

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

Case No. CGRF(NZ)/38/2018
Applicant : M/s. Mandhaniya Industries, Hinganghat,
C/o. Ashish Subhash Chandarana,
302, Sahakar Nagar, Akola-444004.
Non-applicant : Nodal Officer,
The Superintending Engineer,
Wardha Circle, MSEDCL,
Wardha.

Case No. CGRF(NZ)/40/2018
Applicant : M/s. Vijaylaxmi Ginning & Pressing, Hinganghat,
C/o. Ashish Subhash Chandarana,
302, Sahakar Nagar, Akola-444004.
Non-applicant : Nodal Officer,
The Superintending Engineer,
Wardha Circle, MSEDCL,
Wardha.

Case No. CGRF(NZ)/41/2018
Applicant : M/s. Rukmini Cotex, Hinganghat,
C/o. Ashish Subhash Chandarana,
302, Sahakar Nagar, Akola-444004.
Non-applicant : Nodal Officer,
The Superintending Engineer,
Wardha Circle, MSEDCL,
Wardha.

Case No. CGRF(NZ)/43/2018
Applicant : M/s. Salasar Cotex, Hinganghat,
C/o. Ashish Subhash Chandarana,
302, Sahakar Nagar, Akola-444004.
Non-applicant : Nodal Officer,
The Superintending Engineer,
Wardha Circle, MSEDCL,
Wardha.

Case No.CGRF(NZ)/44/2018
Applicant : M/s. Jalaram Ginning & Pressing,
C/o. Ashish Subhash Chandarana,
302, Sahakar Nagar, Akola-444004.

Non-applicant : Nodal Officer,
The Superintending Engineer,
Wardha Circle, MSEDCL,
Wardha,

Applicant represented by :- Shri Ashish Subhash Chandarana,

Non-applicant represented by :- 1) Shri R.R.Nagpade, E.E., MSEDCL, Wardha.
2) Shri S.V.Barahate, Jr.Law Officer, Wardha.

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

**COMMON ORDER PASSED ON 18.06.2018 in Case No.38/2018,
Case No.40/2018, Case No.41/2018, Case No.43/2018, Case No.44/2018,**

1. All these five grievance applications are filed on 19-04-2018 and 20-04-2018 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. Facts of all these applications are similar and identical therefore we are deciding these cases by a common order.
3. Non applicant filed reply and denied the case of the applicant.
4. Forum heard arguments of both the sides and perused record.

5. Applicant's case in brief is that all of them are Industrial consumers of non-applicant MSEDCL. As per the grievance, while providing electric connection to their installation non-applicant had recovered infrastructure cost under @ 1.3% under NDDF scheme in violation of MERC's supply code regulation 2005, approved schedule of charges and subsequently denied the refund of the total amount with interest. According to applicant, IGRC vide its order directed to refund the cost of cubicle metering, unlawful recovery of testing charges and also to initiate the process of refunding electricity duty recovered but failed to direct the refund of entire cost approved under NDDF scheme. So also IGRC is silent on the issue of centrages. Non-applicant while finalizing WCR accounted only 10% centrages as against 42.63% considered in WCR of M/s. Jyoti Oil Mill Hinganghat and ignored aforesaid overheads as per cost data, which will result in less refund and hence shall cause dispute over the amount to be refunded. They further contended that as electricity duty is not at all applicable in Vidarbha and Marathwada Region of Maharashtra and MSEDCL admitted the effecting exemption to its entire consumers from Dec-17. Therefore they prayed for refund of the amount of infrastructure work sanctioned under Non DDF after adding centrages in W.C.R. as per prevailing cost data of MSEDCL and electricity duty collected unlawfully along with payment of

interest @ 12% as decided by MERC in case no.23 of 2004 from the date of release of connection till the date of refund of entire amount. Applicant claimed refund of infrastructure cost of Rs. 396750.00/- for M/s. Salasar Cotex, Hinganghat, refund of infrastructure cost Rs.393550.00/-and service Tax of Rs.1193.00 for M/s. Mandhaniya Industries, Hinganghat, refund of Rs.537925.00/-for M/s. Shri.Vijaylaxmi Ginning and Pressing, Hinganghat, refund of Rs. Rs.341425.00 for M/s. Rukmini Cotex, Hinganghat, refund of Rs. Rs.501820.00/- along with refund of Electricity Duty for M/s.Jalaram Ginning amd pressing , Hinganghat. Applicant annexed copy of Estimates as per 1.3% supervision charges scheme, IGRC order, Load sanction order with the applicant.

Applicant has produced WCR of M/s Jyoti oil Mill Hinganghat wherein centrages @ 42.63% is considered by the non-applicant, so he demanded uniformity in the refund procedure to be adopted for all consumers by the non-applicant.

6. Non-applicant filed written reply. Non-applicant MSEDCL denied the refund towards infrastructure cost as claimed by the applicant. As per their submission, Regulation 3.3.3 reads as follows,"Where the provisions of supply to an applicant entails work of installation of Dedicated distribution facilities, the distribution licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant based on the schedule of charges approved by the commission under regulation 18". Hence as per MERC order 70 of 2005, Revision of Schedule of Charges circular No.24500 dt.30.08.2012 1.3%of normative charges will be applicable towards supervision charges,in case MSEDCL permits the consumer to carry out the work through Licensed Electrical Contractor and the estimate of the consumer is sanctioned in 1.3% Non refundable DDF Scheme. Hence cost of estimate cannot be

refunded . The execution of work is done after parties entered into contract. The applicant has given undertaking that he is carrying this work at his will and he will not claim reimbursement of the expenditure. The process of refund of cost of cubicle is however in process. So far as refund of Electricity duty is concerned on submission of Online application and original Duty Exemption certificate the duty exemption will be processed immediately. Therefore they submitted that the infrastructure amount borne by applicant and the supervision charges cannot be refunded.

7. 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 the Chairperson and the Member/Secretary whereas dissenting note of the Member(CPO) is noted in the judgment and it is part and parcel of the judgment. which is as follows,

Dissent Note by Mr. Naresh V. Bansod, Member (CPO) dated 18.06.2018 in Case No.38,40,41,43,44/2018

(1) Arguments of both the parties heard in detail and perused all the papers on record. The grievance in all above noted cases before me are less or more same or identical and decided by common order.

Applicants prayed for direction to MSEDCL to refund Non DDF Infrastructure cost read with departmental circular dated 20.05.2008 & other charges burdened upon consumer which are refundable/ not recoverable along with interest @ PLR of SBI as ruled by APTEL in Case No. 47/2011 and MSEDCL to refund Electricity Duty charged which is not at applicable in Vidarbha Region with interest etc.

(2) The grievance of the applicants is that non applicant have accorded the approval under NON DDF which is refundable through energy bills as such providing infrastructure is the responsibility of NA and arrangement of spend first and then get reimbursed is formulated to address the difficulty on account of paucity of funds to NA. IGRC acted unlawfully & passed vague directions to refund partial amount and did not directed to process the refund in right spirit as per departmental circular of NA.

(3) Applicant relied on provisions regarding Non DDF Infrastructure cost, interest on refund amount etc. i.e. The E.A. 2003, supply code 2005, MERC order in case No 70 of 2005, Aptel order dated 14.05.2007, MERC order dated 21.8.2007, Supreme court order dated 31.08.2007 & 16.10.2016 etc. & Govt. order on Electricity .Duty exemption. Exemption for Vidarbha and Marathwada till 31.03.2019.

(4) As per applicant, the provisions of E.A. 2003, the cost of Non DDF related infrastructure including HT/LT line & metering cost is to be bear by NA and then get it reimbursed though tariff. Scheme of NDDF dated 20.05.2008 is formulated by NA & consumer need to spent first & then get it reimbursed through monthly energy bill, according to scheme. Non applicant only authorized to recover charges approved by MERC. This arrangement is to overcome through paucity of funds & thereby delay in providing New service connection or augmentation.

(5) In reply before as well as during argument, non applicant tried to deviate NDDF as Non Refundable Dedicated Distribution facility in which consumer has to bear the total cost of expenditure and infrastructure cost is not refundable falsely.

Applicant representative strongly objected for this submission as it is a case of Non DDF and not, Non Refundable Dedicated distribution facility. On close perusal of MERC (Electricity Supply Code) Regulations 2005, define at Regulation 2.1(g) – i.e. Dedicated Distribution Facility (DDF) as well as defined in MERC (SOP) Regulations 2005, & 2014 at 2.1 (1) but other than D.D.F is Non D.D.F. Applicant consumer brought the attention of CGRF towards reply filed by NA before IGRC wherein it clearly admitted position that connections are sanctioned under Non DDF. Applicant also filed MERC order in case No 56 of 2007 which clearly demonstrates that tapping of LT or HT line do not constitute DDF arrangements.

The term invented by non applicant i.e. non refundable DDF is not defined or approved by MERC Regulations. Hence the attempt to misrepresent the NDDF as non refundable DDF is intentional needs to be discarded.

MERC as well as MSEDCL have given clear directions or instructions to non applicant that unless and until the applicant or applicants specifically request or apply for DDF, then only it should be treated as DDF and Non refundable DDF does not exist. Non applicant totally failed to produce the original 'A1' form or specific applications for DDF or Non refundable DDF. Hence presumption of non applicant is ill founded and deserves to be rejected.

(6) Regarding refund of electricity duty, Applicant made specific averment that Electricity duty is exempted to Industries in Vidarbha & Marathwada as per various state Govt. notifications and department circulars till 31.03.2019 and charging of electricity duty is due to not feeding 97 code while feeding NSC in IT system, resulting in illegal recovery. Non applicant denied in Para 10 of reply in case no. 38/2018 by relying commercial circular no. 204 dated 08.08.2013 along with procedure of refund. Also it is admitted by NA that recovery is stopped from all its consumers from DEC-17.

On perusal of Govt. Notification dated 26.5.2009 and subsequent Notifications E.D. is exempted from 1.4.2004 to 31.3.2019 from time to time. Applicant's is consumer are burdened with ED recovery during exempted period. and above Cir. No. 204 dated 8.8.2013 is not applicable but it is t mistake of non applicant i.e. not feeding 97 code while feeding NSC in IT System resulting in recovery.also Stopping recovery from all industrial consumers suo motu from DEC-17 amounts to admission of unlawful recovery on part of NA.

Thus, Applicants are entitle to recover and non applicant is liable to refund E.D. ED recovered during exemption period along with interest i.e. PLR of State Bank of India.

(7)Before I proceed with above included cases one by one separately, on verification of approved scheduled charges recoverable, It can be very well be inferred that Rs.5000/- charges for testing of metering cubical at manufacturer's workshop as well as Rs.3000/- testing charges for testing of CT's at manufacturers workshop are not included in scheduled charges approved by MERC as well as MSEDCL as per above noted circulars. Hence the action of non applicant to recover meter as well as CT Testing at Manufactures factory by separate demand note is illegal and applicants are entitled for refund with interest from date of connection/supply till its date of refund.

Applicant relied on provisions regarding infrastructure cost, interest of refund amount etc. i.e. The E.A. 2003, Electricity supply code Regulation 2005, MERC order of schedule of charges dated 08.09.2006 in case no. 70/2005, Aptel order dated 14.05.2007, MERC order in case no. 82/2006 regarding refund of infrastructure cost, other MERC order dated 21.08.2007, Supreme Court order dated 31.08.2007 & 11.10.2016 etc. (6 orders of MERC, MSEDCL etc. at serial no. 7,8,9,10,11,12,13).

As per applicants (data given), the basic estimate of applicant's connection (excluding overhead centrages) but while preparing WCR, MSEDCL fail to add various overhead expenses which regularly added while making payment to contractor and which is mandatory as per cost data of NA and so also in line with actual execution of work as it was not applicant's job to get the work done through contractor by themselves but MSEDCL compelled consumers to do involution of approved schedule of charges. The overheads are integral part of execution of work and applicants brought to notice of the forum case of one consumer of Wardha circle under refund scheme of infrastructure work which includes following centrages.

The said charges are :-

- a) Transportation charges 5%
- b) Service tax 12.24% on labour and transportation charges.
- c) Contingencies on material 3%
- d) Tool and plant on material 1.5%
- e) Contractor supervision, high level testing and commissioning charges 5%
- f) Contractor's profit on all these components 5%
- g) Price escalation on material cost 5%
- h) HO. Supervision charges 15% on labour cost and i.e. 1.5% on material cost.
- i) Interest during construction period 2.5%

Applicants representative during arguments filed copy of order of C.G.R.F., Akola Zone in complaint No. 08/2018 & 09/2018 dated 04.05.2018 in which issues are identical to the present grievances, pertains to refund of ORC with infrastructure cost, excessive service connection charges and testing charges with interest at bank lending rate and order refund of unlawful recovery with interest in favour of consumers i.e. directed to adjust refund with interest in forthcoming bills payable by complainants. This order has percussive value and can be considered as precedent as it is well reasoned order. (Submitted as directed by the Chairman of the forum)

This order of CGRF Akola is **unanimous** directing MSEDCL to refund infrastructure cost along with centrages and interest as claimed by applicant.

(A) Case No. 38/2018 - Mandhaniya Industries.

As per applicant estimate was Rs.385600/- including cubicle metering and N.S.C. was given on 28.3.2015 and Rs.3000/- + 4950 + Rs.1193/- were recovered separately by giving demand note i.e. testing meter charges at manufactures workshop and 1.3% supervision charges excess than approved and service tax refund as not approved as per schedule of charges respectively. Applicant also claimed refund of illegal recovery of E.D. from 28.3.2015 with instt.

Non applicant denied stating that it is case of Non Refundable DDF Regulation 3.3 of ESC 2005 which is discussed in above paras and non applicant failed to prove submissions. Hence non applicant is liable to refund Rs.385600/- estimated cost and Rs.3000/- meter testing charges at Manufactures workshop + 1.3% excess supervision charges i.e. Rs.4950/- + Rs.1193/- service Tax = Rs.394743/- with interest @ PLR of State Bank of India.

Non applicant also liable to refund the amount of electricity duty illegally recovered from 20.03.2015 as per elobrated above with interest @ PLR of State Bank of India.

(B) Case No. 40/2018 - M/s. Vijay Laxmi Ginning & Pressing

As per applicant, it is case of Non DDF. Whereas per non applicant it is case of NDDF (Non Refundable DDF) and this aspect is discussed in Para 5 above and non applicants failed to prove his submission with cogent evidence.

As per applicant, estimate sanction No. SE/O&M/WRD/ ESTT/Smp.Charges/ 1.3% NDDF/64 dated 28.08.2012 is amounting Rs.523205/- including cubicle metering & S.E. directed E.E. to submit WCR and by way of separate demand note by non applicant, applicant paid Rs.5000/- for testing of metering cubical at manufactures workshop & Rs.3000/- for testing of metering CT's at manufacturers workshop which is not approved in scheduled charges as well as Rs.6720/- excess supervision charges.

Non applicant denied partial claim of refund on pretext of Non Refundable DDF which needs to be discarded as it is deliberate attempt to deviate the entire issue as discussed in earlier paras. Non applicant admitted that process of refund of cost of metering cubicle (which is part of same estimate) is under process but failed to explain why they have charged. Also on one hand NA is denying the refund on the basis of estimate head and on other hand admitting that the amount of cubicle refund is under process which is in contradiction to their own stand Non applicant is liable to refund Rs.537925/- (Rs.523205 + 5000 + 3000 + Rs.6720/-) with interest PLR of State Bank of India.

(C) Case No. 41/2018 - M/s. Rukmini Cotex.

As per applicant estimate for providing power supply was framed by Wardha Circle vide sanction No. SE/O&M/WRD/Estt/Sup.Charges/1.3%/NDDF/49 dated 15.06.12 is amounting Rs.336425/- including cubical metering and S.E. Wardha instructed E.E. Hinganghat to submit WCR to his office for the purpose of refund to be passed through billing.

Non applicant collected Rs.5000/- through demand note for charges for testing of metering cubical at manufacturer's workshop which is not approved as per schedule of charges.

On perusal of non applicant (Dy.Exe.Engineers letter dated 14.03.2018 R/W letter dated 13.03.2018 with subject – proposal for Refund of SLC, ORC and meter cost of M/s. Rukhmani Cotexx, in para 1 – it is stated as under.

“Estimate for supply of H.T. Connection has been sanctioned in Non DDF Scheme”, above letter is of 15.06.2012 and admitted that consumer has paid 1.3% supervision, stamp of agreement Rs.200/- cubical Testing Rs.5000/- & security deposit of Rs.319700/- on 20.07.2012 and estimated cost of H.T. power supply including meter cost & supervision was Rs.332107.20 Ps. as also WCR.

Non applicant while filing reply on 31.05.2018 has taken U Turn to deviate the issue on pretext of DDF which is contrary to above said letter dated 14.03.2018 r/w letter dated 13.03.2018 and entire conspiracy of non applicant proved false by way of their own documents.

Hence non applicant is liable to refund Rs.336425/- + Rs.5000/- = Rs.341425 to the applicant with interest @ PLR of SBI as ruled by APTEL in case No. 47 of 2011.

(D) Case No. 43/2018 - M/s. Salasar Cotex.

As per applicant estimate for providing power supply to applicant was framed by Wardha Circle vide sanction No. SE/W'RD/ESTT/sup.charges/1.3%/NDDF/85 on 29.10.2013 amounting Rs.388750/- including cubical metering and vide letter of Dy.Exe.Engineer dated 14.03.2015 r/w letter dated 13.03.2018, **it is an established fact that it is case of Non DDF.**

Applicant alleged that non applicant has collected Rs.3000/- through demand note for for testing of metering cubical at manufacturers workshop which is not approved schedule of charges as well Rs.5000/- as 1.3% supervision charges are in excess than approved charges.

Applicant claimed refund of Rs.388750++ 3000 + 5000 = Rs.396750/- with interest @ PLR of SBI from 29.10.2013 or date of connection.

Applicant also claimed refund of Electricity duty from date of connection as non applicant failed to feed code 97 delayed feeding 97 Code in IT System resulting in illegal recovery.

The case A, B, C, non applicant again raise the issue of DDF and non refundable DDF but the letter of Dy.Exe.Engineer Hinganghat dated 14.03.2018 r/w letter dated 13.03.2018, the entire submission of non applicant proved as false as it is admitted case of Non DDF as well as the issue of refund of Electricity duty is discussed para 6 and submission of non applicant on point of E.D. needs to be discarded as this forum as well as E.O. has taken consistant view and ordered refund of E.D. with interest in its earlier orders. Hence non applicant is liable to refund Rs.396750/- from the date of connection as well as E.D. from 1st billing till the date of collection with interest @ PLR of State Bank of India.

(E) Case No. 44/2018 – M/s. Jalaram Ginning & Pressing.

As per applicant Non DDF estimate for power supply to applicant's premises was framed by Wardha Circle vide sanction No. SE/O&M/WRD/ESTT/Sup.charges/1.3%/ NDDF/34 dated 05.08.2011 amounting Rs.320800/- including cubicle metering & supply dated is 27.11.2011.

Load enhancement sanctioned vide sanction No. SE/O&M/Wrd/estt/sup.charges/ 1.3%/NDDF/80 dated 29.09.2012 amounting Rs.166760/- including cubicle metering CT up gradation.

As per NDDF circular dated 20.05.2008, no supervision charges were required but as recovered needs to be refunded i.e. NDDF estimate cost Rs.320800 + Rs.5000/- metering cubicle testing witness charges + supervision charges = Rs.329920/-.

As during load enhancement also non applicant collected amount is NDDF estimated cost 166760 + Rs.3000/- metering cubicle testing witness charges + Rs.2140/- supervision charges = Rs.171900/- with interest @ PLR of SBI.

Non applicant like in earlier cases in A, B, C, D, submitted that it is DDF as well as Non refundable DDF and declined to refund as per prayer of applicant. I have already discussed this aspect at Para 5 above and letter of Dy.Ex.Engineer, Hinganghat Rural dated 13.03.2018 with subject – proposal for refund of SLC, ORC and metering cost of M/s. Jalaram Ginning & Pressing and specific mention of Non DDF in letter dated 05.08.2011 which proves that this is a case of Non DDF that is why he submitted proposal for refund. Entire submission of non applicant is without cogent evidence as per para 5 above needs to be discarded.

As discussed in para 6, regarding refund of electricity delay from the date of connection, enhance at request of 'A1' cannot be considered for refund, non applicant repeated the story of Circ. No. 204 dated 08.08.2013. The submission of applicant is worth to be considered that non applicant acted negligently in feeding code 97 while feeding NSC which resulted in illegal recovery. Non applicant is silent on this aspect admitting their lapses.

Hence non applicant is liable to refund Rs.329920 + Rs.171900/- i.e. Rs.501820/- as well as electricity duty recovered till date from date of connection with interest @ PLR of State Bank of India.

In view of above observations, the above 5 applications deserves to be allowed as non applicant acted negligently arbitrarily on false pretext against their own letters and failed to prove their submission with cogent evidence and kept total blind eye on various orders of E.O. and MERC and so also key provisions in EA 2003 in relation to infrastructure cost is liability of NA

Hence this order.

ORDER

1. Non Applicant is directed to refund by way of credit. Infrastructure cost as well as electricity duty with interest as per Section 62(6) of the E.A. 2003 r/o aptel order in Appeal No. 47/2011 from date of connection till date of refund of amount @ PLR of S.B.I. on amounts as noted below.
 - a) Rs.3,94,743/- Infrastructure cost, & Electricity duty
 - b) Rs.5,37,925/- Infrastructure cost.
 - c) Rs.3,41,425/- Infrastructure cost
 - d) Rs.3,96,750/- Infrastructure cost & Electricity duty
 - e) Rs.5,01,820/- Infrastructure cost & Electricity Duty
2. IGRC order is quashed and set-aside as without verification of documents and application of mind and in contravention MERC orders etc.
3. The Compliance of this order shall be done within 30 days from the date of this order.

Naresh Bansod
Member (CPO)

8. Reasoning and finding of majority view of the Chairperson and the Member Secretary of the forum.

According to the Regulation 6.6 of the said Regulation “**Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen**”. In this case load was sanctioned and demand was issued to all these applicants in the year 2012 to 2015 . Therefore cause of action arose in all cases in the year 2012 to 2015. Therefore it was necessary for the applicant to file grievance applications on or before 2 years i.e. on or before 2015-2017. But present cases are filed on 19-04-2018 and 20.04.2018 i.e. after almost 1 to 3 years of expiry of period of limitation and therefore those are hopelessly barred by limitation.

9. Applicant desired to mislead this Forum on the ground that he filed Grievance application before I.G.R.C. on 14.02.2018. So the present grievance is within limitation. However, we do not agree with this argument of the applicant because the date of filing application before I.G.R.C. is not relevant. It is immaterial when anybody files grievance application before I.G.R.C. The relevant date of calculation of limitation is the date of cause of action within the meaning of regulation 6.6. Cause of action arose in year 2012 to 2015. Therefore limitation starts from the date of cause of action i.e. year 2012 to 2015. Therefore we find no force in the contention of the applicant that merely because he filed grievance application on 14.02.2018 before I.G.R.C. any special concession can be given to him.

10. It is noteworthy that date of filing of application before I.G.R.C. specially in time barred cases is irrelevant because if the matter is time barred, according to regulation 6.6 with fraudulent intention, to bring time barred case within limitation any consumer may knock the door of I.G.R.C. at belated stage and may claim to calculate the period of limitation from the date of filing the application before I.G.R.C. but is not legal concept. It is misconception and misinterpretation of the relevant provisions laid down under regulation 6.6 of the said regulations. Therefore grievance application filed by the applicant at belated stage before I.G.R.C. on 09.01.2018 will not help the applicant to bring the time barred cases within limitation.

11. Representative of applicant relied on the Hon'ble High Court ruling as mentioned in his application. We have carefully per used all the rulings cited by the applicant. However, facts of the present cases are totally different and distinguishable and therefore authorities relied upon by the applicant are not applicable to the cases in hand.

12. Therefore we hold that grievance application is barred by limitation according to regulation 6.6 of MERC (CGRF & EO) Regulation 2006.

13. So far as merit of the cases are concerned, the grievance in all above mentioned cases before Forum are more or less identical and applicants prayed for direction to MSEDCL to refund infrastructure amount along with interest at the bank rate (PLR of SBI) section 62(6) of EA 2003 as decided by APTEL in appeal no. 47 of 2011 from the date of release of respective connections

Applicant said the above Non DDF consumers are entitled for refund with interest. On perusal of record it is observed that the applicants in case 38,

40,41,43 and 44 applied for their New industrial connections to non-applicant.

Accordingly their estimates were sanctioned under 1.3 % Supervision charges Non-DDF scheme in the year 2011 to 2015 and on the basis of the estimate a demand is given for load sanction by Non-applicant in the year 2011 to 2015.

Applicant has submitted ground for huge delay in filing the grievance after the statutory period of 2 years as dismissal of MSEDCL Civil Appeal No.4305 /2007 on 10.11.2016 by Hon'ble Supreme Court and narrated chronology of events such as,

a).MERC passed order on 08.09.2006 regarding first schedule of charges order under regulation 18 of supply code 2005 rejecting demand of MSEDCL to allow them to recover infrastructure cost from prospective consumers in case no.70 of 2005.

b) MSEDCL challenged Hon. Commission's order dtd. 8.9.2006. vide appeal no. 22 of 2007 filed before Hon. APTEL. APTEL on 14.05.2007 rejected MSEDCL appeal against MERC's order dt 08.09.2006. After referring the appeal no. 22 of 2007 filed before Hon. APTEL, which were the issues challenged by MSEDCL's against Hon. Commission's order dtd. 8.9.2006 , becomes clear after referring the point which is reproduced below from 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.”

c) MERC passed an order in case no.82/2006 directing MSEDCL to refund infrastructure cost collected under ORC/SLC head till 30.04.2017 and prohibited from further collecting amount which are not covered in schedule of charges or not defined in supply code 2005.

d) MSEDCL filed Civil Appeal petition no. 20340 of 2007 with Hon'ble Supreme Court against the Hon. Appellate Tribunal order dt.14.05.2007 in appeal no. 22 of 2007 challenging the Hon. Commission's order dtd. 8.9.2006. The matter was pending with Hon. Supreme Court.

e) Supreme Court rejected MSEDCL Civil Appeal No.4305 /2007 on 10.11.2016 .

In view of the above, it is clear that the "Service Line Charges" as proposed by the MSEDCL are not being allowed to recover from consumer under the head ORC or SLC .Accordingly MSEDCL has issued circulars no.25079 dt.12.10.2017, No.31793 dt.29.12.2017 and 5039 dt 07.03.2018 in pursuance of the Hon'ble supreme court decision and issued instructions for refund of SLC ,ORC charges and meter cost recovered from all consumers as per MERC's directives issued in order dt.17.05.2007 and 21.08.2007 of case no.82/2006 alongwith interest during the period 20.01.2005 to 30.04.2007

14. Now question is what do we mean by SLC?. For which we rely on MERC order dt..8th Sept 2006 passed in case no.70 of 2005 in the matter of approval of MSEDCL Schedule of charges on page no 24 wherein it is stated that,

"From the schedule of charges proposed by MSEDCL, it is observed that Service Line Charges basically covers the cost of infrastructure between the delivery points on the Transmission lines and Distribution mains. Whereas service connection is interpreted

as a link between Licensee's nearest distribution points(i.e. distribution main) to the point of supply at consumer's premises, which also includes other accessories i.e. any apparatus connected to any such line for the purpose of carrying electricity and SCC covers cost involved in providing service connection from distribution mains." The instant applicants filed their application for new connection at LT / HT supply. There was no infrastructure available near the vicinity of the premises where load was demanded. Hence the extension of infrastructure was needed *from distribution mains*. An estimate for giving supply was framed which involved the work of erection of HT OH line , laying of 11 KV UG cable for providing service connection link between the Licensee's nearest distribution points(i.e. distribution main) to the point of supply at consumer's premise. As such as per regulation 3.3.2 of Supply code state commission authorizes the distribution Licensee to recover all expense reasonably incurred in laying down service line from distribution mains to applicant's premises from the applicant Thus applicant was required to pay the entire cost of Service connection line from the distribution main to his premises .

Secondly Regulation 3.3.8 of Supply Code Regulation provides that Distribution Licensee may permit an applicant to carry out works through a Licensed Electrical Contractor, the Licensee in that case is not entitled to recover expenses relating to such portion of works so carried out by the applicant. The Licensee shall be entitled to recover only the supervision charges not exceeding the 15% of the cost of labour. As such it is seen that the instant applicant has executed the estimated work by paying 1.3% supervision charges. The consent letter for such execution is on record. It is clearly mentioned in this consent letter that applicant is ready to carry out the required infrastructure work at his own cost along with 1.3% supervision charges to Licensee.

The consent is not given conditionally. MSEDCL has not given any undertaking for refund of cost of work carried out by the applicant. It is noteworthy that there was no compulsion by MSEDCL 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.

15. Therefore, this Forum is of considered opinion that, the applicant has been misleading Forum by interpreting the SCC as SLC and the said charges borne by him are covered under the Head of SCC and not SLC, which Hon'ble MERC has allowed the MSEDCL to recover the same from consumer. As the decision of the Hon'ble Supreme Court is regarding SLC charges, therefore it has no relevance in the instant matter.

16. It is also seen that non-applicant has already granted refund in this regard which need to be verified in light of above analysis.

17. For these reason, we hold that grievance application deserves to be dismissed.

Hence we proceed to pass following order by majority.

ORDER

1. The Grievance applications are dismissed.

Sd/-
(N.V.Bansod)
MEMBER

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

Sd/-
(Vishnu S. Bute)
Chairman