

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

Case No. CGRF(NZ)/032/2011

Applicant : M/s. Darpan Multi Poly Pack,
(India) Pvt. Limited.
Lal Imli Gali, Bhandara Road,
Itwari, NAGPUR.

Non-applicant : MSEDCL represented by
the Nodal Officer-
The Superintending Engineer,
Nagpur Rural Circle,
Nagpur.

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

2) Smt. Vandana Parihar
Member Secretary.

ORDER (Passed on 21.04.2016)

In view of order passed by Hon'ble Bombay High Court of
Judicator bench at Nagpur in Writ Petition No.4595/2014 dated
18.01.2016. This matter is remanded back to this Forum for deciding
the grievance on merit on or before 29.04.2016.

Therefor it is the second round of litigation. Initially
applicant filed original grievance application vide Case No.
CGRF(NUZ)/32/2011, before this Forum on dated 08.07.2011
under Regulation 6.4 of the Maharashtra Electricity
Regulatory Commission (Consumer Grievance Redressal

Forum & Electricity Ombudsman) Regulations, 2006 (here-in-after referred-to-as the said Regulations.)

The applicant case in brief is that, as per application of the applicant for power connection, MSEDCL had sanctioned HT power with contract demand of 1510 KVA as per order dated 09.07.2008. It was stated in this order that the metering cubicle has to be purchased by the applicant, and applicant purchased it from approved vendor of MSEDCL. Alongwith this MSEDCL had also asked to erected HT line for which estimate of a total cost of Rs.6,55,750/- were given to applicant. This line was also erected by to their electric contractor at their cost. As per the order of the Electricity Ombudsman case no. 46 of 2008 dated 28.08.2008 and order of CGRF Nagpur Urban Zone, CGRF/NUZ/119 dated 14.05.2008. It has now become clear from that the metering cubicle should have been supplied by MSEDCL free of cost instead of asking the consumer to purchase it from the market. It is also clear that the cost of agreement, testing fees for cubicle & transformer have been incorrectly collected by MSEDCL from the applicant. Work of line erection which MSEDCL has got done through the applicant is not a part of service connection, but an infrastructure created to provide power supply to them. As per order of MERC in case no. 70 of 2005. This cost is to be borne by MSEDCL. The applicant filed application to Inter al Grievance Redressal Cell, Nagpur Rural Circle, Nagpur but only part of the claim was allowed by IGRC and refuse to refund the remaining charges. Therefore, applicant filed present grievance application and claim following reliefs namely.. . . . 1) Refund to cost of agreement of Rs.200/-

- 2) Refund the testing fee cubicle of Rs.5000/-
- 3) Refund the cost of testing fee for transformer of Rs. 3000/-
- 4) Refund the cost of metering cubicle of Rs.1,08,731/-.
- 5) Refund the cost of HT line work as per estimate of MSEDCL, but excluding the cost of metering cubicle of Rs.6,55,750/-

Thus claim of total refund of amount of Rs.7,72,681/- with interest from MSEDCL.

The non-applicant denied the claim of the applicant by filing reply on dated 30.07.2011. It is submitted that M/s. Darpan Multi Poly Pack (India) Pvt. Limited is the consumer of MSEDCL having contract demand of 1510 KVA on 33 KV provide sanctioned order dated 09.07.2009. The MSEDCL admitted refund of certain amount, however MSEDCL specifically denied that the applicant is entitled to recover the amount of Rs.7,72,681/- from MSEDCL.

MSEDCL denied the claim of the applicant towards cost of agreement charges as it non regulatory and mandatory charges. It is submitted that the work of 0.78Km. line, which is carried out by the applicant, through the licensed, Electrical Contractor by paying 1.3% charges of estimate towards the supervision of the work, including both the work of Service line charges and Service connection charges. According to the Commission order in case no. 70/2005 "Service line charges basically covers the cost of infrastructure between the delivery points on the transmission lines and the distributing mains. Whereas, service connection is interpreted as a link between licensee's nearest distribution points (i.e. Distributing Main) to the point of supply at consumer's premises, which also

includes other accessories, i.e. any apparatus connection to any such line for the purpose of carrying electricity & SCC covers cost involved in providing service connection from distributing mains.”

From the above definition it is clear that the service connection is a link between Distributing Main to the point of supply at consumer’s premises.

Regulation 3.3.2 of Electricity Supply Code authorizes the Distribution Licensee to recover all expenses reasonably incurred in laying down line from Distributing Main to the point of supply at consumer’s premises as per Schedule of Charges.

MSEDCL further denied the claim of the applicant towards Transformer testing fees for Rs.3000/-. Testing of transformer is mandatory before sanctioning the estimate and load to the consumer. If there is any internal defect in the transformer, it will hamper the whole system and also cause damages to the equipment of the consumer. It is further gives rise to tripping / interruption in the system of other consumers. It is also necessary to decide the losses of Transformers within permissible limit and also to check quality of Transformers before and after transportation. Testing of transformer is beneficial to both, the licensee and the consumer. Timely testing of transformer and its maintenance is an integral process for maintaining the safety of the equipments and one cannot avoid these safety measures. Also the question of consent of the consumer does not arise in it as, it is a mandatory procedure. Moreover, the Commission

in its order date 08.09.2006 in case no. 70 of 2005, has specifically mention that, the charges for testing of equipment belonging to consumer are non regulatory items generating other income for these licensee. The Commissions therefore does not include these items in Schedule of Charges.

It is further submitted that 33 KV HT line, 0.78km. which is laid down by the applicant, through the Licensed Electrical Contractor, is line tapping from the existing 33 KV Gumthala Feeder to the point of Supply at consumer's premises. Therefore a consent for carrying out the work through a licensed electrical contractor was given by the applicant by paying supervision charges. In the consent applicant has stated that he will not claim for refund of the expenditure incurred for electrification of the above work and this documents attached alongwith reply which is at Annexure-II. It is submitted that claim of applicant may be rejected and grievance application may be dismissed.

After hearing arguments of both the sides this Forum dismissed grievance application of the applicant vide Case No.32/2011 as per order dated 02.09.2011. This order was challenged by the applicant before Hon'ble Electricity Ombudsman, Nagpur in Representation No. 70/2012. But order of this Forum was maintained by Hon'ble Electricity Ombudsman, Nagpur. Being aggrieved by said order of Hon'ble Electricity Ombudsman, Nagpur applicant filed Writ Petition before Hon'ble High Court of Judicator Bombay Bench at Nagpur. As per order dated 18.01.2016 in Writ Petition No.4595/2014 this matter is remanded back to this Forum for

deciding the grievance submitted by the applicant on merits on or before 29.04.2016

In view of order passed by Hon. High Court this Forum had issued notices to the both parties and fixed the matter for hearing on merits. Both the parties remained present before Forum. Forum heard arguments of both the parties on merit and proceed to decide the grievance application on merit in accordance with law.

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.

So far as merit of the case are concerned in this matter applicant claimed refund of cost of agreement, refund of testing for cubical, refund of cost of testing fee for Transformer, refund of cost of metering cubical and refund of cost of H.T. line work, total claim amounting to Rs. 7,72,681/-.

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, perhaps both the parties did not argue the point that issue of "Refund of cost of Infrastructure"

is sub-justice before Hon'ble Supreme Court and stay is granted by Hon'ble Supreme Court.

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

1. In this case, the applicant has given stress on the Hon. Electricity Ombudsman's order. 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."

2. 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.***

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 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."

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 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 No. CE/Dist/III/22197/20.05.2008. 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 no where 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.”

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.

33KV H.T. line, 0.78 kms. which is laid by applicant through the Licensed Electrical Contractor as a line tapping from the existing 33KV feeder to the point of supply at consumer premises. Therefore a consent for carrying out the work to the Licensed Electrical Contractor was given by the applicant being the supervision charges. In the consent applicant has stated that he will not claimed for refund of infrastructure incurred for electrification of the above work. Therefore, now applicant is estopped from claiming the charges. Therefore on merit applicant is not entitled to claim amount of Rs.7,72,681/- from M.S.E.D.C.L. Therefore grievance application deserves to be dismissed on merits and hence Forum 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 permit.

Sd/-
(Smt.Vandana Parihar)
MEMBER
SECRETARY

sd/-
(ShriShivajirao S.Patil)
CHAIRMAN