

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

Case No. CGRF(NZ)/13/2018

Applicant : 1) Shri Manik Wankhede,
2) Shri Ramsurat Chouhan,
3) Smt. Smita Agarwala,
4) Shri Ashish Regundwar,
5) Shri Sanjeev Pradhan,
6) Shri Ashish Khemuka,
7) Shri Kesab Chandra Ray Burman,
8) Shri Gaurav Mahendu,
9) Smt. Kanchan Dapke,
10) Shri Sandeep Dwelles P.Ltd.
11) Shri Kuber Chauhan,
12) Shri Tarun Bhartia,
13) Smt. Neha Bhartia,
14) Gokul Construction.
15) Smt. Vandita Avinash Killa,
16) Shri Naresh Row,
17) Sanjeev Pradhan,
18) Smt. Sunita Dattatray,
19) Shri Ashok Kalra,
20) Shri Brijesh Rathi,

Non-applicant : Nodal Officer,
The Executive Engineer,
Butibori Dn., MSEDCL, Nagpur

Applicant represented by : 1) Shri. Chandak,
2) Shri Agarwala Builder,

Non-applicant represented by: 1) Shri Ghatol, Ex.Engr. MSEDCL.
2) Mrs. Parakhi, Addl.E.E. MSEDCL.

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

ORDER PASSED ON 04-05-2018

Above mentioned twenty applicants (hereinafter referred to as, the applicants) had submitted application for new electricity connections, to the MSEDCL (hereinafter referred to as the respondent), for their own flats in SDPL premises, "SDPL 'Paradise" project at Dhaba, Nagpur. The respondent vide letter dt. 5-9-2017 refused to release new service connection. The applicant approached the IGRC – NUC – MSEDCL. The IGRC dismissed the application vide order passed in case No. 17/2017 on 22-12-2017.

Feeling aggrieved by the aforesaid order the applicant presented this application under the provisions contained in Regulation 6.4 of the MERC (CGRF & EO) Regulations 2006.

The respondent was directed to submit parawise reply. The respondent submitted reply under no. EE/MIDC Dn/Tech/CGRF/889 Dt. 9-3-2018. The case fixed for personal hearing on 19-04-2018. Both the parties were present. They were heard.

It was argued on behalf of the applicant that M/s. SDPL, is constructing a housing scheme named, "SDPL Paradise" at Dhaba, Nagpur. There are 257 number of dwelling units. The project was initiated in 2014. The respondent released a connection at the site for construction purpose. It bears consumer no. 410018623025 with billing unit no. 4690. The developer right from the beginning clearly stated that the connections to all 257 dwelling units be granted under non DDF Scheme. As per Regulation 5.5 of the supply code the applicant is willing to handover a piece of land for the purpose of creation

of infrastructure. The aforesaid demarcated land was inspected by the representative of the respondent on 5-5-2014. It was also stated that the land is suitable and acceptable.

The respondent took reference of circular no. CE(Dist.)/D III/Circular/22197 dt. 20-05-2008 and refused to release the connections under non DDF Scheme. In fact the circular dt. 20-05-2008 has been superseded by the circular of the Chief Engineer's Commercial Circular no. 280 dt. 04-02-2017.

According to the order of the IGRC, the Chief Legal Advisor gave opinion that the request of the applicant for providing electricity under non DDF cannot be accepted. However this opinion is illegal and against the guidelines of the MERC, SOP 2014 and the Electricity Act 2003.

The respondent asked us to bear the cost of infrastructure under DD facility. The estimate as finalized by the respondent is about 34 lakhs of rupees.

As stated above the applicant is ready to handover the required land to the respondent to develop the infrastructure. Clause 5 on page 5 of circular 28792 reads as under,

"If Developer/Builder/Owner/Applicant provides the required land to the MSEDCL and MSEDCL develops, erects and commissions substation and necessary allied infrastructure then it shall be treated as non DDF". The applicant right from the beginning made it clear that the applicant is willing to handover the required land and the applicant is not seeking any DDF facility. The applicant referred to the following cases for the consideration of the Forum.

- 1) In case no. 70 of 2005 dated 8-9-2006 at page 29 the Commission observed, "As regards expenditure incurred on 33 KV and 11 KV infrastructure beyond distribution mains, which form a distinct part of wheeling business, there is no provision in the supply code regulation allowing licensee to recover it from the prospective consumer. The expenditure incurred on upstream of the distribution mains may be claimed through ARR."
- 2) In an order passed in case no. 56 of 2007 dt. 15-2-2008 at page 6 the Commission stated that dedicated distribution facilities cannot be imposed on a consumer. If the consumer does not seek dedicated distribution facility, 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 distribution licensees, period for giving supply and determination of compensation) Regulations 2005. In fact the licensee should take advance action to develop the distribution net work, based on the survey of groth packets and demand projections so as to fulfill, "Universal Service Obligation", as per the spirit envisaged in the Electricity Act 2003 and the regulations made there under.

The Commission in the said order at page 4 in point no. 9 has said, "the commission observed that the consumer should not be burdened with the infrastructure cost which is the liability of MSEDCL. It was further observed that paucity of fund is the actual reason for burdening applicants for distribution infrastructure, MSEDCL may seek the recovery of the same

annual revenue requirements. It has further observed in the same point that the DDF should be provided on the request of consumer and not as per direction of MSEDCL. It was further ordered by the commission that under Electricity Act 2003 regim the mode of recovery of infrastructure cost has been altered. As against the earlier practice of charging individual consumer for infrastructure costs. The recoveries of infrastructure costs need to be made through general tariff. (as a part of annual revenue requirement).

It was also stated that if some individual constructs his own house in the same Khasara the MSEDCL provide connection as per SOP 2014. Even if any infrastructure including HT/LT Lines is required the total expenses are incurred by MSEDCL. However in the instant case the MSEDCL is burdening the applicants for infrastructure cost. There is no separate category of tariff for apartments or individual house, they all come under residential category only. However the respondent is differentiating them in giving the supply.

The respondent have shown total disrespect to the commercial circular no. 240 issued by the CE(Comm) dt. 2-5-2015.

Prayer of the applicant was as follows.

1. The respondent be directed to release the connections to the applicants immediately.
2. The applicants has to sustain financial loss. They can not occupy the flats due to non availability of electricity. The compensation may be awarded.
3. Compensation may be awarded as per the provisions of the SOP for not taking action on the application, like (a) inspection (b) non issue of demand note (c) non release of connection.

Shri Ghatol Exe.Engineer Buty Bori Division and Mrs. Parkhi, Addl. E.E. argued for the respondent. They referred to the reply dt. 9-3-2018.

The respondent further submitted that the applicant gave application for load sanction and electricity supply on 5-1-2016. Total load was of 1234 kw. The load is equal to on more than 500 KVA, So the provisions of Circular, CE.(Dist.) /D III/Circular 22197 dt. 20-5-2008 are applicable. Point no.3 of the Circular reads, "Generally, the load of 500 KVA and above are availed to cater to the exclusive requirement of complex in the form of Dedicated Networks to such complex and in most of the cases the infrastructure including the transformer lines and other allied equipments are required to be installed in the developer's premises itself and remains for the exclusive use of the complex. Therefore, the developer or the group of consumers shall be given connection as Dedicated Distribution Facility (DDF) which will not include the cost of setting up or augmentation of 33/11 or 22/11 KV Sub Station. The line will remain dedicted to the consumers in future."

Total estimated value for the proposed work is about 34 lakhs of rupees. The applicant is not ready to bear the cost of the infrastructure. In view of the provisions of the circular dt. 20-5-2008, it is not possible for the respondent to release the connections. The same fact was communicated to the applicant.

Prior to the instant proceeding 15 consumers approached the respondent for residential connections in the same premises. The respondent denied to release the connections as they were not ready to pay the infrastructure cost. The applicants approached this forum. In case no. CGRF (NZ) 56/2017 this forum upheld the action of the respondent.

So the grievance application has no force. It may be dismissed.

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 applicants are entitled for electricity connection. However the Member Secretary of the forum was of the opinion that the action taken by the respondent is proper. It needs to be confirmed. The Member Secretary was requested to give a dissenting note.

The note given by the Member Secretary reads as under.

Argument furnished by the Applicants:-

1. Applicants i.e. twenty Individual flat owners have submitted applications to Non-applicant for new residential connection on dt.27.02.2017 for their own flats of SDPL premises project at Dhaba ,Nagpur. The Non-applicant refused to release Individual new connections of this project, and rejected all these applications.
2. M/s. SDPL Paradise, planned to construct 257 no's of dwelling units at Dhaba, Nagpur. The project was initiated in the year 2014 and was granted a new service connection for construction purpose bearing consumer no. 410018623025 with billing unit no. 4690.
3. It was stated by them that, they handed over a piece of land to MSEDCL as per norms and MERC supply code. The said demarcated land was inspected by the then Dy. Exe. Engineer on dated 5.5.2014 and a letter was issued by the said authority for acceptance of the said land for meeting their connection demand. But they were asked to bear the cost of infrastructure under DD Facility (1.3% normative/supervision charges) which is around 34 lakhs rupees, as per CE (Dist.) circular no. 22197, dt 20.05.2016 and also CE (Comm.) Circular no. 2667 dt

4.2.2017 & Comm. Circular no. 280. These circulars has cast the duty of installation of the transformer HT/LT lines on developer/builder in the developer's premises and it will be remain exclusively for the complex and supply to the flat owners.

4. It was further stated by Applicants that, clause no 5 of circular 28792 on its page 5 has clearly mention that *"if developer/builder/owner/applicant provides the required land to MSEDCL and MSEDCL develops, erects and commissions substation and necessary allied infrastructure then it shall be treated as non-DDF."*

5. Hence in spite of the fact ,since the very beginning they were are willing to handover the required land but not seeking any DDF Facility, Non-applicant has been forcing them to carry out the work under DDF Facility.

6. They further submitted that, the MERC through its various orders have put the onus of creation of electrical infrastructure for all new residential and commercial connection to MSEDCL. In support of this, the applicants has cited following orders /Judgments and hence sought reliefs made in the application

1] Case No. 70 of 2005 dated 8.8.2006 of page no 29 of said order the commission has observed " *As regards expenditure incurred on 33 KV and 11 KV infrastructure beyond distribution mains, which from a distinct part of wheeling business, there is no provision in the supply code regulation allowing licensee to recover it from prospective consumer. The expenditure incurred on upstream of the distribution mains may be claim through ARR."*

7. They also submitted, that the MSEDCL being the Distribution Licensee is bound by the provision of the Electricity Act, 2003 as well as the Regulations of the Commission to provide infrastructure up to the point of supply. Therefore, Licensee has failed to comply with the Electricity Act, Orders issued by MERC, SOP regulation

instead breached the same and has intervened with the procedures of the Appellate Authority. Therefore denying connections to 20 nos. of individual connection is unlawful and in violation of directions of the Commission.

8. Therefore, they seek justice from the forum and pray as follows.

.Prayer:

1. The new connection to all the 20 applicants in SDPL Paradise at Dhaba may be released immediately.
2. SOP Provisions be made applicable and compensations as deem fit under SOP be pass to all the applicant.

9. Argument furnished by the Non-applicant

Non-applicant submitted that M/s SDPL paradise had submitted the application for load sanction and electricity supply for group of flat owners of their M/s SDPL paradise project with total 1234 KW connected load on dt. 05.01.2016. The connected load being above 500 KVA for their group of consumers, quidlines as per departmental circular no.22197 dt.20.05.2008, issued by the Chief Engineer (Distribution) MSEDCL,Mumbai,(vide which guidelines for releasing new connections and augmentation were issued)item no.3 has been given as under:-

“Generally ,the loads of 500 KVA and above are availed to cater to the exclusive requirement of complex in the form of dedicated network to such complex and in most of the cases the infrastructure including the transformer, lines and other allied equipments are required to be installed in the developer’s premises itself and remains for the exclusive use of the complex. Therefore the developer or the group of consumer shall be given connection as Dedicated Distribution Facility (DDF) which will not include the cost of setting up or augmentation of 33/11 or 22/11 KV sub-station. The line will remain dedicated to the consumers in future.

10. Accordingly, The total estimated cost to cater the 1234 KW load of these group of flat owners , proposed is 34 lakhs(Under 1.3 % normative/supervision charges) which was informed to the applicant on dt.05.12.2016 and requested to submit the consent for sanctioning estimate under 1.3%Supervision charges.

11. Non-applicant further stated that, for releasing of new connections to these group of consumers in a complex for all material purposes, the clause at serial no.3 in MSEDCL circular no.22197 dt.20.05.2008 states that the developer or group of consumers shall be given connections as DDF only. And therefore the request of the individual applicants for providing of Electricity supply under non-DDF cannot be granted in the wake of clause at serial no. 3 of MSEDCL circular no.22197 dt.20.05.2008.hence as regards releasing of new connection to the group of consumer from existing infrastructure, the same will not be feasible unless SDPL is ready to bear the aforesaid cost for developing the necessary infrastructure for giving New service Connection.

12. He has further submitted that, these 20 applicants of the same project however, submitted application for new service connection for their individual apartments. As premises and project being the same, estimate for partial consumers could not be framed and All A-1 forms were return back.

13. Hence Non-applicant reiterated that, new connection to group of LT consumers can only be released under DDF scheme, These 20 consumers being part of the group having common approved plan cannot be therefore given connection separately from existing infrastructure.

14. Applicant filed their grievance with IGRC on dt.26.10.2017.Accordingly matter was heard. IGRC passed the order on dt 22.12.2017.and rejected their

application stating that M/s SDPL Paradise being a residential and commercial complex having group of consumers, supply to individual connection of this group is not feasible, hence applicant's request cannot be considered. Hence aggrieved Applicant filed their grievance application with this forum for necessary relief.

15. To enable the Applicant and Non-applicant to put forth their arguments in person, a hearing was conducted before the forum on dt.19.04.18. Forum heard the argument of the both sides and perused documents furnished by them.

16. The Non-applicant stated during the argument and in their rejoinder dt.27.04.201 that In the similar case for releasing supply to 15 nos. of consumer of the M/s SDPL project in the same premises, in **Representation No. 43/2017.** filed on dt.02/08/2017, M/s. SDPL Paradise Apartment, Dhaba, Nagpur. **Appellant...**VS...The Executive Engineer,MSEDCL, Urban Circle, Butibori Dn., Nagpur. **Respondent, Hon'**ble Electricity ombudsman has passed order Passed on 4th day of November, 2017,

(a) *The MSEDCL should release the electricity connections to the 15 applicants who have approached this Authority for the said connections, as per Rules.*

(b) *While releasing these connections, the MSEDCL must take cognizance of the order of the Hon'ble High Court of Judicature at Bombay passed on 31.8.2017 in Public Interest Litigation No. 70/2017.*

17. Non-applicant further stated that the MSEDCL has approached the High Court of Judicature at Bombay, Nagpur Bench, vide a writ petition No.8266 of 2017 challenging this order of hon'ble Electricity ombudsman dated 04.11.2017 passed in representation No.43/2017., Judicial granted interim relief has ordered on 26^h Dec 2017 as follows:

“Issue notice to respondents returnable on 6/02/2018 .In the meantime, there shall be ad interim relief in terms of prayer clause (2) of the petition”

Whereas prayer (2) of the said petition is as follows:-

“(2) Stay the effect,operation,implementation and execution of the impugned final order dated 04.11.2017 passed in representation No.43/2017 by respondent no.2.-Electricity Ombudsman, during the pendency of present Petition.”

18. It would be seen from the Writ Petition No. 8266 of 2017 filed by the Non-Applicant in the High Court Bench at Nagpur **a prayer is made to quash and set aside the impugned final order dated 04.11.2017 passed in representation no.43/2017 by Hon’ble Electricity Ombudsman and be further pleased to dismiss the grievance/complaint of M/s SDPL in Toto.** It is clearly thus seen that these 20 Applicants are agitating the same issues which is already considered and decided in the order dated 04.11.2017 in Representation of 43 of 2017 but challenged by MSEDCL before Hon’ble High Court. As the Writ Petition and the issue in the present proceeding is the same, it can be concluded that present matter is subjudiced.

19. As the said Petition pertaining to release of New service connection to individual flat owner’s of M/s SDPL paradise Project is pending before the High Court, Regulation, 6.7(d) of the MERC(CGRF&EO)Regulations,2006 bar entertaining such grievance, It provides as under ***“The forum shall not entertain a grievance where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already passed by such court, tribunal, arbitrator or authority.***

Therefore I am of the opinion that, when stay has already been granted in the petition having exactly similar issue and in view of this pertinent fact, forum therefore, will be justified and within its rights in rejecting the Grievance application during the pendency of the Writ Petition No.8266 of 2017 filed by the MSEDCL before the High Court.

20. As Regulation 6.7(d) of the MERC (CGRF&EO) Regulations, 2006 is attracted in the instant matter; in the result, grievance application deserves to be rejected.

Member Secretary/EE (CGRF,Nagpur)

Mrs.V.N.Parihar

We have perused the note given by Ld. Member Secretary.

The Member Secretary mainly raised the point that MSEDCL challenged the order passed by Hon. Electricity Ombudsman. Nagpur in representation No. 43/2017 on 4-11-2017. Hon. High Court of Judicature at Bombay, Nagpur Bench Nagpur in Writ Petition No. 8266 of 2017 passed an order 26-12-2017 and granted ad interim relief in terms of prayer clause (2) of the petition.

The Member Secretary stated that as per Regulation 6.7 (d) of the MERC (CGRF & EO) Regulations, 2006, "The Forum shall not entertain a grievance where a representation by the consumer in respect of the same grievance is pending in any proceedings before any court, tribunal or arbitrator or any other authority or a decree or award or a final order has already passed by such court, tribunal, arbitrator or authority".

Since Hon'ble High Court granted stay in the petition having exactly similar issue the instant grievance may be rejected.

We have perused the copy of the Writ Petition no. 8266 of 2017 and the copy of the order passed by Hon. Electricity Ombudsman Nagpur in Representation no. 43/2017 on 4-11-2017.

Prayer clause (2) of the petition reads, "Stay the effect, operation, implementation and execution of the impugned final order dt. 4-11-2017 passed in Representation no. 43/2017 by the Respondent no. 2 – Electricity Ombudsman during the pending of the present petition".

Hon. High Court order is, "In the meantime, there shall be ad interim relief in terms of prayer clause (2) of the petition".

So, it is clear that Hon. High Court stayed the effect, operation implementation and execution of Hon. Electricity Ombudsman's order dt. 4-11-2017. Since this is an independent case the order will not have any effect on the instant proceeding.

The proposal of the Member Secretary is not acceptable.

We have perused the record. We have heard the arguments advanced by both the parties carefully.

The applicant from Sr. No. 1 to 20 submitted application for new connection for their own flats in SDPL premises, "SDPL Paradise" project at Dhaba, Nagpur. The project started in the year 2014. The respondent released service connection for construction purpose. The applicant had stated in their load sanction application that they want the connection for all the 257 dwelling units under the Non Dedicited Distribution Facility Scheme. A

piece of land was demarcated for the purpose of setting up the infrastructure facilities. However relying upon the provisions of circular dt. 20-5-2008, the respondent insisted that the applicant has to take connection under DDF Scheme. The applicant has to bear the cost of the infrastructure.

At the time of argument the applicant referred to case no. 70 of 2005. The order was passed on 8-9-2006. In para 6.4 Commissions ruling is “..... The commission therefore directs that the cost towards infrastructure from delivery point of transmission system to distribution mains should be borne by MSEDCL”.

In case no. 56 of 2007 in order passed on 15-2-2008, the commission have stated that dedicted distribution facility cannot be imposed on a consumer. If the consumer does not seek dedicated distribution facility the licensee has to develop its own infrastructure to give electric supply within the period stipulated in section 43 of the Electricity Act. 2003.

If the orders given by the commission in case no. 70/2005, 56/2007 and the provisions of Section 43 of the Electricity Act. 2003 are taken together we came to the conclusion that the respondent is entitled to electricity connection under non DDF Scheme.

In absence of any cogent and reliable evidence on record we are not inclined to grant any compensation to the applicant.

So we pass the following order, by majority.

ORDER

1. Application no. 13/2018 is partly allowed.
2. Order passed by the IGRC in case no. 17/2017 on 22.12.2017 is set aside.
3. The respondent should release the electricity connections to the twenty applicants, who have approached this Forum, as per Rules.
4. While releasing the connections the respondent should follow the directions given by Hon'ble High Court, Nagpur Bench in Public Interest Litigation No. 70/2017 on 31-8-2017.
5. The applicants are not entitle for any compensation.

Sd/-
N.V. Bansod
MEMBER

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

Sd/-
Vishnu S. Bute,
Chairman