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

Case No. CGRF(NZ)94/2016

Applicant : M/s Big Vision Research Institute Pvt.Ltd.
1072, Durgawati Chowk, Sujata Nagar
Itwari Rd.,Nagpur.

Non–applicant : Nodal Officer,
The Superintending Engineer,
(D/F.) NUC,MSEDCL,
NAGPUR.

Applicant 's Representative :- Shri Khandekar.

Respondent by 1) Shri Vairagade, EE, Nodal Office
2) Shri Tekam, Nodal Office.
3) Shri Dahasahastra, SNDL Nagpur.

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

2) Shri N.V.Bansod
Member

3) Mrs. V.N.Parihar,
Member, Secretary

ORDER PASSED ON 24-08-2016.

1. The applicant filed present grievance application before this Forum on 01.07.2016 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 the service connection No.410019011340 namely M/s Big Vision Research Institute Pvt.Ltd. situated at Plot No.1072,

Durgawati Chowk, Sujata Nagar, Itwari Road, Nagpur alleged that he has filed for HT connection requiring 206 KW load in the month of March-2014. There was no infrastructure available near the vicinity of the premises where the load was demanded. Therefore in view of getting urgent electric supply, the purpose of which being Hospital, the applicant alongwith his Co-partner M/s. Deshraj Bhandari & Assocites has given joint consent in March-2014 for carrying out the required infrastructure work required to cater, the load of the applicant for Hospital and M/s. Deshraj Bhandari & Associates for his Flats scheme. Accordingly an estimate was sanctioned and after paying supervision charges to the company, the work was executed by the applicant and his Co-partner M/s. Deshraj Bhandari & Associates jointly. The line was charged in the end of April-2014. After release of the connection, applicant is demanding refund of cost of work of his share of Rs.171749/- out of the total expenditure they have incurred for erection of infrastructure for getting electric supply. Applicant approached to learned IGRC but IGRC rejected grievance application of the applicant. Therefore applicant approached to this forum and claimed following relief namely;

(a) The amount of Rs.171749/- as refund of cost of infrastructure.

(b) Interest @ Bank rate from the date of completion of work i.e. 30-04-2014 till the date of refund.

(c) Rs.25,000/- compensation as per S.O.P.

(d) Rs.20,000/- as cost of the proceeding.

3. Non applicant, denied applicant's case by filing reply dated 15.07.2016 & supplementary reply dated 17-07-2016. It is submitted that applicant has applied for total load 206 KW (existing 10 KW + additional load 196 KW) load on date 06-12-

2013. There was no infrastructure available near vicinity of premises where the load was demanded. Hence extension load application can not be executed. Being Hospital, SNDL propose to go on HT connection for reliable uninterrupted power supply as per letter dated 27-02-2014. In view of getting urgent electric supply, the propose of which being Hospital, the applicant alongwith his Co-partner M/s. Deshraj Bhandari & Associates has given joint consent in March-2014 for carrying out the required infrastructure work required to cater the load of applicant for Hospital and M/s. Deshraj Bhandari & Associates for his flats scheme vide there letter dated 04-03-2014 and also given joint undertaking on stamp paper. The work was executed by the applicant and his Co-partner M/s. Deshraj Bhandari & Associates jointly. Accordingly an estimate was sanctioned and after paying supervision charges, the line was charged in April-2014. Now, after release of connection the applicant is demanding refund of cost of work of his share Rs.171749/- out of total expenditure they have incurred for erection of infrastructure for getting electric supply. As per his consent letter on record, it is clearly mentioned that the applicant and his Co-partner are ready to carry out the required infrastructure work at their own cost alongwith 1.3% supervision charges to the company. The consent is not given conditionally and also the company has not given any consent for refund of the cost of work carried out by the applicant. The applicant should have registered his grievance at appropriate level for getting electric connection without incurring expenditure on infrastructure work. But since the work was carried out at own cost with consent, the cost of work can not be refunded. Grievance application deserves to be dismissed.

4. Forum heard arguments of both the sides and perused record.

5. It is noteworthy that there is difference of opinion amongst all 3 members of

the forum. Therefore the judgment and the decision is based on majority view of Hon'ble Chairperson and Hon'ble Member/Secretary whereas dissenting note of Hon'ble Member(CPO) is noted in the judgment and it is part and parcel of the judgment.

Resoning and finding of majority view of Hon'ble Chairperson and Hon'ble Member/Secretary of the forum.

6. Initially we have to consider whether present grievance application is filed within prescribed limitation as per said Regulation. **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**". Applicant filed application for total load 206 KW on 06-12-2013. SNDL propose the applicant to go on HT connection for reliable and uninterrupted power supply as per letter dated 27-02-2014. Applicant and his Co-partner has given joint consent in March-2014. Applicant has given consent on the stamp paper dated 15-03-2014. The line was charged in April-2014. Therefore all these given dates are dates of alleged cause of action. Lastly the cause of action arose on 30-04-2014 when supply was given. Therefore date 30-04-2014 is the date of alleged the cause of action. It was necessary to file application before this forum within 2 years from the date of cause of action 30-04-2016 i.e, on or before 30-04-2016 but present grievance application is filed before this forum on 01-07-2016 and therefore it is barred by limitation according to Regulation 6.6 of the said Regulation. On this only count grievance application deserves to be dismissed.

7. It is evidence from the record that applicant had applied for total load 206 KW on 06-12-2013. There was no infrastructure available near the vicinity of the

premises where load was demanded. Hence the extension load application can not be executed. Being Hospital, NSDL propose to go on HT connection for reliable and uninterrupted power supply as per letter dated 27-02-2014. This letter is attached alongwith supplementary reply of non-applicant and it is Annexure-I. Therefore in view of getting urgent electric supply, purpose of which being Hospital, the applicant and his Co-partner has given joint consent in March-2014 to carry out the required infrastructure work required to cater, the load of applicant for Hospital and Co-partner for Flats scheme as per letter dated 04-03-2014. This letter is filed alongwith reply of non-applicant and it is Annexure-II. Applicant and his Co-partner has also given joint undertaking on stamp paper of Rs.100/- which is filed supplementary reply of non-applicant and it is Annexure-III.

8. Record shows that the work was executed by the applicant and his Co-partner jointly. Accordingly the estimate was sanctioned and after paying supervision charges to SNDL, the line was charged in April-2014. Now, after released of connection, applicant is demanding refund of cost of his share Rs.171749/- out of the total expenditure they have incurred erection & for getting electric supply.

9. The consent letter executed by applicant is on record. It is clearly mentioned in this consent letter that applicant and his Co-partner are ready to carry out the required infrastructure work at their own cost alongwith 1.3% supervision charges to SNDL. The consent is not given conditionally. SNDL has not given any consent for refund of cost of work carried out by the applicant. It is noteworthy that there was no compulsion by SNDL to the applicant to give such consent. On the contrary the consent was given voluntary and free consent as per will and wishes of the

applicant. Therefore it has binding force on the applicant.

10. If really applicant had no mind to gave such consent, the applicant should have registered grievance at appropriate time at appropriate level for electric connection without incurring expenditure on infrastructure work. Till released of the connection i.e. 30-04-2014 applicant did not file any grievance at appropriate time at appropriate level therefore this belated grievance application is barred by limitation and deserves to be dismissed.

11. Relying on judgement of Hon'ble Bombay High Court of Judicator Bench at Nagpur Division Bench in Writ Petition No.4595/2014 and Writ Petition No.4745/2014 dated 16.12.2015 and Judgement of Hon'ble Bombay High Court of Judicator Bench at Nagpur Single Bench in writ petition No.4595/2014 dated 18.01.2016 we hold that this Forum has jurisdiction to decide this grievance application on merit and therefore we proceed to decide the grievance application on merit.

12. Needless to say that to have jurisdiction of this forum is one aspect and refund of cost of infrastructure on merits is another aspect.

13. However, so far as matter of refund of infrastructure cost is concerned, matter is subjudice before Supreme Court of India. It appears that while arguing the matter before Hon'ble High Court Bench at Nagpur, in writ petition No.4595/2014 and 4745/2014 perhaps both the parties did not argue the point that issue of "Refund of cost of Infrastructure" is sub-judice before Hon'ble Supreme Court and stay is granted by Hon'ble Supreme Court.

14. Applicant rely on the judgment of **Hon'ble MERC in case No.56/2007**

decided on 16-02-2008 in the matter of "Maharashtra Rajya Veej Grahak Sanghatna V/s. MSEDCL", however this authority goes against the applicant. On page No.7 of 7 in sub para (3) of this authority Hon'ble MERC hold as under,

"*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."*

Therefore this authority cited by the applicant goes against the applicant

15. Applicant also relied on another authority of **Hon'ble MERC in case No.24/2007 in the matter of MRVGS V/s. MSEDCL decided on 29 November 2010** however this authority also goes against the applicant. In this authority on page No.5 of 7 & 6 of 7 and 7 of 7. Hon'ble MERC hold as under,

"*MRVGS has submitted that Hon'ble Supreme Court passed an order dated 31 August 2007 in Civil Appeal No.4305 of 2007*

(D.No.20340 of 2007) wherein the following directions were passed:-

"ORDER

Refund is stayed till the matter comes up for hearing on date fixed, i.e., 14th September, 2007."

MRVGS has submitted that Hon'ble Supreme Court passed another order dated 19 January, 2009 in the said Civil Appeal No.4305 of 2007 (D.No.20340 of 2007) admitting the Appeal.

According to MRVGS Hon'ble Supreme Court's stay order dated 31 August 2007 ceased to exist and in fact stands vacated once the appeal stood admitted by Hon'ble Supreme Court under its Order dated 19 January 2009. The entire basis for seeking the aforesaid refund is interpretation placed by MRVGS that on the appeal being admitted the stay order on refund automatically cases to exist and automatically stands vacated. Obviously, due to this interpretation no order of Hon'ble Supreme Court has been placed on the record of the commission which expressly vacated the stay on refund granted. Under Hon'ble Supreme Court's order dated 31 August 2007.

MRVGS has referred to the following finding of the Commission under its order dated February 16, 2008 in case No.56 of 2007:-

"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 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 continuous. This applies also in case of the third prayer in the present petition."

In light of interpretation placed by MRVGS, it has been submitted by MRVGS that the aforesaid finding of the Commission under its order dated February 16, 2008 in case No.56 of 2007 would not hold good any more because on the date when the said order dated February 16, 2008 was passed Civil Appeal No.4305 of 2007 (D.No.20340 of 2007) did not stand admitted and the stay on refund continued. However, once the appeal stood admitted by Hon'ble Supreme Court under its order dated 19 January 2009 the stay order on refund automatically ceases to exist and automatically stands vacated. Therefore, according to MRVGS the Commission could reverse its aforesaid quoted findings given under its order dated February 16,2008 as subsequent event has happened that is Hon'ble Supreme Court passed an order dated 19 January 2009 admitting the appeal and which automatically vacate the stay refund granted earlier under Hon'ble Supreme Court's order dated 31 August 2007.

The Commission is of the view that the interpretation placed by MRVGS is misconceived in light of the fact that Hon'ble Supreme Court passed an order dated 14 September 2009 directing the continuance of interim order until further orders, as follows:

"ORDER

Learned Counsel for the appellant is permitted to implead Maharashtra Rajya Beej Grahak Sanghathan as Respondent No.2 in this appeal.

Permission to file additional documents is granted.

Delay condoned.

Issue show cause notice.

Until further orders, interim order passed by this Court shall continue to operate."

{underling and bold added}

No order of Hon'ble Supreme Court has been placed on the record of the Commission which expressly vacates the stay on refund granted under Hon'ble Supreme Court's order dated 31 August 2007. The fact that the appeal has been admitted by Hon'ble Supreme Court does not imply that stay on refund granted under Order dated 31 August 2007 automatically stands vacated.

In view of the above the interpretation and contentions placed by MRVGS is entirely misconceived and deserves to be rejected.

In view of the decision in this present petition, there is no need to go into the judgments cited by MSEDCL vide its written submissions filed on 18th November 2010.

In light of the above the present petition stands dismissed. No order as to costs."

16. **Therefore this authority cited by the applicant goes against the**

applicant.

"Uptill now various judgments are delivered on this point by Hon'ble, MERC, APTEL and Hon'ble Supreme Court. We will discuss all these important decisions which are as under, ----------

i) Hon. Commission passed order 1st September, 2010, in case no. 93 of 2008 in the matter of petition of Akhil Bhartiya Grahak Panchayat, Latur. 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*****."**

ii) 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.

iii) 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:

"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."

iv) 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."

v) 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.

vi) **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.**

vii) 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."

viii) 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 over lapping 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."

ix) 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."

18. 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. It is held as under

" 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."

19. 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 *It is held as under -------.*

"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 and interim 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. And interim 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".

20. 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 or decided 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.

21. For these reasons we hold that applicant is not entitle for refund of infrastructure cost or any other amount at this stage and grievance application of the applicant deserves to be dismissed.

22. **Dissenting note of Hon'ble Member (CPO) is as under:**

"1. The grievance of the applicant is that applicant applied for additional load on 06-12-2013 and submitted additional documents on 02-01-2014, site inspection was done by N.A. on 16-01-2014.

2. Applicant contended that as per SOP, site inspection was to be held with 7 days before 16-12-2013 but was done on 17-01-2014. As per my opinion expected site inspection should have been within 7days from 02-01-2014 i.e. on or before 09-01-2014 i.e. late by one week.

3. According to applicant as per SOP, the time period for intimation of charges is 30 days (in case of extension and augmentation of distribution mains) and charges should have been informed before 01-02-2014 but were not intimated.

4. Vide letter dated 17-01-2014 Applicant informed non-applicant about contract demand is 110 KVA. As per SOP, for contract demand limit of 150 KW/187KVA (201 HP), supply will be given as four wire, Three phase, 240 Volts between phase wire & neutral general and contract demand would be falling in this range and supply of L.T. need to be given but application appears to have been considered on basis 206 KW and HT supply was envisaged.

5. According to applicant, non-applicant vide letter dated 27-02-2014 stated that no HT/LT infrastructure is available on site or nearby to cater applicants load and letter suggested that if the power is needed then applicant being hospital, it is necessary to have reliable and uninterrupted power supply and looking urgency of power supply, non-applicant proposed to go on HT connection.

Applicant said supplier is duty bound to maintain proper supply and forcing consumer for HT supply even though entitled for LT supply is an unfair trade practice. However Applicants were desperate to get power supply since investment

of crores of rupees in construction of the Hospital and delay in getting supply caused unnecessary burden of lakhs of rupees in terms of interest & delaying income from Hospital.

6. Applicant said, as per section 42(i) of The Electricity Act 2003 " it shall be the duty of a Distribution Licensee to develop and maintain an efficient coordinated and economical Distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act and therefore non availability of infrastructure can not be an excuse to non-applicant. It is incorrect to ask applicant to create infrastructure and alleged about intention of the Non-applicant and its action is a clear violation of the Act.

7. Applicant said, creating infrastructure not only involve the expenses, labour but also clearness from local authorities etc.

Applicant said as per MERC order in case no.56 of 2007 (para 9) dated 16-02-2008 – i.e.

"The Commission observed that consumer should not be burdened with infrastructure cost which are the liability of MSEDCL. It was further observed that If paucity of funds is the actual reason behind burdening consumers from distribution infrastructure, MSEDCL may seek the recovery of the same as an annual revenue requirement."

8. Applicant incurred expenditure of Rs.171749/- (Rs.166269/- towards infrastructure cost + Rs.5480/- i.e. 1.3% supervision charges to SNDL) shall be refunded with interest from 30-04-2014 and requested Rs.25000/- compensation to paid for harassment faced by applicant due to uncertainty of getting supply since submission of A-1 from and necessary documents.

9. Non-applicant in reply denied the allegations of the applicant and stated that they have acted as per letter dated 04-03-2014 alongwith consent letter and denied refund of charges incurred by applicant as well as compensation and cost.

10. I heard the arguments of both the parties and perused all the papers on record including MERC order dated 16-02-2008 (mentioned in para 7 above).

The disputed points for my consideration are

(1) whether applicant consumer comes under L.T. category? Yes

(2) Whether action of non-applicant to propose for HT supply and to bear cost of infrastructure by applicant as No HT/LT infrastructure is available on site or nearby is proper & legal? No

(3) Whether application is filed within limitation? Yes

(4) Whether applicant is entitled for refund of Rs.171749/- (cost of errection & supervision charges) with interest at Bank rate? Yes

(5) Whether applicant is entitle for compensation for harassment & mental agony & cost? Yes

***Issue No.1**:- Whether applicant consumer comes under L.T. category? Yes*

As per applicant as mentioned in A-1 form" his contract demand is 110 KVA. Existing load of 10 KW + additional load 196 KW = Total load 206 KW.

Applicant invited attention to Clause 5 – Quality of supply and system of supply i.e.5.3(c) of MERC (SOP & period for giving supply & Determination of compensation) Regulations, 2005 – reads as under – In Municipal Corp. Areas where such limit would be 150 KW/187 KVA (201 HP) and upto 1500 KVA relates to contract demand.

Non-applicant said connected load is 206 KW and without showing specific reason, non-applicant contented that total load is 206 KW as well as no infrastructure available for HT/LT on site or nearby and HT distribution network was proposed. Non-applicant failed to differentiate the contract demand and connected load on basis of any guideline of MSEDCL.

Applicant emphasized that the interpretation of this clause is that HT supply in Municipal Corporation area is to be given at 11/22KV only if the contract demand is exceeding 150 KW/187KVA (201 HP) and upto 1500 KVA. Since applicant's demand was less than 187 KVA i.e.110 KVA and premise is within Municipal Corp. area, non-applicant should have given LT supply.

Firstly against demand of applicant for LT supply, contention of non-applicant to propose HT Distribution network at the cost of applicant is without any basis or specific regulation or guidelines. On perusal of 'A-1' form page 2, Existing load/contract demand is 10 KW which shows LT supply (Infrastructure) is available but non-applicant in letter dated 27-02-2014 wrongly stated as under,

"Since there is no HT/LT infrastructure available on site or nearby to cater your required load. Being Hospital, it is necessary to have reliable and uninterrupted power supply. Looking in to urgency of power supply we propose to go on HT connection. Non-applicant also failed to justify that why LT supply can not be given and in Nagpur Municipal Corporation area otherwise also power supply is uninterrupted. Hence, contention of non-applicant deserves to discarded and applicant comes under LT category.

***Issue No.2**:- Whether action of non-applicant to propose for HT supply and to bear cost of infrastructure by applicant as no HT/LT infrastructure is available on site or*

nearby is proper & legal? No

In answer to issue No.1, it is clear that existing load/contract demand is 10 KW & LT power supply is available in on site. It can be concluded that applicant's contract demand is 110 KVA which comes under LT consumer as per clause 5.3 (mentioned above) and action of non-applicant on the pretext of proposing to HT due to non availability of infrastructure is a lame excuse and false representation and just to delay the process and to harass the applicant with ill intention.

Hence to propose for HT supply is illegal & improper in the eyes of law as per The Electricity Act 2003.

Contract demand – means demand in KW/KVA/HP as mutually agreed between the distribution licensee and the consumer and as entered in the agreement for which distribution licensee makes specific commitment to supply from time to time in accordance with the governing terms & conditions contained therein or equal to the sanctioned load, where the contract demand has not been provided through / in the agreement. Non-applicant also failed to file the copy of agreement between distribution licensee and the applicant which would have thrown light on the dispute and an adverse inference needs to drawn for concealment of fact available with N.A.

In this context, I wish to mentioned that even if the so called consent is given by applicant on insistence of N.A. against the provisions of the Electricity Act 2003 & order of MERC amounts violation of legal provisions as well so called consent it self looses legal value.

As mentioned in para 6 above (page 6 of para 7) regarding section 42(i) of the Electricity Act 2003 & as per MERC's order in case No.56 of 2007 dated 16-02-

2008 in para 9 of page 7 of application (page 34 filled by applicant), "It shall be the duty of Distribution Licensee to develop & maintain an efficient, coordinated and economical Distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

It is also emphasized that cost towards infrastructure can not be recovered from consumer directly."

Secondly applicant after the date site inspection on 16-01-2014 i.e. 17-01-2014(Sr.page 14 of applicant) itself informed N.A. clarifying the position as to how they come under category of LT power supply but N.A. has taken total 41 days i.e. on 27-02-2014 to inform applicant and propose HT supply on false/incorrect reasons by violating the section 42(i) of the Electricity Act 2003 & above MERC order as well as SOP normal which shows ill motivation of concerns of N.A. even though from the plane reading of letter dated 27-02-2014 it can further be concluded that they agreed that the supply should be given on LT basis & proposed HT on false pretext of better reliability.

In view of the provision of section 42(i) The Electricity Act 2003 and above order of MERC, non-applicant is not authorized to allow applicant to create infrastructure at his own cost. Non-applicant is not entitle to recover any infrastructure costs and even supervision charges directly or indirectly from applicant. The action of N.A. is not proper & legal and does not sustain in the eyes of law because any action or proposal against the provision of section 42(i) of The Electricity Act 2003 & above order of MERC, amounts to violation of the act & order and N.A. can not proposed or forced on the pretext of consent of the applicant without free consent.

Issue-3:- *Whether application is filed within limitation? Yes*

On this aspect N.A. has not alleged anything that means the application is within limitation. Applicant got supply on 30-04-2014 & filed application before IGRC on 04-03-2015. IGRC ordered on 12-03-2015 & application before CGRF is filed on 01-07-2016 i.e. within 2 years.

I rely on the order in review petition No.19/2014 decided on 29-10-2014 of M/s Sunder Rolling Pvt.Ltd. V/s Superintending Engineer, MSEDCL Urban Circle Nagpur in which Hon'ble Electricity Ombudsman discussed the issue of limitation in para No.12,13,14 and held that the law laid down in the said case and facts in the present case also are identical.

I refer the representation No.100/2015 decided on 22-01-2016 M/s.Shilpa Steel & power ltd. V/s. S.E.MSEDCL Nagpur urban circle, Nagpur & Hon'ble Electricity Ombudsman Nagpur vide order dated 19-01-2012 and in writ petition No.9455/2011 (HPCL V/s. MSEDCL & others), Hon'ble High Court observed that the terms cause of action has not been defined in the CGRF & EO Regulations, 2006 and several provisions of MERC (CGRF & EO) Regulation, 2006. Hon'ble High Court concluded that it is clear that consumer can not directly approached forum. The Hon'ble High Court further concluded that cause of action arisen only when IGRC redress the grievance i.e. on 12-03-2015 & present application is filed on 01-07-2016 & hence grievance is within limitation and can not be said to be barred by limitation of cause of action.

Issue No.4 *:- Whether applicant is entitled for refund of Rs.171749/- (cost of Infrastructure and supervision charges) with interest at Bank rate? Yes*

Applicant's contention is that they have spend crores of rupees on

construction of hospital and due to delay in power supply further would have cost him lakhs of rupees in terms of interest and delaying income from the hospital. According the N.A. as per reply letter of applicant dated 04-03-2014 along with consent letter, the applicant is not entitle for refund of Rs.171749/- with interest and application deserves to be dismissed as IGRC also dismissed in the application.

Non applicant just over looked the contention and justification of applicant vide his letter dated 17-01-2014 which is relating findings of the site inspection (at Sr.page16), states the discontentment over the proposed illegal action of the non-applicant and justified that applicant comes under category of LT supply and there is no justifiable explanation or reference to Act or order of MERC, by N.A. It was only on insistence of SNDL (N.A.) that consent was given to carry out the work at cost of applicant. It is not free consent because the consent on stamp paper was given much later than 15-03-2014 after his letter dated 04-03-2014.

Therefore, the non-applicant's reliance on letter of applicant dated 04-03-2014 & consent letter is not with free consent to spent huge amount on power supply further but under duress and compulsion of unnecessary burden of cost, interest and delay in loss of income.

Hence the applicant is entitle for refund of Rs.171749/- with interest of 9% PA from 30-04-2014 till date of refund of amount because N.A. has acquired the infrastructure and is now owner of the infrastructure and earning out of it.

***Issue No.**5 :- Whether applicant is entitle for compensation for harassment & mental agony & cost? Yes*

In view of the above observations, it is crystal clear that there is delay for site inspection as well as delay in issue of demand note and power supply as per MERC

(SOP) Regulation 2005 & more importantly the anxiety due to cold response of N.A. and due to delay in power supply to applicant, it is very well be inferred that serious harassment and mental agony caused to the applicant and has to approach the IGRC & CGRF for no fault of applicant.

As per above observation and as per Regulation 8.2(c) (e) of MERC (CGRF & EO) Regulation 2006, I am of the opinion that in the interest of justice granting Rs.10000/- as compensation & cost will meet the end of justice for harassment and mental agony & dragging the applicant in litigation.

Hence by this order Non-applicant is directed to refund Rs.171749/- with interest @ 9% P.A. from 30-04-2014 & Rs.10000/- as compensation & cost within 30 days."

23. **Concluding finding and reasoning of majority view of Hon'ble Chairperson & Hon'ble Member/Secretary**;

For these reasons as pointed out by us above, grievance application is barred by limitation according to Regulation 6.6 of the said Regulation and it is also untenable at Law according to Regulation 6.7(d) of the said Regulation. Issue of refund of cost of infrastructure is sub-judice before Hon'ble Supreme Court and pending before Hon'ble Supreme Court and therefore it is the supreme Law of the land and it is binding on us. Therefore at this stage applicant is not entitle to get refund of infrastructure cost. However after judgment of Hon'ble Supreme Court, applicant is at liberty to approached to this forum if circumstances, Law and Regulations permits. Therefore grievance application deserves to be dismissed.

24. Hence we proceed to pass the following order.

ORDER

The grievance application is dismissed.

However applicant is at liberty to approach to this forum after Judgement of Hon'ble Supreme Court, if circumstances, law and Regulation permit.

Sd/-	sd/-	sd/-
(N.V.Bansod)	(Mrs.V.N.Parihar)	(Shivajirao S. Patil),
MEMBER	MEMBER/SECRETARY	CHAIRMAN