

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

Case No. CGRF(NZ)/61/2017

Applicant : M/s Mahamaya Agro Industries,
Kh No. 32, PH No.73,
Ramtek Road, Tal Mauda,
Dist. - Nagpur

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

Applicant: - 1) Shri. Suhas Khandekar Applicant's representative.
Non-applicant:- 1) Shri R.K. Giri EE Adm, (NRC),MSEDCL.Nagpur
2) Shri. Harish Gulhane Dy EE, (NRC), MSEDCL. 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 25.06.2018

1. In view of order passed by Hon'ble Electricity Ombudsman at Nagpur in representation No.58 of 2017 on 06.12.2017, the matter was remanded back to this Forum and the Forum was directed to pass fresh order on the basis of the decision of the Hon'ble Supreme Court of India dt 10.11.2016 in Civil Appeal No. 4305/2007. As per this judgment Hon'ble EO concluded that the Hon'ble Supreme Court have upheld the decisions of MERC and appellate Tribunal and that the infrastructure cost is to be borne by the Licensee. Hence for deciding the

grievance on merit, the parties were directed to appear before the forum on 02.05.2018. Therefore this is a second round of litigation. Initially applicant filed original grievance application vide Case No. CGRF(NZ)/61/2017, before this Forum on 06.05.2017 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 filed an application for rehearing before this Forum on 22.01.2018 .

2. Non applicant, denied applicant's case by filing reply dated 07.06.2018.
3. Forum heard arguments of both the sides and perused record.
4. The applicant's history of the case is that, as per their application for power connection, non-applicant had sanctioned HT power with contract demand of 450 KVA as per order dated 30.07.2014 and released connection on 22.01.2016. As per sanction order they have erected 400 mtr. of overhead line, born expenses of service connection of HT overhead Line, constructed room costing about Rs.3,22,000/- for the metering cubicle. For claiming the refund, they rely on order of MERC in case no. 70 of 2005, which states that the entire infrastructure is to be created by MSEDCL and the cost is to be recovered through Annual Revenue Requirement. But non-applicant had asked the applicant to create infrastructure costing Rs.3,97,220/- and same is borne by the applicant. In spite of the fact that cheaper option of overhead connection was available at the rate of Rs.15000/- as per regulation of MERC, they gave costly underground connection for which charges approved by the commission is Rs.2,00,000. By making compulsion of costlier option e.g. underground cable to the applicant, the applicant alleged the MSEDCL is adopting unfair

trade practice. Also as per Central Electricity Authority (Installation and operation of Meters) amendment Regulations 2010, section 2(C), both outdoor and indoor cubicles are permitted giving option for outdoor and indoor metering. But non-applicant had asked us to spend Rs.3, 22,000/- for construction of room for indoor metering arrangement.

The applicant filed present grievance application and claim following reliefs namely,

- 1) Refund the difference of cost of overhead and underground connections i.e. Rs.1, 85,000/-
- 2) Refund the cost of construction of metering room of Rs,3, 22,000/-.
- 3) Refund the cost of Infrastructure Rs.3, 97,220/-

Thus, they claimed total refund of amount of Rs.9, 04,220/- with interest@9.5 % per annum from the non-applicant.

5. The non-applicant denied the claim of the applicant by filing reply dated 07.06.2018. In the light of the Hon'ble Electricity Ombudsman, Nagpur order dated 06.12.2017 passed in Representation No. 58/2017, it is submitted by them that the Hon,ble High Court by its order dated 10.07.2013 passed in Writ Petition No. 1650/2012, MSEDCL V/s Mukund R. Salodkar disagree with the view taken in the matter of M/s. Hindustan Petroleum Corporation Ltd. Hon'ble High Court observed in Para 10 that, *"In my view, in this case, the facts clearly establish that the cause of action for the case arose when the electricity supply was disrupted in 2003 and in my view, the consumer ought to have approached the Forum within two years from the date of cause of action. Since this period is of two years, he has to make representation to the Cell within these two years. The Cell is an internal arrangement and cannot be said to be a judicial forum. The first judicial forum*

available to the respondent no.2 is thus the Forum. Therefore, within two years from the cause of action, a complaint must come to the Forum.” Therefore, the instant grievance application should be rejected on the ground of Limitation as not filed within two years as mandated in Regulation No. 6.6 of the MERC (CGRF & EO), Regulations 2006, without going in to the merit of the application.

6. Non-applicant further contended that, the IGRC has rejected the application by an order dated 14.12.2016 and the applicant has filed a Grievance application before the Hon’ble Forum on 26.05.2017. That, the applicant has not filed its grievance application before this Forum within two months from the date of the order of the IGRC as mandated in Regulation No. 6.4 of the MERC (CGRF & EO), Regulations, 2006. Therefore, on this ground also the instant grievance application should be rejected without going in to the merit of the application.

7. Non-applicant also submitted that the applicant has already waived his claim about reimbursement of the difference in the overhead and underground connection during the hearing before the Hon’ble Electricity Ombudsman, Nagpur. Therefore, in the light of this admission, the applicant may be directed to modify his plea.

8. Non-applicant further submitted that, Regulation No. 5.5 speaks about the installation of Distribution Transformer and not about the Meter Cubicle Meter. Therefore, this Regulation is not applicable in the present matter. Also, the question of Lease Agreement doesn’t arise.

9. Non-applicant further contended that, the applicant has been misleading Forum by interpreting the SCC as SLC. In fact, the said charges are covered under the Head of SCC and not SLC, which Hon’ble MERC has allowed the MSEDCL to recover from consumer . Therefore, the decision of Hon’ble Supreme

Court is not having any relevance in this matter.

10. Non-applicant also submitted that, the applicant has paid the Charges on 15.09.2014 as 1.3% Supervision Charges and also consents for carrying out the work at own cost. Therefore, the applicant is not entitled for refund of the said charges. Hence in the light of above submissions the grievance application may be rejected in the interest of justice.

11. It is noteworthy that there is a difference of opinion amongst the members of the Forum. Therefore the judgment and the decision is based on the 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. The note reads as under,

12. Argument heard on 8.6.2018 and perused all the papers on record.

In Rep. No. 58/2017 original CGRF Case No. 61/2017 was remanded back to CGRF on 11.12.2017 and it was expected to issue notices to both the parties and hear arguments/further submissions at the earliest like original grievance, but No steps appears to have taken by Member(Secretary). On application of consumers representative dated 22.1.2018 and Member Secretary put remarks that "Chairman may please see & guide me in the matter" on 25.1.2018. the Chairman's remarks dated 5.2.2018 are (1) The letter brought to me today (2) please fix hearing in first week of March 2018.

The notices were issued on 12.4.2018 fixing the hearing on 2.5.2018 which proves the apathy of Member Secretary as well as Forum towards the consumer cause/grievance without regards to the order of E.O. Nagpur.

(1) Non applicant along with reply dated 8.6.2018 filed the diagram of 11 KV (Wadoda) feeder which is not clear & readable & understand the purpose of filing during arguments.

Member (CPO) has telephoned Mr. Gulhane on many occasions to place diagram which is clear, readable and able to understand the very purpose of it, along

with demarcation and names of Units, transformer, connection from substation or H.T.Line and further requested to depute the concerned Engineer of that area to explain but inspite of assurance by Mr. Gulhane, neither the diagram was filed nor turned up to explain the Member (CPO). This attitude of non applicant proves to misguide the consumer, Forum and conceal the factual position from the diagram. Hence the diagram filed with reply is nothing but a piece of paper and does not deserve consideration. Hence discarded as informed to Chairman on 22.6.2018 who in return advised to make observations in dissent note.

(A) The Electricity Ombudsman, Nagpur in representation no. 58/2017 ordered on 6.12.2017 as under.

(a) The Representation is allowed (b) The order of the CGRF dated is set aside (c) The case is remanded to the CGRF who should hear the parties in this case in detail on the points raised above and subject to all relevant rules and regulations and relevant decisions by the courts before taking a view and passing orders there on.

The points before E.O. were as under similar to before Forum.

(1) Limitation (2) Reimbursement of the difference in the overhead and underground connection (3) Reimbursement of the cost of the metering room (4) Reimbursement of the cost of infrastructure with interest (5) Lease of 16 Square meters area occupied by the MSEDCL for the metering room.

Issue No. - (2) Reimbursement of the cost of difference in the over head and under ground connection. The observations of E.O. in para 8 are as under.

“During the hearing on 4.12.2017, the representative of the appellant, Shri suhas Khandekar, stated that he would like to modify his plea No. 1 (Not its point2) and not to insist on the amount of reimbursement of Rs.1.85 lakhs which represents the difference between the normative charges from underground connection and an overhead one.

Hence this issue is infractions.

(1) Limitations – Whether the present grievance filed by applicant is bar by limitations ?

No

In this, non applicant raised the objection that grievance application was not filed within 2 years from the cause of action and therefore barred by limitation as provided under Regulations 6.6 of the MERC (CGRF & EO) Regulations 2006 and deserves to be rejected on this ground itself.

Non applicant failed to mention the date of cause of action, but Jumped to the conclusion that grievance is bar by limitation. Before IGRC, non applicant was totally silent on the point of cause of action or limitation and In IGRC Mr. Gulhane was member & Mr. J.S. Thakre was Chairman and did not record any findings on the point of cause of action or limitation.

It is necessary to record that same Mr. Gulhane Dy.E.E. NRC(Member of IGRC) along with Mr. Sadamate E.E.(NRC) represented the non applicant and raised the point of limitation without referring any Judgement of the Hon'ble High Court before CGRF or E.O.

I feel it necessary to put on record that CGRF is for hearing the appeals arosed from the un redressed issues before IGRC and its order. Non applicant did not raise the issue of cause of action or limitation and now allowing the non applicant for the same is nothing but to deviate, delay and protract the main grievance on merit. Hence such objections should not be allowed.

The connection was sanctioned on 30.7.2014 and. Hence the date of cause of action cannot be before date of connection dated 22.1.2015 or date of agreement dated 23.1.2015 and The order of IGRC is dated 14.12.2016.(at Sr. page 55) but date 17.2.2017 appears on top of the order may be date on which order was ready for dispatch & delivered subsequently.

The date of connection is 22.1.2015 and agreement was executed on 23.1.2015.

It is alleged that the aggrieved consumer is required to approach the CGRF within 60 days from the order of IGRC i.e. 17.2.2017 and 3 days for delivery i.e. 20.2.2017.

6.4 of MERC (CGRF & EO) Regulations 2006 – is as under.

Unless a shorter period is provided in the Act, in the event that a consumer is not satisfied with the remedy provided by the IGRC to his grievance, within a period of 2 months from the date of intimation or where no remedy has been provided within such period, the consumer may submit the grievance to the forum.

“The D.L. shall within the said period of 2 months send a written reply to the consumer stating action it has taken or proposes to take for redressing the grievance”.

This clearly speaks the period of 2 months for the redressal of grievance is given to IGRC and 2 months period is given to CGRF. Hence confusion 60 days period does not sustained.

Non applicant referred the Judgement Hon’ble High Court in it order dated 10.7.2013 passed in Writ Petition No. 1650/2012, MSEDCL v/s Mukund R. Salodkar disagreeing with the view taken in the matter of M/s. HPCL. The Hon’ble High Court observed in para 10 that

“In my view, in this case, the facts clearly establish that the cause for the case arose when the electricity supply was disrupted in 2003 and in my view, the consumer is ought to have approached the Forum within 2 years from the date of cause of action. Since cause of action. he has to make representation to the cell within these 2 years. The cell is an internal arrangement and cannot be said to be a Judicial Forum. The first Judicial forum available to the respondent No.2 is thus the forum, Therefore, within 2 years from the cause of action, a complaint must come to the forum”.

Therefore the instant Grievance application should be rejected on the ground of limitation as not filed within 2 years as mandated in Regulation No.6.6. of the MERC (CGRF & EO), regulation 2006 without going in to the merit of the application”.

The above referred Judgement is pertaining to cause of disruption of supply in year 2003 and for SOP compensation as per MERC (SOP) Regulation 2005 for delay in restoration, as supply was restored in June 2010, H.C’s. observation are pertains to the fact & circumstances of that case but in the present case is regarding the refund of expenditure incurred by applicant at the behest of non applicant. Hence in facts and circumstances of the present case the observations of the High Court cannot be made applicable.

Applicant submitted that the cause of action arises when the remedy provided by IGRC, it is unacceptable to the consumer or if IGRC does not provide any remedy. The application to CGRF is within 2 years and within limitation &

interpretation of Reg. 6.6 is provided in the order of Hon'ble Mumbai High Court in case of HPCL v/s MSEDCL and further accepted the interpretation in HPCL petition by Hon'ble High Court in case of MSEDCL v/s Shilpa Steel & Power and has been upheld by the E.O. also in review petition of M/s. Shilpa Steel & Power and now non applicant can not take U turn.

Applicant said, as per regulation 6.6 of MERC CGRF & EO regulation 2006, the forum shall not admit the grievance unless it is filed within two years on which the cause of action has arisen. Applicant filed application before IGRC on 27.10.2016 and date of order 14.12.2016, cause for approaching forum arises on 15.12.2016 and hence application is within limitation. OP said IGRC rejected applicant on 14.12.2016.

Applicant relied upon judgment of Hon'ble Bombay High Court in matter of HPCL Vs MSEDCL and MSEDCL Vs. Shilpa Steel. NA in reply at Para 3 relied on judgment of Hon'ble High court in its order dated 10.07.2013 in writ petition 1650/2012, MSEDCL Vs. M.R.Salodkar, Disagreeing with view taken in the matter of HPCL and observed in Para 10 that , " in my view the consumer ought to have approach the forum from the date of cause of action". NA submitted that application be rejected on this count without going into merit of application as per regulation 6.6. Of MERC CGRF & EO regulations 2006.

NA relied on single judge of the High Court Mr.A.V. Nirgude as noted above denying the view taken by division bench of Bombay High court announced by Justice G.S.Godebole in petition of HPCL Vs. MSEDCL order dated 19.01.2012.

Applicant relied on Judgment of Hon'ble Bombay High Court Nagpur bench in WP No 3997 of 2016 MSEDCL Vs. Shilpa Steel And Power Ltd challenging the order of EO on point of cause of action arisen from the date of rejection of grievance from IGRC. In this case, as per NA, IGRC rejected the application on 14.12.2016 and hence the cause of action has arisen on 15.12.2016+. It is very funny that in WP of M.R.Salodkar as well as Petition of Shilpa steel and Power, the advocate of MSEDCL was adv.S.V.Purohit but he did not prefer to rely to rely on judgment of M.R. Salodkar and as well as objected the view on Judgment of HPCL and accepted the fact of reliance on the judgment or view in HPCL. Hon'ble Justice Ku. Indira Jain has accepted the view in petition of HPCL of the division bench of Bombay High court and confirmed the view taken in the HPCL order that the cause of action aroused when IGRC rejected the complaint of complainant as well as rejected the WP filed by MSEDCL on point of cause of action & so also limitation and the same is not challenged before Hon'ble Supreme Court after order in WP 3997 of 2016 order date 18.07.2017 and NA complied the subsequent order of EO in review petition.

The latest judgment of 18.07.2017 of Nagpur bench of Bombay High court will always prevail and EO Nagpur and consistent view taken in HPCL & Shilpa Steel is relied by EO Nagpur, Bombay cannot be negatived by observations in WP 1650/2012 dated 10.07.2013.

EO also relied on HPCL as well as Petition of Shilpa Steel and orders were accepted in number of cases and complied by NA and hence NA cannot take u turn now just to protract the litigation.

For the sake of clarity on entire issue of cause of action and limitation,

I further rely upon judgment of Hon'ble Supreme Court of India in Civil appeal No 3699 of 2006 order dated 12.02.2016 Rashtriya Ispat nigam Ltd Vs Prathyusha Resources and Infra Pvt.Ltd. Apex Court in Para 5 of page 4 observed as under.

“We shall now consider the settle law of the subject. This court in a catena of judgment has laid down that cause of action arises when the real dispute arises i.e. when one party asserts and other party denies any right.” The cause of action in present case is the claim of Respondent / claimant to determination of base year for the purpose of escalation and calculation made thereon and the refusal of appellant to pay as per the calculations”.

Appellant allege and it is necessary to record that NA have never relied upon cause of action during proceedings before IGRC and IGRC in its order not decided on cause of action and hence it can be inferred that it is afterthought attempt and also failed to prove with legal provision.

I rely on the judgment of Appellate Tribunal of electricity (Appellate jurisdiction) appeal No 197 of 2009 order dated 11.03.2011 in the matter of MSEDCL Vs. MERC and 8 others. In detailed and reasoned order in belatedly filed petition, after a gap of 9 years. Para 10 of the order on page No 12 and 13

“It cannot be debated that electricity act is a complete code. Any legal bar or remedy under the act must exist in the act. If no such Bar to the remedy is prescribed under the code, it would be improper to infer such a bar under the limitation act. Admittedly there is no provision in this act, prescribing the bar relating to limitation. That apart, this question is already been decided by the Supreme Court that limitation act would not apply to quash judicial authorities like state commission. This has laid down in AIR 1976, SCC 177, AIR 1985 SCC 1279, AIR 2000 SCC 2023, 2004, VOL 2 SCC 456 and 1985 (Vole II SCC 590. Further it has been held by Hon'ble Supreme Court in Madras Port trust Vs. Himanshu International reported in (1979) 4 SCC 176 that Public authorities ought not to take technical plea of limitation to defeat the legitimate claims of citizens”.

The extract of relevant judgment is also reproduced by APTEL in its order. As per Supreme Court, the Limitation could not apply to quassi judicial authorities

like state commission. It was further held that public authorities not to take technical plea of limitation to defeat the legitimate claims of citizens. In view of the above observations, the plea of non applicant on point of cause of action and bar by limitation is failed as CGRF is the quasi judicial authority under the EA 2003 & otherwise also cause of action is aroused in this case on 14.12.2016 or 17.02.2017 and rejection of grievance of IGRC on 14.12.2016 and grievance application is well within limitation because NA totally failed to demonstrate and mentioned the date of cause of action

Non applicant in reply dated 14.7.2017 before CGRF referred Reg. of MERC (ESC & other conditions of supply) Reg. 2005 & 4.3, But after remand of the case, vide reply dated 8.6.2018 has made last fatile attempt and said as under.

Para 5 - Non applicant has mislead this Hon'ble forum by interpreting the S.C.C. as SLC. In fact, the said charges are covered under the Head of S.C.C. and not SLC, to which the Hon'ble MERC allowed the MSEDCL to recover the same. Therefore, the decision of the Hon'ble Supreme Court is not having any relevance in the matter of writ petition filed by MSEDCL.

The present applicant has paid the charges on 15.9.2014 as 1.3% supervision charges and also consented for carrying out the work at own cost. Therefore, the applicant is not entitled to refund of the said charges”.

Para 3 of Reply before (CGRF on 14.7.2017 -

“Further the matter of refund of cost of Infrastructure is concerned, it is submitted that of similar / same subject matter is pending before the Hon'ble Supreme Court in Civil appeal No. 4305 of 2007 and Hon'ble S.C. has stayed the refund vide order dated 31.8.2007 and continued the same vide its order dated 18.9.2009. It is a civil appeal filed by MSEDCL against the Hon'ble APTEL order dated 14.5.2007 passed in appeal No. 22/2007 challenging the MERC order dated 8.9.2006 passed in case No. 70/2005”.

Firstly non applicant has totally mislead the Forum and in many representations to E.O. that civil appeal No. 4305 of 2007 is pending before Supreme Court on 14.7.2017 even though the above civil appeal was dismissed by Supreme Court on 10.11.2016 which shows total disregard to the Judgement of Supreme Court and mischivous mis presentation.

It is very funny that in reply dated 8.6.2018 in para 5 non applicant tried to deviate the issue by referring SCC & SLC and also to misguide the forum when assuming the stay by Supreme Court stated that a similar/same subject matter which needs to be discarded as no regards for the truth. The attempt of non applicant is to distract the observations of E.O. i.e. in para 10 i.e.

“in this context, I rely on the decision of the Hon’ble Supreme Court of India dated 10.11.2016 in civil appeal No. 4305 of 2007. As per this Judgement, the Hon’ble Supreme Court has upheld the decisions of the MERC and appellate Tribunal and concluded that the infrastructure cost is to be borne by the licensee. This point has not been looked at in detail by the CGRF. (So called majority order of CGRF when Member (CPO) has recorded his finding in the order) as under.

Issue No. 3,4&5 - Whether the applicant is entitled for refund or payment of cost of metering room and. Infrastructure cost illegally imposed by Non Applicant along with interest as per section 62(6) of The Electricity Act 2003” and lease agreement of land of metering Room? Yes

A] Applicant stated that non applicant under compulsion asked to construct metering room & infrastructure which has costed Rs 397220/- and the land premises has costed Rs 322000/- and under duress the service connection was given to the applicant.

B] Applicant said as per electricity act, all the infrastructure is to be created by MSEDCL at its cost and recovering it through annual revenue requirement & not from an individual consumer still non applicant forced to create infrastructure at the estimated cost of Rs. 397220/-.

C] The section 42(1) of the electricity act 2003, is as under, “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 Moto of the act is that approach of distribution licensee should be efficient & economical.

D] It is worth to note the direction/ observations in order of MERC dated 16.9.2008 in petition No 56/2007 (Para 9)

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

E] MERC in order dated 8.9.2006 in case no 70 of 2005 on page 16- 64

Commissions Ruling-

The commission totally reject MSEDCL’S proposal to recover service line charges from progressives consumers except in cases of consumer requiring dedicated Distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of licensee. The commission therefore directs that the cost toward infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL.

F] Applicant specifically stated in Arguments that Indoor cubicles means closed body in which metering is placed with CT’s & PT’s and outer cubical is pole structure, on which there is no specific reply in written statement as well as during arguments.

G] As per the central Electricity Authority (installation & operation of meters) amendment regulations 2010, Section 2(C) a meter can be inside or outside the premises of a consumer further as per regulations both outdoor and indoor cuticles are permitted and hence the land & room is permanently occupied an area of about 16 sq meters in side premises & MSEDCL forced to spend Rs 397220/- forced to create infrastructure, which is totally unfair trade practice as per provision of the consumer protection Act 1986.

H] As per applicant MSEDCL in Para (b) has given reference of section 9.1 to 9.3 of Electricity supply Code, however, instead of supply code, the matter is taken from MSEDCL’s supply conditions and also cited the reference of agreement executed with consumer. Both the documents are framed by MSEDCL themselves. Applicant further said that these document have legal sanctity only to the extent that any of the conditions or rules framed by MSEDCL do not violate the provisions of the Electricity Act or rules and regulations mentioned their under.

In this case indoor or outdoor systems are permissible and indoor & outdoor meter were also feasible. Hence contention of Non applicant regarding feasibility of

indoor meter or cubical as was neither technical requirement nor the consumer's requirement. Hence entire approach of non applicant is without any basis but just to put consumer into heavy expenditure than the economical.

I] Non applicant is totally silent on the submission of applicant that if it is outside, a display is to be given inside the premises and space of about 16 sq meter has been permanently occupied by MSEDCL due to MSEDCL'S meter in side premises which is useless for them. Applicant rightly demanded to enter into lease Agreement for this Area.

Non applicant made reference to the agreement dated 23.1.2015 but could not reply whether copy of agreement is given to applicant as per Regulation 6.3 of the MERC (Electricity Supply Code & Other Conditions Of Supply) regulations 2005 and Applicant again refused that copy of Agreement is not provided which is violation of the above regulation.

J] Hon'ble High Court of Judicative at Bombay- W.P.No 2798/2015 in case of MSEDCL V/s M/s M.R. Scion Agro Processions Pvt Ltd. dated 18.1.2017, has ordered refund of infrastructure cost and rejected the petition of MSEDCL with following observation at Page 9& 10 (from Judgement)

"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 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 an 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 India Contract Act.”

Hence the entire submission & conduct of Non applicant is without any basis and against the electricity act 2003, Regulations of 2005 as well as orders of MERC from time to time deserves to be discarded as cannot be accepted in real sense and other contentions and reference to other provisions of Regulation does help non applicant to reject the application i.e. section 9.1 to 9.3 MSEDCL's conditions of supply & others.

In view of the above observation, I am of the firm opinion and direct that Non applicant shall refund the cost of meter room of Rs.322000/- as well as refund the cost of infrastructure cost of Rs. 397220/- along with interest @ PLR of SBI. from 23.1.2015, as decided by Aptel. The compliance of this order shall be done within 30 days from the date of order.

In view of the observations the Reg. 5.5 page para 9,

It is obligatory on non applicant to execute the lease agreement retrospectively from date of supply (22.1.2015) or date of agreement (23.1.2015) and pay or refund, leasing charges of land on yearly basis with interest as per section 62(6) with @ PLR of SIB till its payment .

In view of the above observations, the present application deserves to be allowed.

Hence the following order.

ORDER

1. Non applicant is directed to refund cost of metering Room Rs.322000/- as well as refund the Infrastructure Cost Rs.397220/- with interest as per section 62(6) E.A. 2003 R/W Aptel order @ PLR of SBI from date of agreement dated 23.1.2015 till its refund by giving credit to his account.
2. Non applicant is directed to execute the lease deed of the land with retrospective effect i.e. from 23.1.2015 and pay leasing charges prevailing to market rates with interest as per section 62(6) E.A. 2003 R/W Aptel order i.e. PLR of SBI from 23.1.2015.
3. The order of IGRC is quash & set aside as it is against E.S.C. & MERC orders from time to time.

The compliance of this order shall be done without within 30 days from the date of order.

**Mr. Naresh Bansod
Member (COP)**

13. Resoning and finding of majority view of the Chairperson and the Member Secretary of the Forum.

Initially we have to consider whether present grievance application is filed within prescribed limitation as per MERC (CGRF & E.O.) Regulation, 2006. It is seen that the IGRC has rejected the application by an order dated 14.12.2016 and the applicant has filed a grievance application before this Forum on 26.05.2017 i.e. after expiry of mandatory period of 2 months. As such the applicant has not filed its grievance application before this Forum within two months from the date of the order of the IGRC as provided under Regulation No. 6.4 read with regulation 6.7 of the .MERC (CGRF & EO), Regulations, 2006. Hence it deserves to be dismissed.

Secondly Member CPO has stated that cause of action arose on the non-redressal of a grievance by IGRC. He referred to the judgement of Hon'ble High Court in the case of HPCL....Vs....MSEDCL in case no.9455/2011 dt. 19.01.2012 and the order dt.18.07.2017 in case of MSEDCLVs.... Shilpa Steel and power, But Forum agrees and rely on the contention of non-applicant that, the Hon,ble High Court in its order dated 10.07.2013 passed in Writ Petition No. 1650/2012, MSEDCL V/s Mukund R. Salodkar disagree with the view taken in the matter of M/s. Hindustan Petroleum Corporation Ltd. The Hon'ble High Court observed in Para 10 that, *"In my view, in this case, the facts clearly establish that the cause of action for the case arose when the electricity supply was disrupted in 2003 and in my view, the consumer ought to have approached the Forum within two years from the date of cause of action. Since this period is of two years, he has to make representation to the Cell within these two years. The Cell is an internal arrangement and cannot be said to be a judicial forum. The first judicial forum available to the respondent no.2 is thus the Forum. Therefore, within two years from the cause of action, a complaint must come to the Forum."* Therefore, the instant grievance application needs to be rejected on the ground of Limitation as it was not filed within two years as mandated in Regulation No. 6.6 of the MERC (CGRF & EO), Regulations, 2006 as per detailed position explained in earlier order without going in to the merit of the application. Therefore, on this ground the instant grievance application deserves to be rejected and dismissed.

14. Further, at this stage it is necessary to look into what is Civil Appeal no. 20340 of 2007 decided by 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.

15. After referring, the appeal no. 22 of 2007 filed before Hon. APTEL, it becomes clear which were the issues challenged by MSEDCL against Hon. Commission's order dtd. 8.9.2006. This point is reproduced below from above order dtd. 14.5.2007:

“This appeal filed by the Maharashtra State Electricity Distribution Company Ltd. (for short ‘MSEDCL’) is directed against the order passed on 08.09.2006 by the respondent, The Maharashtra Electricity Regulatory Commission (hereinafter called as ‘the Commission’ or ‘MERC’) whereby the ‘Commission’ did not approve the proposed “Schedule of Charges” including ‘Service Line Charges’ submitted to the Commission in compliance to Regulation No. 18 of MERC (Electricity Supply Code and other Conditions of Supply) Regulations, 2005 (hereinafter to be called as ‘Regulations 2005’). The aforesaid Service Line Charges (for brevity to be called as ‘SLC’) as claimed by the appellant is on the basis of normative expenditure to be incurred on the infrastructure which are required to be created for bringing the distribution network closer to the Consumer premises.”

This appeal is dismissed by the order as follow:

“In view of the above, it is clear that the “Service Line Charges” as proposed by the appellant are being allowed to be recovered through tariff. If the aforesaid proposal on “Service Line Charges” made by the appellant is accepted it will amount to doubling of the recovery of the expenses from the consumers. The appeal is accordingly dismissed.”

16. 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.”

17. The above points clarifies the Hon. Supreme Court stayed the order passed by Hon. APTEL on 14.5.2007. In this order the Hon. APTEL dismissed the MSEDCL's appeal for recovery of 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.

18. In other words the refund of infrastructure cost i.e. SLC from the order date i.e 8.9.2006 which was under challenge was stayed by the Hon. Supreme Court and the issue was dismissed on 10.11.2016 by Hon. Supreme Court.

19. .As per 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 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 point s 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 applicant filed application for total Contract demand of 450 KVA for 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 11 KV supply was framed which involved the work of erection of HT OH line –0.4 Km and laid 11 KV UG cable -80 mtr 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 applicant has executed the estimated SCC 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 consent 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.

20. Therefore, this Forum accepts non-applicant's contention that, the applicant has been misleading the 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. As such instant grievance application is rejected and hence dismissed. Hence we proceed to pass the following order, by majority.

ORDER

1. The present petition stands dismissed. No order as to costs.

Sd/-
(N.V.Bansod)
MEMBER

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

Sd/-
(Vishnu S. Bute)
Chairman