

CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE
(Established under the section 42 (5) of the Electricity Act, 2003)

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Consumer Grievance Redressal Forum
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No. / CGRF /Nashik/NUC/N.U.Dn.1/714/45/2018-19/229
(BY R.P.A.D.)

Date: 30/11/2018

Date of Submission of the case : 28/09/2018

Date of Decision : 30/11/2018

To.

C.G. Power & Industrial Solution Ltd,
Plot No. A-3, MIDC Ambad
Nashik 422010
(Consumer No.9139001175)

Complainant

1. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Urban Circle office, Vidyut Bhavan ,
Nashik Road.
2. Executive Engineer (U-1)
Maharashtra State Electricity Distribution Com. Ltd.
Kharbanda Park, Nashik

Distribution Company

DECISION

C.G. Power & Industrial Solution Ltd, (hereafter referred as the Complainant). Nashik is the HT consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for Wrong Tariff and correction there off. The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. Ltd. But as the IGRC did not provide any remedy for more than 2 months, the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.98 of 2018 on 28 /09/2018.

The Forum in its meeting on 28/09/2018, decided to admit this case for hearing on 12/10/2018 at 1.30 pm in the office of the forum . A notice dated 28/09/2018 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Urban I Circle Office Nashik for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Smt. P. V. Bankar, Nodal Officer / Ex. Engr. Shri. A. R. Tiwari, Dy.Ex.Engr. Smt. Nital S.Varpe, Jr. Law Officer represented the Distribution Company during the hearing. Shri . Vikas Maindalkar Shri. Vishal Kakad, Shri. Hemant D. Patil appeared on behalf of the consumer.

Consumers Representation in brief :

On verification of energy bills pertain to last few years it is observed that we have been charged with tariff applicable to consumer on express feeder.

Hence, vide our letter at reference one, it was brought to the kind notice of office of Superintending Engineer O&M Circle Nashik that as per MSEDCL / MERC rules and regulations our supply is NOT from express feeder but from Non express feeder as few other consumers are also availing the supply from the same feeder where from we are receiving the electricity supply. { List of few consumers availing the supply from the feeder wherefrom are receiving the supply is as below...

- 1 IBP
2. Sudal Industries Ltd.
3. Garware Polyesters

As per case No. 116 of 2008 dated 17th August 2009, there is concept of tariff applicable to consumer on express feeder and consumer on Non Express feeder.

In our case the thought our supply is from Non express feeder we had been charged with tariff applicable to consumer on express feeder. As such erroneous tariff has been applied from August 2009.

As per condition No. 3.4 of Electricity Supply Code and Other Conditions of Supply Regulations, 2005

...

3.4.1 The Distribution Licensee is authorized to recover charges for electricity supplied in accordance with such tariffs as may be fixed from time to time by the Commission.

Similarly as per provision under section 62 sub section 6 of Electricity Act 2003 If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

However though there is separate tariff for consumer on Express feeder and consumer on NON Express feeder, we have been charged with tariff applicable to consumer on express feeder.

Since we have been charged with erroneous tariff since the tariff applicable from 1st August 2009, we made the request to the office of Superintending Engineer O&M Circle, MSEDCL, Nashik. Our request was as below...

1. To refund the excess amount charged by them due to application of wrong tariff. The refund should be from the period when the concept of Express feeder tariff and Non express tariff first came in tariff order issued under Case No. 116 of 2008 dated 17th August 2009 .
2. We may please be considered to get interest as per provision of section 62 sub section 6 of electricity act 2003 on excess amount wrongly been recovered from us.

We made the request to the office of Superintending Engineer Nashik Circle, MSEDCL vide our letter dated 7th May 2018.

As we did not get any response / relief from office of Superintending Engineer Nashik Circle, MSEDCL even after lapse of more than one month period and one billing cycle, we filed an appeal with IGRC office under MSEDCL Nashik Circle. We made an appeal on 16th July 2018 acknowledged on 21st July 2018 to the office of IGRC MSEDCL Nashik Circle.

In-spite of lapse of more than 60 days we have not got any response / relief / order from IGRC, MSEDCL, Nashik circle.

Hence we are filing this appeal with your kind authority. Our submission is as below...

1. Though our supply is from NON Express feeder, we have been charged with tariff applicable to consumer on express feeder. Hence MSEDCL may please be directed to refund the excess amount which they have wrongly charged to us from the beginning. (Please see our details submission as above).

Our above request is with reference to

- Condition No.3.4 :- Charges for Electricity Supplied : As per Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005
- concept of express feeder consumer and not express feeder consumer under the tariff of 2009
- SOP regulation 2014 which has defined the express feeder and non express feeder
- provision under section 62 sub section 6 of Electricity Act 2003

- Hon. High Court of judicature at Bombay, Nagpur Bench, Nagpur order in Writ Petition No. 3997 of 2016 (Copy enclosed herewith)
2. We may please be considered to get interest as per provision of section 62 sub section 6 of electricity act 2003 on excess amount wrongly been recovered from us.
 3. We may please be considered to get the cost of filing this appeal
 4. We may please be allowed to make the changes / correction if any required in our submission and to make additional submission if requires.
 5. Though our supply is from NON Express feeder, we have been charged with tariff applicable to consumer on express feeder. Hence MSEDCL may please be directed to refund the excess amount which they have wrongly charged to us from the beginning. (Please see our details submission as above).

Our above request is with reference to

- Condition No.3.4 :- Charges for Electricity Supplied : As per Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005
- concept of express feeder consumer and not express feeder consumer under the tariff of 2009
- SOP regulation 2014 which has defined the express feeder and non express feeder
- provision under section 62 sub section 6 of Electricity Act 2003

Hon. High Court of judicature at Bombay, Nagpur Bench, Nagpur order in Writ Petition No. 3997 of 2016 (Copy enclosed herewith)

In relation to this please find the following documents to substantiate our say...

1. Summary of HT Tariff effective from August 1, 2009 indicating separate tariff for consumer on Express feeder and consumer on Non Express feeder. (As per Page No. 1 of enclosed document.)
2. Summary of tariff Subsequently determined by Hon. Commission. (As per Page No.2 to 7 of enclosed document.)
3. SOP regulation 2014 which has defined the express feeder and non express feeder. (As per Page No. 8 & 9 of enclosed document.)
4. As per Section 45 of Electricity Act, 2003 the prices charged by Distribution Licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariff fixed from time to time and condition of his licensee.
By charging extra amount than what they are entitled, MSEDCL has failed to follow the provision of Electricity act 2003. (As per Page No. 10 of enclosed document.)
5. As per Maharashtra Electricity Supply Code and Other Conditions of Supply Regulation, 2005 condition No. 3.4 – Charges for Electricity Supplied Distribution Licensee is authorized to recover charges for electricity supplied in accordance with tariffs as may be fixed from time to time by the Commission.
Thus MSEDCL have failed to follow this condition as they have charged extra / higher amount that what they are entitled. Thus this is default on the part of MSEDCL to follow MERC directives. (As per Page No. 11 of enclosed document.)
6. Further as per sub section 4 of section 45 of Electricity Act, 2003 Licensee shall not show undue preference to any person or class of person or discrimination against any person or class of person.
By charging extra amount than what they are entitled, MSEDCL has have made Discrimination against us which is against the provision of Electricity Act 2003. (As per Page No. 10 of enclosed document.)
7. Further as per Sub section 6 of section 62 of Electricity Act, 2003, if any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

Since in our case MSEDCL has charged extra amount than what they are entitled, MSEDCL shall refund this amount along with interest equivalent to bank rate. (As per Page No. 12 of enclosed document.)

8. In writ Petition No. 3997 of 2016 – Maharashtra State Electricity Distribution company Limited V/s. Shilpa Steel & Power Limited and Two other, Hon High court have upheld the decision of Hon Electricity Ombudsman that consumer is entitled to get refund along with interest for the period more than two year old.

Our case is similar to this in respect that we have also been charged with wrong tariff and extra / higher amount have been recovered from us. Hence we shall also be entitled to get refund along with interest (As per Page No. 13 to 20 of enclosed document.)

9. Further to submit that the Basic Principles of Maharashtra electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 is as below...
The Established Forum by Licensee shall follow the Principles of natural Justice, including inter alia, the following:

A : It shall protect the interest of consumer. (As per Page No. 21 of enclosed document.)

10. As per condition No. 1.4 of Maharashtra electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , in case of any inconsistency with these Regulations, the Standard of performance of Distribution Licensees and Electricity supply code shall prevail.

Standard of performance of Distribution Licensees and Electricity supply code have been formed in relations to provisions of section 45, section 181, section 46, section 47, section 50 of electricity Act, 2003.

Thus in case any provision under Maharashtra electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 is inconsistent with the provision of Electricity Act, 2003, the provision under Electricity Act, 2003 shall prevail.

Our all request is with reference to provision of Electricity Act 2003 and Condition of supply. Hence it may please be noted that in case of any provision produced by MSEDCL under any other documents, the provisions of Electricity Act 2003 and Condition of supply shall prevail

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 22/10/2018 from the Nodal Officer, MSEDCL, Urban Circle Office Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. This consumer is connected on 11 kV IBP Express feeder & getting continuous uninterrupted power supply without load shedding vide letter under ref No. 2.
1. During staggering day also there was no load shedding on this feeder as per letter under ref No. 3 & always there was continuous supply on this feeder
2. Also even for any outages on this feeder consent of this consumer was taken.
3. As per letter under ref no. 2, the Notarized Consent on Rs. 200 Stamp paper from this consumer was obtained for continuous Power supply and additional supply charges to be paid for continuous power supply on Dt.20.12.2007 .
5. Since the consumer had availed the facility of continuous supply so he has paid all the bills with continuous tariff without any complaint till Oct 2016 & never applied for non continuous category .
6. As per MERC regulation 6.6 the forum shall not admit any grievance unless it is filled within 2 years from the date on which the cause of action has arisen.
- 7 Also in the decision of CGRF Kolhapur order under ref no.5, the decision is given that the consumer who are availing the continuous supply should give the choice of Continuous or non continuous tariff within 1 month from the date of issue of tariff order . But in this case the consumer has never applied for non continuous category.

- A) **As earlier** mentioned in our reply dtd.11/10/2018, in point no.6 that as per MERC regulation 6.6 the forum shall not admit any grievance unless it is filed within 2 years from the date of cause of action has arisen.
As per MERC Regulation 2006

1) Regulation 2 (2.1)(c) of the 2006 Regulations defines a "Grievance" as under:-

"Grievance" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a license, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be"

2) Regulation 2 (2.1) (d) defines the "Cell" as under.

"Internal Grievance Redressal Cell" or "IGR Cell" means such first authority to be contacted by the consumer for Redressal of his/her Grievance as notified by the Distribution Licensee".

3) Regulation 2 (2.1) (e) defines a "Forum" as under:

"Forum" means the forum for Redressal of grievances of consumers required to be established by Distribution Licensees pursuant to sub-section (5) of section 42 of the Act and these Regulations".

Regulations 6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.

In view of this Regulation especially as per 6.6 clauses, consumer is mandated by Law to approach the Forum within 2 years from the date of Cause of action. Here the consumer M/s. CG Power & Industrial Solutions Ltd is connected on 11 kV IBP Feeder and getting continuous Electric Power Supply from the date of connection 01/09/2006. Applied Tariff for consumer is HT continuous from the date_01/09/2006 up to the date 31/10/2016.

Consumer applied on date 24/05/2018 & raised his dispute for refund of non continuous Tariff category. Therefore the fact is that now consumer cannot pretend that it was raised the dispute within 2 years from the date of the knowledge because the cause of action and alleged legal injury is the HT continuous electric power supply bills raised from the date of HT continuous supply electricity bills given i.e. from the date 01/09/2006. Consumer since these bills have to be paid, failing which, the electricity supply is disconnected by the company, the consumers has paid all these electric HT continuous tariff bills thereby clearly indicating that it has the knowledge of the purported Legal Injury caused by the bills. Once such bills are paid, may be under protest or not, the limitation for cause of action would begin only from the date of the said bills.

Therefore the date 01/09/2006 is the date on which the cause of action for filing the complaint or grievance before the forum as defined under Regulation 2 (c) arose. Hereby, consumer has a two year periods for reaching the forum for the 1st bill of HT continuous Tarriff applied i.e. dt 01/09/2006. Hence in view of above Regulation 6.6, it is clearly not within the limitation of 2 years from the date of cause of action and hence consumer's pray shall be rejected in total.

We hereby placed our reliance upon reference

1) Writ Petition No.6859 of 2017 in MSEDCL V/s. Jawahar Shetkaro Soot Girani Ltd. Dhule, The H'ble High Court of Judicature of Bombay Bench at Aurangabad, Para no. 15, 42,43, 45 & 46 read as para no.15 : -----*once such bills are paid, may be under protest or not, the limitation for the cause of action would begin only from the date of the said bills.*

Para No. 42. -----and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42 (5) r/w Regulation 6.2, 6.4, 6.6 & 6.7 co-exist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

Para No.43. If I accept the contention of the consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and section 45 (5) in effective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore co-exist harmoniously.

Para No. 45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.

2) Also writ petition no. 1650/2012 (MSEDCL V/s. Electricity Ombudsman ,Nagpur and Mukund Ragjhnath Salodkar, Amravati, In the court of Judicature at Bombay Nagpur Bench, Nagpur,

Para no.10: read as ----- 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 in 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..

Para no.12(detailed copy is attached herewith .

The limitation does not start every day or it is not a case of continuous cause of action. This is clear from the Articles 72 to 91 of the Limitation Act, 1963. In all the cases referred in these articles, it is provided that the period of limitation starts on the date breach occurs; This was a case of breach of contract. Admittedly, the electricity supply got disconnected in 2003, long prior to the regulations came into force.

In view of the above discussion, the writ petition succeeds,. The impugned order dated 27th February 2012, passed by the Electricity Ombudsman, Nagpur, in Representation No. 22/2011 is set aside. The complaint (Representation No 22/2011) of the respondent no.2 stands rejected. No. orders as to costs.

3) Further, before the Electricity Ombudsman (Mumbai) in representation no. 125 of 2016 In M/s. Technova Imaging System Pvt.Ltd.,

In para no.10 read as The Appellant has pointed out that Limitation Act is not applicable to the proceedings before the Tribunal or the Forum and therefore, the grievance cannot be rejected on the ground of limitations. The CGRF Regulations, 2006 are Statutory and made in exercise of power under section 181 and 42 of the Electricity Act, 2003. Regulations 6.6 of the CGRF Regulations clearly provides bar for admitting the grievance unless the grievance unless it is filed within a period of two years from the date on which cause of action has arisen. The grievance was admittedly not filed within a period of two years and hence, the Forum has rejected the grievance on the ground of delay. There is no reason to interfere with the order of the Forum. Since the grievance is rejected on the ground of delay, it is not necessary to examine the merits of the case. The Bombay High Court has held in the case of Madhav Saroder V/s. Jyotiba Dnyan Upasak Shikshan Mandal (2004 (3) Mh. L.J. 1078) that the Ld. Tribunal erred in entering into merits of the matter while rejecting the appeal of the Petitioner on the ground that it was beyond the period of limitation. (Para 12 in the result , this representation is rejected.)

Here the citation referred by consumer is WP No. 3997 of 2016 in High court, Bombay, Nagpur bench Nagpur in MSEDLC V/s Shilpa steel & power Ltd & others is the case of para no ii of case read as- "Contention of respondent No 1 before the forum was that clause 6.6 of Regulations does not apply to IGRC but it applies to forum & complaint was well within limitation".

Therefore the subject matter is of categorization, to the consumer premises & offices of industries i.e. commercial tariff & Industrial tariff as per the tariff order dated 12/09/2010. Also , respondent No. 1 i.e m/s Shilpa steel place reliance on decision of the Division Bench of this court in m/s Hindustan petroleum corporation Ltd v/s MSEDCL & offer in wp No. 9455 of 2011.

Here by the said citation & also the whole case is over ruled by the Judgment passed by Division bench of Aurangabad High court in W.P. No. 6859 of 2017 & it's para No 19, 25, 27, 27, 34 & 43 is very clear (copy affective H/W) overruled the case by passing the judgment in deep sense of cause of action and upheld the criteria of limitation of 2 years.

Para No. 46. Read as

As such all these petition area allowed the impugned orders of the forum are quashed of set side.

- B) The clarification about express feeder came in existence from MERC SOP Regulations 2014, before 2014, there was no clear definition of express feeder. So Uninterrupted & Continuous supply is taken as base for continuous tariff.
- C) Also as per MERC review order in case no. 122 of 2017 dated 4.5.2018, 60 Hrs per month interruptions/ No Supply in a month was considered as permissible for continuous category consumer. Hence before granting relief to change tariff category from cont. to non cont. on account of interruption of supply it is important to verify that such consumer suffered more than 60 Hrs per month interruptions/ No Supply in a month.

In the case of this consumer, interruption was never more than 60 hrs in any month upto Oct.16. So on basis of interruption also the consumer comes under Continuous tariff.

Action by IGRC :

1. The complainant has submitted grievance to the Internal Grievance Redressal Cell Nashik Urban Circle on 16/07/2018 .
2. But the IGRC has not taken any action for more than 2 months.

Observations by the Forum:

1. The consumer as requested to refund the excess amount charge by the respondent due to application of wrong tariff. The refund should be for the period when the express feeder tariff and non express feeder tariff . First came in tariff order issued under case No. 116 of 2008 dated 17th Aug. 2009.
2. The consumer also requested to get interest as per the provision of Section (62) subsection (6) of electricity act 2003 on express amount wrongly been recovered.
3. Appeal No. 127 of 2013 before the affiliate period of electricity has ordered that the limitation act 1963 is not applicable to the matter pending before the State Electricity regulatory Commission .
4. Writ petition No. 3997 of 2016 :-
In the High Court of judicature at Bombay Nagpur Bench, Nagpur.
In this case , the cause of action for submitting Grievance arose, when the IGRC rejected the grievances of complainant.
5. On careful perusal of clause 6.6 of the regulations and the order of IGRC was challenged before the forum well within the limitation.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. MSEDCL shall refund the excess amount charge to the consumer from the period when the concept of express feeder tariff and non express tariff that first came tariff order as issued under tariff order in case No. 116 of 2008 dated 17/08/2009, and as per SOP Regulation passed in May 2014 in which Express feeder consumer is clearly defined, so the difference amount / extra recovered amount on account of continuous tariff be refunded from May 2014 to Oct. 2016, from which the rates for continuous & non continuous consumer are kept same.
2. M/s. MSEDCL shall refund as in (1) above alongwith interest as per provision of section (62) Subsection (6) of Electricity Act 2003 on excess amount wrongly been recovered .
3. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.

- 4 As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
5. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Smt. Vaishali V.Deole)
Member

(Prasad P. Bicchal)
Member Secretary

(Dr. Bhaskar G.Palwe)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Urban Circle office, Nashik .

