the matter of Chandrashekhar Ravappa Gobbi Vs. MSEDCL decided on 4.7.2012 and argued that as per this authority the applicant is entitled for refund of infrastructure amount along with interest @ 18%p.a. He further argued that after release of connection only actual load can be ascertained. He further argued that there are 35 consumers in that area.

11. On the contrary Mr. Waghmare, Executive Engineer for M.S.E.D.C.L. argued that applicant had not given the sketch of the area for calculation of load and therefore M.S.E.D.C.L. calculated the load for 506 kW. He reiterated the submissions made in the written statement and argued that grievance application deserves to be dismissed.

12. After hearing the arguments from rival sides and perusal of the record, I proceed to decide the matter in accordance with law.

13. According to the definition of "DDF" as per MERC (Electricity Supply Code & Other Conditions of Supply), "DDF" means such facilities not including the service line, forming part of the distribution system of distribution licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or group of consumers on the same premises or contiguous premises".

14. It is evident from the record that date of estimate sanction is 4.12.2007. Demand note payment is Dt. 15.12.2007 and therefore present case fall within the period from 9.9.2006 to 20.5.2008. **Hon'ble Electricity Ombudsman Mumbai in representation No. 36/12 in the matter of Chandrashekhar Revappa Gobbi Vs. M.S.E.D.C.L. has even referred decision of Hon'ble High Court Aurangabad Bench in Writ Petition No. 2032/11, MSEDCL Rural Circle Aurangabad Vs. M/s. Kaygon Paper Mills Ltd. decided on 1.7.2011 and held that Commission's order Dt. 1.9.2010 relating to refund of excess amount other than approved schedule of charges levied up on the consumers during the period from 9.9.2006 to 20.5.2008 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 the application of applicant comes within jurisdiction of Forum or not.**

15. Hon'ble Electricity Ombudsman Mumbai in representation No. 36/12 Chandrashekhar Revappa Gobbi Vs. MSEDCL, decided on 4.7.2012 held in para 1 of the judgment (Page 1 of 4) as under :-

“Applicants carried out the works as per the sanctioned scheme and got supply. Thereafter the appellant demanded refund of cost of works carried out, as per Respondent's circular No. 22197 dated 20th May, 2008. The Forum held that it is a continuous cause of action and hence Appellant's grievance cannot be rejected as time barred”.

In the same authority, Hon'ble Electricity Ombudsman Mumbai also held in para 7 of the judgment (Page 3 of 4) that –

“Both parties conceded that the Commission’s order dated 1st September 2010, relating to refund of excess amounts, other than approved Schedule of Charges, levied upon consumers during the period from 9th September 2006 to 20th 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 9th September 2006 to 20th May 2008. The Appellant approached the respondent for refund of the cost of works levied upon him and then filed a grievance before the Forum on 24th October 2011, which is within 2 years from the date of the Commission’s order dated 1st September 2010. Respondent’s submission that the Forum ought to have dismissed Appellant’s complaint on point of limitation is clearly misplaced. Moreover, there is no provision under which the Respondent’s appeal against Forum’s order can be entertained by the Electricity Ombudsman and there is nothing on record whether the Respondent has challenged Forum’s order before any appropriate court of law. Respondent’s submission and

contention, in this regard are therefore liable to be and hereby rejected”.

I carefully perused cited authority of Electricity Ombudsman. Facts of this authority and facts of the present case are similar and identical and therefore authority squarely applicable to the case in hand. Relying on the authority cited supra I hold that grievance application of the applicant is within limitation, tenable at law and needs to be allowed”.

16. In case in hand also, date of estimate is 4.12.2007. Demand note payment date is 15.12.2007 and therefore present case fall within the period from 9.9.2006 to 20.5.2008. Applicant filed grievance application before I.G.R.C. on 18.12.2010 which is within 2 years, from the date of order of Commission Dt. 1.9.2010 and therefore submission of non applicant that application deserves to be dismissed on the point of limitation is clearly misplaced.

17. If really as per say of non applicant, matter is pending before Supreme Court, claim of the applicant shall be subject to final decision of Supreme Court. If applicant remains silent till final decision of supreme court, his claim will become time bar in future. Therefore relief is granted subject to decision of Supreme Court.

18. Taking into consideration facts and circumstances of the case, documentary evidence on record and regulations framed by

Hon'ble MERC it is clear that the supply arrangement of the applicant can not be termed as DDF. On the contrary it is non DDF scheme. In reply of M.S.E.D.C.L. at the bottom of para 4, MSEDCL admitted in clear terms that "refund is adjustable in non DDF schemes only". As it is non DDF scheme refund is adjustable according to regulation. Therefore application of the applicant must be allowed but subject to decision of Supreme Court.

19. Along with Grievance application, the applicant produced cutting of news paper daily Hitvada regarding grant of similar type of claim by this Forum. Therefore I have carefully perused judgment delivered by this Forum in case No. CGRF(NUZ)/065/10 M/s. MPM Durrans Refracoat Pvt. Ltd., MIDC Butibori Vs. M.S.E.D.C.L. decided on 19.10.2012. From copy of the said judgment it is clear that this Forum has granted similar type of grievance application in favour of consumer. Facts of the present case are also similar relating to same subject matter. Therefore relying on judgment of our Forum In case No. 65/10 Dt. 19.10.2010, I hold that applicant is entitled for the relief prayed for subject to decision of Supreme Court.

20. For these reasons in my opinion applicant is entitled for an amount of estimate of Rs. 1408505 for which infrastructure works are carried out by the builder / developer is to be refunded / adjusted in monthly bills of consumers as per condition 2(b) of Circular No. CE/DIST/D-III/Cir.22197 Dt. 20.5.2008. As per MERC order Dt. 8.9.2006 in case No. 70/05 schedule of charges. The applicant claimed interest @ 18% p.a. on principal amount. However, in my opinion interest claimed by the applicant is excessive. In my opinion

applicant is entitled for interest on principal amount @ Rs. 12% p.a. to be paid or adjusted along with principal amount of Rs. 1498505.-. Therefore grievance application of the applicant must be partly allowed. Relief can be granted to applicant, however, subject to decision of Supreme Court.

DISSENTING NOTE OF HON'BLE MEMBER / SECRETARY OF
THE FORUM

1. "The grievance is regarding refund of the amount 1408505 with 18% interest which spent by the applicant on electrical infrastructure development for getting connection in respect of M/S Maitree Enterprises. The applicant's case in brief, the applicant applied for getting connection to the non-applicant. The non-applicant sanctioned the load of 506 kW under DDF scheme with 1.3% supervision normative charges on 4.12.2007. The applicant paid these charges having amount 18320 on 15.12.2007. The work as per estimate was executed by a licensed electrical contractor M/S Adinath Corporation. The work involved replacement of HT/LT line conductors, erection of 630 kVA transformer alongwith all associated equipment and laying of 3 circuits of LT lines. After completion of the work, all service connections were released by MSEDCL. The applicant applied for refund of infrastructure cost to IGRC, NUC, on 18.12.2010. The applicant didn't receive any response from IGRC, therefore filed the grievance to the Forum on 30.10.2012.
2. The oral and written submissions of the applicant reveals that the basis for refund lies on following points:
 - i. There is a judgment passed by Hon. Electricity Ombudsman, Mumbai, in which it is noted that MERC's order dt. 1.9.2010, relating to refund of excess amounts other than approved schedule of charges, levied upon consumers, during the period from 9.9.2006 to 20.5.2008, has not been challenged before any court of law and therefore, it remains in

force and needs to be complied. In this case, the applicant's estimate was sanctioned on 4.12.2007, demand note was paid on 15.12.2007. Since both these date fall within the period from 9.9.2006 to 20.5.2008. Therefore the infrastructure cost should be refunded.

- ii. The supply and infrastructure arrangement is not a Dedicated Distribution Facility (DDF) as defined by MERC because out of 3 LT circuits, 2 LT circuits for Maitree Willows and third circuit is exclusively for system improvement with respect to MSEDCL's existing consumers. Therefore the infrastructure cost is refundable to the applicant as per condition 2b of the circular no. CE/Dist/D III/ Circular/22197/20.5.2008 as per MERC order dt. 8.9.2008 in case no. 70/2005.
 - iii. The above circular is applicable to all LT non-domestic, LT residential consumers, having load less than 500 kVA. Presently total connected load is 446.3 kW against sanctioned load of 506 kW. This 506 kW was calculated by MSEDCL although their requirement was quite less.
 - iv. In similar cases, CGRF ordered that the refund cases were not within the jurisdiction of the Forum. Hence grievance application was not filed at that time. The applicant recently came to know that as per order of Hon. Supreme court, refund cases of such type are very much within the jurisdiction of CGRF. Hence this application filed.
3. The non-applicant rejected applicant's submission by filing reply to the Forum on dtd. 6.12.2012. As per non-applicant's submission, the complainant has applied for 506 kW load. The site inspection carried out and the inspection report was prepared on dtd. 10.11.2007 for proposed load of 506 kW and the same was dully signed by the complainant. As per requirement of the complainant, non-applicant has prepared estimate under DDF scheme. As per regulation 3.3.3 of M.E.R.C.(Electricity Supply Ccode and Other Conditions Of Supply) Regulation, 2005, where the provisions of supply to an applicant entails works of installation of DDF, the Distribution Licensee shall be aluthorised to recover all expenses reasonably incurred on such works from applicant. Therefore infrastructure cost is not considerable for refund in DDF

scheme to the complainant. Refund is adjustable in Non-DDF scheme only.

4. A number of matters were heard by this Forum based on refund of infrastructure cost and delivered orders based on legality prevailing during the particular period. In this case, the applicant has given stress on the Hon. Electricity Ombudsman's order as mentioned in point 'i'. This is an order in case no. 36 of 2012 passed by Hon. Electricity Ombudsman, Mumbai, on 4.7.2012. For the reference, the para from the order is reproduced below:

" Both parties conceded that the Commission's order dated 1st September, 2010, relating to refund of excess amounts, other than approved Schedule of Charges, levied upon consumers, during the period from 9th September, 2006 to 20th 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 9th September, 2006 to 20th May, 2008."

5. The above para mentions Hon. Commission's order 1st 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.**”*

6. 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.

7. 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.”*

8. 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 31st August, 2007, that refund is stayed till the matter comes up for hearing on the date fixed i.e. 14th 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.”

9. 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.
10. **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.**

11. 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 16th 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 17th 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’ble Supreme Court’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’s Order dated 29th November 2010 in Case No. 24 of 2007 in view of continuation of the Hon’ble Supreme Court’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 Gaothan, 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.”

14. The applicant referred the non-applicant’s circular as mentioned in point ‘ii’. This point is also clarified by the Hon. Electricity Ombudsman in above order, para 13 and 14 as:
- “13. As regards the Appellant’s reference to Circular No. 221976 of 20th May, 2008, it was issued by the Respondent in different context. Perusal of the said circular indicates that it is still the responsibility of the MSEDCL to provide infrastructure for supply of electricity. It has nowhere disowned this position. This circular only facilitates the consumer or group of consumers who wants supply earlier than the time limit stipulated in the Regulations and opts to execute the work and bears the cost of infrastructure. Then, in such cases, refund of cost of infrastructure, will be given by way of adjustment through energy bills. It is not mandatory for the consumers to carry out the works at their cost. Option given under this circular should not be confused with the situation when the consumer carried out works under ORC or by paying SLC even after approval of Schedule of Charges, on 8th September, 2006.*
- 14. In the present case, estimate for works was sanctioned by the Respondent in February, 2008, much before the circular no. 22197 was issued by the Respondent on 20th May, 2008. Therefore, there was no question of applying contents of the circular with retrospective effect. In any case, the Appellant had*

not volunteered or opted to carry out the works on the conditions like ones envisaged in the circular, that the Respondent would refund the cost by adjustment in the bills, as is contemplated in the said circular. Therefore, the Appellant's argument that cost incurred should be refunded on the basis of the said circular, has no basis."

15. In this grievance also, the estimate was sanctioned on 4.12.2007 and the applicant paid the demand note on 12.12.2007 without any protest, much before the circular dtd 20.5.2008. Therefore no question arises for giving retrospective effect as the applicant's request has no base.

16. Now the discussion of point 'iii', the applicant states that the MSEDCL mentioned 506 kW as the load applied although the existing load prevailing at that time was much less. But the applicant failed to produce any document to substantiate his say. However, document on record i.e. inspection load dtd. 10.11.2007 shows applicant's signature that is too without any protest. Therefore, I cannot hold that present load which is stated by the applicant i.e. 446.3 kW was prevailing at the time of new application. Also, not a single document was produced by the applicant which shows that the non-applicant forcefully sanctioned 506 kW against applicant's demand.

17. With respect to point 'iv', the applicant mentioned some Hon. Supreme Court's decision for considering this grievance within the jurisdiction of Forum. However, during the hearing, when the applicant asked to produce the copy of the said judgment, he failed to produce the same. In several cases regarding refund of infrastructure cost, this Forum dismissed the grievances on the basis of Hon. High Court, Aurangabad Bench, Judgment passed on dtd. 1.7.2011 in WP no. 2032 of 2011 which barred the jurisdiction of Forum in such cases.
"By no stretch of imagination the grievance of respondent No. 1, mentioned above, would be covered by this definition. A consumer's grievance contemplated under the Regulations is basically a complaint about fault or inadequacy in quality of performance of the Electricity Distribution Company. In this case, admittedly, there is no grievance that performance of the petitioner-company, as distribution licensee, had been

imperfect or otherwise. The grievance of respondent No. 1 is in respect of breach of statutory obligation allegedly committed by the petitioner-company. So, the grievance would not fall within the four corners of the term “grievance” defined under the Regulations.....

.....I am afraid, even though in similar situation, the petitioner-company was directed by the Commission to refund the amount to their consumers, still such orders are not capable of being utilized as precedent. I have made sufficiently clear above that the dispute between the parties is of civil nature and would not be covered by the term ‘grievance’. The Consumer Grievance Redressal Forum, which had passed the impugned order, apparently did not have jurisdiction to entertain a complaint of this nature. Respondent No. 2- Forum thus could not have decided the dispute of this nature.”

18. This Forum’s order based on above judgement in case no. 29,32,33 of 2011 and 65,66,67 of 2012 were challenged at Hon. Electricity Ombudsman, Nagpur and the Hon. Electricity Ombudsman, Nagpur, hold the stand taken by this Forum in above cases by order dtd.3.12.2012.
19. On careful perusal of the documents submitted by both the parties, I noted that the applicant never raised any grievance upto 18.12.2010 i.e grievance filing date at IGRC. Also, in Forum, the grievance is filed on dtd 30.10.2012 without seeking any condonation of delay. However, the applicant paid the demand note on 12.12.2007 without any protest. In other words, the applicant failed to submit its grievance within 2 years from the cause of action i. e. 12.12.2007.
20. While going through the documents on record, the applicant attached a Newspaper cutting referring this Forum’s Order dtd. 19.10.2010 in case no. 65 of 2010. However, nothing is mentioned regarding this in his detailed application. But, at this point, I would like to mention that the applicant filed a writ petition against MSEDCL for the same case at Hon. High Court Bombay, Nagpur Bench, with WP no.5358 of 2011. This WP was disposed of by the Hon. High Court vide order dtd.3.5.2012. The direction given by Hon. High Court is reproduced as follows:
“4.Respondent has pointed out that the controversy regarding the infrastructure cost is pending before the Honourable Apex Court and because of that pendency, a circular has been issued

on 20th May 2008 laying down policy. As per that policy, if petitioner wants precedence, he has to apply under clause no. 3 viz. to get the work executed at his expenses under the MSEDCL supervision and get refund of the expenses so incurred through his energy bills. For that, he has to get the estimates and specifications sanctioned from appropriate authorities and he is not expected to pay any supervision charges.

5. We find that petitioner is ready and willing to proceed even under clause 3 if timebound directions are issued. Mr Jaiswal has attempted to demonstrate that the petitioner establishment is waiting for proper supply since 2010 and its prospects are being adversely affected. In these circumstances as all technical data is already available with respondent, we direct respondent to work out the estimates and specifications and grant sanction as per clause no.3 of their circular dated 20th May 2008 within a period of three weeks from today.

6. After receipt of such sanction to estimates and specifications, petitioner is free to execute the work of infrastructure under the supervision of MSEDCL. Respondent shall, after completion of that work, release the electric supply to the petitioner at once. Respondent shall also permit refund to the petitioner of such expenditure in terms of Circular dated 20th May 2008. Needless to mention that the refund as ordered is because of above mentioned circular which also depends upon further orders of the Honourable Apex Court on the subject.”

21. This order also mentioned that refund as ordered depends upon further orders of the Hon. Apex court on the subject. At this juncture, it is prudent to mention that the above mentioned circular allows the refund for load less than 500 kVA only.

22. I infer, from all above discussions that this forum has no jurisdiction to entertain this case because of following reasons:

- a. The matter of refund infrastructure cost is sub-judice with Hon. Supreme Court. Therefore, this Forum has no jurisdiction as per Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, EO regulation 6.7(d).(as concluded in para 10)

- b. This is time barred as per Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, EO regulation 6.6. (as discussed in para 19).
- c. As per Hon. High Court , Aurangabad Bench, decision, the Forum has no jurisdiction to entertain such nature of complaints.(as discussed in para 17 and 18).
- d. No retrospective effect of above mentioned circular can be given as per order of Hon. Electricity Ombudsman.(as elaborated in para 14 and 15)”.

21. Therefore in the majority view of the Forum, it is necessary in the interest of justice to partly allow grievance application of the applicant subject to decision of Supreme Court. In majority view of the Forum applicant is entitled for an amount of Rs. 1408505/- for which the infrastructure works are carried out by the builder / developers to be refunded / adjusted in the monthly energy bills of the consumer and consumer is also entitled for interest @ Rs. 12 % p.a. to be paid / adjusted along with principal amount of Rs. 1408505/- subject to final decision by Supreme Court. Hence Forum proceed to pass the following order in majority view as under : -

ORDER

- 1) Grievance application is partly allowed.
- 2) MSEDCL is hereby directed that amount of estimate of the applicant of Rs. 1408505/- for which the infrastructure works are carried out by the builder / developer shall be refunded / adjusted in the monthly energy bills of the consumer as per

condition 2(b) of Circular No. CE/DISTT/D-III/Cir./22197 Dt. 20.5.2008 as per MERC order Dt. 8.9.2006 in case No. 70/05 schedule of charges.

- 3) MSEDCL shall pay / adjust interest @ 12% p.a. to the applicant on principal amount of Rs. 1408505/- from the date of release of connection till final realization / adjustment of full amount. For the purpose of calculation of interest, Non applicant is hereby directed to calculate the full interest @ 12% p.a. on Rs. 1408505/- from the date of release of connection to the first adjustment of principal amount against the monthly energy bill of the applicant and then the interest should be calculated and adjusted on reducing balance of principal amount of Rs. 1408505/- till full and final realization.
- 4) Above relief granted to applicant shall be subject to final decision of Supreme Court.

Sd/-
(Smt.K.K.Gharat)
MEMBER
SECRETARY

Sd/-
(ShriShivajirao S.Patil)
CHAIRMAN