

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

Case No. CGRF(NZ) 14/2018

Applicant : Big Vision Reasearch Institute Pvt. Ltd.,
1072, Durgavati Chouk, Sujata Nagar,
Itwari Road,
Nagpur.

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

Applicant represented by : 1) Shri Suhash Khandekar,

Non-applicant represented by: 1) Shri N. Vairagade, Exe. Engineer MSEDCL,
2) Shri Dahasahastra, SNDL, Nagpur.

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

ORDER PASSED ON 15-05-2018

Under Regulation 6.4 of the MERC (CGRF & EO) Regulations 2006, Applicant has challenged the order dated 3-2-2018 passed by the IGRC, SNDL, Nagpur, rejecting the grievance of the applicant in Case No. 35/2018.

1) This grievance has arisen due to order 'C' of order dated 17-4-2017 by E.O. in representation No. 69/2016 between the same parties and order 'C' and 'b' are as under,

(c) “The appellant is at liberty to seek a refund of the infrastructure and Supervision Cost with interest, at the right time, once the Case No. 20340/2007 is decided by Hon’ble Supreme Court of India.

“(b) The respondents shall pay Rs.10000/- as compensation to the appellant for unnecessarily harassing the appellant by insisting, inspite of his protest that he should go for H.T. supply, when his requirement was for L.T. supply.”

2) Supreme Court of India, Civil Appeal No. 4305 of 2007 (old No. 20340/-2007) order dated 10-11-2016 is as under,

“Heard the learned counsel. Mr.Rimali Batra, the learned counsel, appearing for the appellant has argued vehemently and has made all submissions, which could have been made. However, we are unable to agree with her submissions. The impugned Judgement does not require any interference.

The Civil appeal is dismissed. Pending application, if any, stands disposed of”.

This means the orders of MERC in Case No. 82/2006 dated 17-5-2007 & 21/8/2007 prevails.

3)(A) In the aforesaid order of MERC in para 2, the reference is to MERC order dated 8-9-2006 in case No. 70/2005 in case of refund of SLC, SCC, ORC & Cost of meter. The order is as under.

“The commission totally reject MSEDCL’s proposal to recover service line charges etc. from progressive consumers except in cases of consumer require dedicated distribution facility. As per provisions of the Act,

developing infrastructure is the responsibility of licensee. The commission therefore directs that the cost of infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL”

(B) The rulings in MERC Case No. 82/2006 dated 17/5/2007 & 21/8/2007 are as under respectively.

“While on the subject, the commission directs that MSEDCL should not collect any monies under any charge items which is not defined under the Supply Code and / or the order dated 8/9/2006”

There shall directions to MSEDCL in terms of the above. The commission reiterates that appropriate action under Section 142 of the E.A. 2003 may be considered by the commission on the managing Director, Director(Operations) and Chief Engineer “Commercial” of MSEDCL, should the directives issued to MSEDCL under this order not be complied with.

Para 9 – The directions of the commission to MSEDCL were to i.e. intention not to comply. The directions of the commission to MSEDCL were to refund amount that never belongs to them as they collected illegally. It is well settled that interest shall also be liable on such amount.

Para 10 – Commission has imposed penalty for contravention of aforesaid para No. 7 and 8, Rs. 1 lakh for each contravention etc. and further in case of a continuing failure with an additional penalty of Rs.6000/- for every day during which the failure continues after contravention of the directions contained in the order dated 17-5-2007.

4) In view of the above paras it was clear or within knowledge of non applicant that the issue pending before SCI, was regarding refund of cost of SLC, ORC & Electric Meter Cost for duration 20-1-2005 to 30-4-2007 and same is further proved by MSEDCL Circular No. 25079 of 21-10-2017.

Non applicant in reply to Rep. No. 69/2016 on 11-2-2017 for refund of Infrastructure cost of 2014 in between same parties, in same manner stated in even though it pertains to 21-1-2005 to 30-4-2007, when the Supreme Court Case was already dismissed on 10-11-2016 i.e.

“Reply of Non applicant. - It is also untenable in law according to regulation 6.7(d) of the said regulations, issue of refund of cost of Infra is subjudice before Hon’ble Supreme Court, therefore at this stage appellant is not entitle to get refund of Infrastructure”.

5) From the above observations, It is further to mention that even after Supreme Court Judgement dated 10-11-2016, non applicant dared to make false submissions which proves the serious legal apathy of Non Applicant/Nodal Officer as well as law officer. Secondly it is proved that non applicant has taken shelter of false contention and misguided Hon. E.O. Nagpur in this case.

6) To proceed with present grievance of the applicant which was already dealt & decided by Hon. E.O. Nagpur in representation No. 69/2016 on 17-4-2017 and as our views and reasoning is same reproduce here below,

The appellant who is a medical research institute had a 10 KW, LT industrial Connection with Consumer No. 410014677091 for construction purpose. On 6.12.2013, the appellant applied for an additional load of 196 KW with Contract Demand of 110 KVA. Additional documents were submitted on 2.1.2014 to the respondent Spanco Nagpur Distribution Ltd. (SNDL for short) as required by them. On 27.2.2014, a letter was received by the appellant from the SNDL asking them to avail HT supply for stability of supply and as there was no infrastructure available at the site or nearby for LT supply of 110 KV. This was inspite of the appellant's letter dated 17.1.2014 asking for LT supply. As asked by SNDL, the appellant gave a joint undertaking to the effect that they were ready to pay 1.3% supervision charges and, therefore, the estimate for the HT infrastructure may be framed and sanctioned. The work was carried out jointly by M/s. Big Vision Research Institute and M/s. Deshraj Bhandari & Associates (Guruda Complex) as per the estimate. After due approval from the Electrical Inspector, the line was charged on 30.4.2014. The appellant spent Rs.1,71,749/- (Rs.1,66,269/- as his part of the shared cost of the work and Rs.5480/- towards 1.3% supervision charges).

7) Applicant approached the IGRC for refund of the amount spent on Infrastructure work. By an order dated 3-2-2018, the IGRC rejected the claim by relying on MSEDL's Circular No. 25079 dated 12-10-2017 and saying that the applicant's payment date is in 2014.

8) The prayer of applicant is that SNDL/MSEDCL may be advised to release within one month, Rs.171749/- alongwith interest at standard bank rates towards the cost of infrastructure to us, totaling to Rs.2432349 as on 28-2-2018 inclusive interest @ 9.5% and compensation of Rs.20000/- and for any further delay to comply the order of CGRF, DPC of 1.25% p.m. of the amount and interest at the same rates shall be payable by SNDL/MSEDCL as they charge their consumers for delay in payment) (Page 536 of Tariff order 3-11-2016 in case No. 48 of 2016).

9) Non applicant in their reply dated 17-3-2018 denied the claim made by applicant stating that applicant has carried out the Infrastruture work with cost of Rs.171749/- for getting 110 KVA H.T.Supply and applied to IGRC for refund on the ground that the laying of the infrastructure is the responsibility of licensee/franchisee. On disposal of case in Supreme Court, applicant approached company as well as nodal office for refund but both rejected the refund as well as IGRC rejected claim. Non applicant relied on MSEDCL Cir. No. 25079 dated 12-10-2017 and stated that applicant has paid ORC charges in 2014, the same cannot be considered for refund as case before Supreme Court was for period 20-1-2005 to 30-4-2007 only and prayed for rejection of application.

10) On perusal of order of E.O. Dated 17-4-2017, it is revealed that Non applicant raised the issue as para 6 is as under,

“The respondents by their reply dated 18-2-2017 denied the claims made by the appellant stating that (i) the appellant had applied for 206 KW/110 KVA load. However, as there was no infrastructure available in the vicinity of the premises and for the purpose of getting urgent electric supply for Hospital, the appellant alongwith co-partner M/s. Deshraj Bhandari & Associates had given a joint consent for carrying out the required infrastructure work. Accordingly the estimate was sanctioned and after the appellant paid the supervision charges, the work was completed by the appellant and its co-partner. Now, after the release of the connection, the appellant has demanded a refund of the cost of work i.e. his share of Rs 1,71,749/-. The consent letter for this work was given unconditionally by the appellant whereas the respondent did not give any consent for refund of the cost of work. The IGRC has already rejected his application. The Forum also rejected his Grievance as the Grievance is barred by limitation as per Regulation 6.6 of the MERC (CGRF & EO) Regulations, 2006 and as the cause of action lastly arose on 30.4.2014 and the Grievance was filed on 1.7.2016. the Grievance is also not tenable in law according to Regulation 6.7 (d) of the said Regulation, as the issue of refund of cost of infrastructure is sub-judice before the Hon’ble Supreme Court of India. Hence, the Forum rejected the Grievance.

But did not mention any thing about consent letter in this case, argued orally saying applicant is not entitle for refund.

Para 8 of E.O’s order.

It is admitted fact that on 6.12.2013, the appellant applied for an additional load of 196 KW and 110 KVA Contract Demand. The respondent SNDL vide their letter dated 27.2.2014 insisted that the appellant should go in for HT supply by erecting the required infrastructure on a cost sharing basis. This was inspite of protests by the appellant to the effect that the appellant is entitled for L.T. supply as per Standard of Performance Regulations, 2005 (Item 5.2 (i) (b) vide letter dated 17.1.2014). As the construction work was nearing completion and no positive response was coming from SNDL, the appellant had no alternative but to avail himself of HT supply as insisted upon by the respondents. Accordingly, the infrastructure work was completed on a cost sharing basis with M/s. Garuda Complex. The appellant was compelled to give his consent for carrying out the work on a sharing basis. The shared portion of work carried out by the appellant is Rs.1,71,749/- (Rs.1,66,269/- paid to the Licensed Electrical Contractor + Rs.5480/- paid towards 1.3% supervision charges). As per Circular No. 22197 dated 20.5.2008 issued by the Chief Engineer (Distribution) MSEDCL, Mumbai (by which guidelines for releasing new connections and augmentation were issued), item no. 1.3 has been elaborated as under :-

“All LT industrial individual or group consumer – If the consumer/group of consumers wants early connections and opts to execute the work and bears the cost of infrastructure then the refund of the cost of infrastructure will be given by way of adjustment through energy bills. This Circular is issued subject to the final decision in the proceedings pending before the Hon’ble Supreme Court and MERC and to avoid hardship to prospective consumers

and to remove difficulties in release of new connection.”

Section 42(i) of The Electricity Act 2003 and MERC order dated 16-9-2008 in petition No. 56(2007) para a – respectively.

“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.”

“The commission observed that the consumer should not be burdened with this infrastructure cost which are liability of MSEDCL. It is further observed that if paucity of funds is the actual reason behind burdening consumers for infrastructures MSEDCL may seek the recovery of the same as an Annual Revenue requirement.”

In view of the above legal position vide section 42(i) and MERC order dated 16-9-2008, the Non applicant’s reference to MSEDCL Cir. No. 22197 dated 20-5-2008, is void as per Reg. 19, 19.1.19.2 because circular dated 20-5-2008 is not inconsistent with the provisions of the Electricity Act. 2003 & ESC-2005 & MERC order dated 16-9-2008. Hence circular loses its referral value.

11) The points for our consideration are – but E.O. vide order dated 17-4-2017 has affirmed in page 13 (a)(b)(d)(e) (Page 5 of order) ? - Yes.

(a) “Whether the appellant consumer comes under L.T. Category.? Yes”

I agree with this in view of Clause 5.2 (b) of the Standard of Performance

Regulations, 2014 of the MERC.

(B) Whether the action of the 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 and legal? - No”

The appellant had been given LT supply of 10 KW for his construction purpose. This show that the infrastructure for LT supply was in place. It cannot be presumed however that this infrastructure could have catered to a 110 KVA Contract Demand Load, which was the requirement of the appellant. Even then, it was the responsibility of the MSEDCL to create the infrastructure as required for the supply of a 110 KVA load. Even though consent was given by the consumer for HT connection, it is apparent, in view of the protest letter dated 17-1-2014 of the appellant that the consent is a forced consent, given under duress.

(d) “Whether applicant is entitled for refund of Rs.1,71,799/- (cost of infrastructure + supervisions charges) with interest at bank rate? - Yes”

The consumer deserves the refund with interest at the bank rate. However, due to the stay of the Hon’ble Supreme Court dated 31.8.2007 in Case No. 20340/2007, it cannot be granted at this stage.(since dismissed on 10-11-2016).

(e) “Whether applicant is entitled for compensation for harassment, mental Agony and cost? - Yes”.

The appellant was entitled to electricity supply on LT side but was forced to avail himself of the same on HT side by creating infrastructure himself. He is liable for refund of infrastructure cost alongwith compensation for harassment.

12) Applicant said non applicant SNDL never argued that this is case of DDF, but now suddenly has come up with new excuse. Non applicant is unnecessarily dragging on the issue.

Non applicants submission on DDF is probably solely based on consent letter without date applicant vide letter dated 17-1-2014, neither requested to H.T. nor to DDF facility but emphasized on L.T. Applicant said consent is given on insistence of SNDL and to carry out the work at cost of applicant. It is not free consent because claim it is undated as well as no consumer will give free consent to spent huge amount on power supply that to under duress and compulsion of unnecessary burden of cost, Interest and delay in loss of Income.

(A) On perusal of MSEDCL Cir. No. 22197 dated 20-5-2008, on page 5 for dedicated distribution facility.

“The total infrastructure cost from the applicant shall be recovered seeking D.D.F”.

Seeking word is self explanatory and applicant did not seek DDF and it is not specifically mentioned in consent letter which was taken under duress. MERC order dated 16-2-2008 in case No. 56 of 2007 page 6 at the top few lines as under.

“D.D.F cannot be shared in future by other consumers.

Such facility cannot be imposed on a consumer. If the consumer does not seek D.D.F. the licensee has to develop its own infrastructure to give electric supply within the period stipulated in Section 43 of the Electricity Act 2003 read with the MERC (SOP of DL, period of giving supply an determination of compensation) Regulations 2005. In fact licensee should take advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfill” Universal service obligations” as per the spirit envisaged in the E.A. 2003 and the regulations.”

Hence contention of non applicant on DDF deserves to be rejected as DDF was imposed against above directives and obtained consent under duress against free bill of applicant.

Para 9 & 10 are as under.

9) “There cannot be a second opinion, that the orders which are passed by the Maharashtra Electricity Regulatory commission would become relevant from the point of view of the consumer’s interest. So also the regulations which are framed under the Electricity Act 2003 as noted above and relevant to the facts of this case, are required to be interpreted in a manner which are beneficial to the consumers. Further when it comes to distribution of electricity, the petitioners are in a monopolistic or in a dominant position, as no other player is in the field at least in this case. In this situation the consumers,, (respondent No 1 in this case) cannot be said to be in a sound bargaining position in demanding supply of Electricity and its term and conditions. This

inequality becomes relevant when such agreements as the MOU in the present case are required to be considered by the court. The applicability of doctrine of inequality to such contracts cannot be ignored. It is in this circumstance that the order passed by the MERC and the statutory regulation play a pivotal role for protection of the consumers interest. Thus in entering into such agreements the petitioners in their public character cannot be oblivious of the statutory regulations and the obligations cast on them under the various orders, which are passed by the authorities under the Act and which become binding on the petitioners as in the present case. Nor can the petitioners enter into such agreements which would defeat the regulations or render nugatory the orders passed by the adjudicating authorities under the act. Thus, the reliance of the petitioners on the decision of the Supreme Court in *Virgo steels Bombay* (supra) would not assist the petitioners and/or is misplaced in the facts of the present case”.

10) In the circumstances, in my clear opinion, as the agreement itself, being contrary to the requirement of law, the submission of estoppels or for that matter waiver of a legal right by respondent No.1, as urged on behalf of the petitioners cannot be accepted. It would be an argument contrary to the doctrine of public policy as envisaged under Section 23 of the Indian Contract Act.

13) After the hearing of the case was over the case was discussed among the members of the Forum. The Chairperson and the Member (CPO) were of the opinion that the applicant is entitle for refund of the infrastructure cost and the compensation. However the Member Secretary of the Forum gave a dissenting note. It reads as under,

14) Dissenting Note By Member Secretary/Executive Engineer in r/o case no.14/2018 . Big Vision Research Institute Pvt. Ltd.

I have gone through the above reasoning and my opinion in this matter differ as below:

1. The applicant **Big Vision Research Institute Pvt. Ltd** having Consumer No. 410014677091 is a consumer of SNDL.They had applied for refund of cost of Infrastructure claiming an amount Rs.171749.00 with 9.5 % interest which has been paid by them for availing the connection. The Instant grievance application was rejected by IGRC as well as by CGRF(case No.94 of 2016). Then they filed their grievance with Hon'ble Electricity Ombudsman as representation No. 69/2016 & it has ordered that "*The appellant is at liberty to seek a refund of the infrastructure and Supervision Cost with interest, at the right time once the Case No. 20340/2007 is decided by the Hon'ble Supreme Court of India.*"

As per contention of applicant, the applicant gave a joint undertaking that they were ready to carry out the work by paying 1.3% supervision charges for availing HT supply, the estimate for meeting their demand was framed and sanctioned. The work was carried out jointly by M/s. Big Vision Research Institute and M/s. Deshraj Bhandari & Associates (Guruda Complex) as per the estimate and incurred the total cost as Rs.1,71,749/- (Rs.1,66,269/-as actual expenses Plus Rs.5480/- towards 1.3% supervision charges) ,refund of which is now claimed being by them.

As the present grievance of applicant is already dealt & decided by E.O. Nagpur in representation No. 69/2016 on 17.4.2017, the matter is restricted as to whether after decision of Hon'ble Supreme Court of India in case no. 20340/2007 whether applicant is liable for refund of infrastructure cost ?.

As per my opinion Supreme Court of India Civil Appeal No. 4305 of 2007 (old No. 20340/-2007) order dated 10-11-2016 is as under.

“Heard the learned counsel. Mr.Rimali Batra, the learned counsel, appearing for the appellant has argued vehemently and has made all submissions, which could have been made. However, we are unable to agree with her submissions.The impugned Judgment does not require any interference.The Civil appeal is dismissed. Pending application, if any, stands disposed of”.

Forum has concluded that this means the orders of MERC in Case No. 82/2006 dated 17-5-2007 & 21/8/2007 prevails and Instant applicant is entitled for refund. But in pursuance of the Hon’ble Supreme Court order, and MERC’s orders in case no. 82 of 2006dt.17.05.2007 and 21.08.2007,the Specific departmental circulars such as 25079 dt.12.10.2017 has been issued by MSEDCL for refund of SLC,ORC and meter cost from the consumer. The directives of this circular are applicable to only those consumers who have paid SLC,ORC and meter cost over the period of **20.01.2006 to 30.04.2007**.The instant applicant’s has made **payment after 30.04.2007** which is in the year 2014. Hence Contention of Non-applicant that when MERC orders are for particular period, there is no question of considering the cases of consumers who have made payment after 30.04.2007 is quite justified. In view of above analysis, Non-applicant is not entitled for any refund and thus his application deserves to be rejected.

Mrs.V.N.Parihar
MEMBER/SECRETARY
CGRF,NZ,Nagpur

15) We have perused the note. In view of the position discussed in the order we disagree with the view of the Member Secretary.

16) In view of the above observations. Applicant is entitle for refund of Rs.171749/- at the standard Bank rate as per Section 62(6) of the E.A. 2003 as well as entitle for compensation of Rs.10000/- for denying right full dues as per order of E.O. and further harassing applicant by dragging into unnecessary litigation as per MERC (CGRF & EO) Regulations 2006 Reg. 8.2 (c&e).

Hence the order.

ORDER

1. Non applicant is directed to refund Rs.171749/- with interest i.e. standard bank rate as per section 62(6) of The Electricity Act 2003 from date of payment/investment till its refund.
2. Non applicant is further directed to pay Rs.10000/- as compensation for denying rightful dues and harassing applicant by dragging into unnecessary litigation,
3. IGRC order is quashed & set aside.

Sd/-
N.V. Bansod
MEMBER

Sd/-
Mrs.V.N.Parihar
MEMBER SECRETARY

Sd/-
Vishnu S. Bute
Chairman