

**CONSUMER GRIEVANCE REDRESSAL FORUM**  
**AMRAVATI ZONE, AMRAVATI**  
'Vidyut Bhavan', Shivaji Nagar, Amravati: 444603, Tel. No. 0721 2551158

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**Dt: 22.04.2019**

**ORDER**

**Case No. 3/2019 dated 22.02.2019**

**In the matter of grievance pertaining to to refund of infrastructure cost developed for providing supply to residential layout .**

**Quorum**

Dr. Vishram Nilkanth Bapat (Chairman)  
Miss.M.H.Ade, Member Secretary  
Sau. Sushama Joshi, Member (CPO)

**Complainant**

Shri.Kamalkishor Gurudas Jaiswal  
Mouza- Lohara  
Yavatmal

**Consumer – No Number**

**Versus**

**Respondent**

The Executive Engineer ,  
MSEDCL, O&M Division,  
Yavatmal.

**Appearances:-**

**Complainant Representative :-** Shri.Prashant Daryapurkar

**Respondent Representative :-** 1)Shri.S.M.Shrungare,Additional Executive Engineer,Urban Sub Division,Yavatmal.  
2) Shri Bommi Reddy. Junior Law Officer, Yavatmal Circle.

Being aggrieved by IGRC, Yavatmal's Order Dt.22.01.2019 applicant complainant approached C.G.R.F, Amravati under clause 6.4 of MERC( CGRF & OMBUDSMAN) Regulations 2006, for redressal of his grievance dt 22.02.19 and C.G.R.F Amravati filed his complaint as Case No 03/2019.

**The complainant submits his grievance as under:**

As per Complainant's complaint and verbal submission during hearing before the Forum, Complainant submitted that:-

- 1) Applicant complainant submitted application for electrification of residential layout at Sr no 87/1, 87/2,87/3 and 87/4 , Chintamani Vihar, Mouza Lohara, Dist Yavatmal to N.A MSEDCL, and accordingly N.A. sanctioned the estimate for Rs 24,79,410/- for electrification of this residential layout, sanction no SE/YTL / Tech / Est / DDF 1.3% /2015-16 / No.23 dated 04.08.2015.
- 2) The complainant had applied to the distribution licensee N.A. MSEDCL for electrification of layout at Chintamani Vihar, Mouza Lohara Yavatmal and it was the responsibility of N.A. to develop the infrastructure and provide supply to the complainant. Due to non- availability of funds to carry out the said works N.A. MSEDCL expressed inability to provide supply to the layout and asked the complainant to carry out the works and sanctioned estimate for Rs 24,79,410/- under DDF scheme. The complainant has paid 1.3% supervision charges Rs 36,209/- vide M.R no.1105962 dated 14.08.2015 as per demand issued by N.A.
- 3) As per Electricity Act 2003, section 42 (1) "It shall be the duty of distribution licensee to develop and maintain and efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this act". Hence as per provisions of this section it was the responsibility of N.A to provide supply to the complainant premise within the stipulated time. As per Electricity Act 2003 section 43 (1) " As otherwise provided in this Act, every distribution licensee, shall, on an application by the owner, or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.

Provided that where such supply requires extension of distribution mains, or commissioning of new sub stations, the distribution licensee shall supply the electricity to

such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission.

These provisions in the Electricity Act 2003 makes it very clear that it is the duty of the distribution licensee to supply electricity to an occupier or owner of any premises located in the area of supply of electricity, if such owner or occupier of such premises applies for it.

4) The grievance of the complainant is that infrastructure proposed, approved and erected does not constitute DDF arrangements. MERC's order in case no 56 of 2007 explicitly defines the term DDF, "Dedicated Distribution Facilities", means such facilities, not including a service line, forming part of the distribution system of the distribution licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premise or contiguous premises".

It is clear from the above defined term that mere extension or tapping of the existing line cannot be treated as Dedicated Distribution Facility. Such extension or tapping being part of the common network will be affected due to any fault or outages on the common network and cannot be considered as the facility solely or clearly dedicated for giving supply. Thus, in the distribution system, dedicated distribution facility means a separate distribution feeder or line emanating from a transformer or a sub station or a switching station laid exclusively for giving supply to the consumer or a group of consumers.

The charges deposited by the complainant under pressure of the N.A cannot be considered as the consent by the complainant.

5) The complainant has contended that he is burdened with unlawful recovery which is in violation of MERC approved Schedule of charges vide case no 70 of 2005. The N.A.MSEDCL has recovered the infrastructure cost in violation of approved schedule of charges from applicant while granting sanction and releasing supply to the layout of the complainant at Sr no 87/1, 87/2, 87/3 and 87/4, Chintamani Vihar, Mouza - Lohara, Dist Yavatmal. Subsequently while hearing MSEDCL's petition challenging MERC order in case No 70 of 2005 order dated 8-9-2006 thereof rejecting MSEDCL's appeal, Hon'ble Supreme Court granted stay on refund of charges. The said appeal is decided by Supreme Court on 10.11.2016 rejecting MSEDCL's appeal and so also stay order dated 31.08.2007.

6) In light of the Hon'ble Supreme Court's decision in civil appeal no 35067 /2013 the charges deposited under pressure cannot be considered as consent by the complainant.

The expenses incurred by the complainant to develop the infrastructure should be refunded along with interest.

Applicant complainant had admitted grievance to the I.G.R.Cell on date 19.10.18. I.G.R.C.Yavatmal's order dated 22.01.2019 states that the consumer complainant had submitted consent to carry out the electrification work under DDF scheme and had paid the necessary 1.3 % supervision charges and hence the amount incurred to carry out the works cannot be refunded.

**Prayer of the complainant before the Forum:**

- 1) The complaint of the complainant should be allowed.
- 2) The case papers related to the complainant's complaint submitted at IGRC Yavatmal should be brought before the Forum for detailed observation.
- 3) The amount collected from the complainant should be refunded along with interest @18% in a single stroke through cheque.
- 4) Permission may please be granted to amend, alter the representation of so required
- 5) Any other relief which Hon'ble CGRF may deem fit considering facts and circumstances of the case

**Reply filed by N.A. MSEDCL before the Forum:**

The case was admitted to the Forum on date 22.02.19 and a copy of the grievance was forwarded on date 26.02.2019 to the Nodal Officer, MSEDCL, O&M Circle Yavatmal for submitting para-wise reply to the Forum on the grievance within 15 days under intimation to the complainant. However N.A. MSEDCL vide letter dated 14.03.2019 to the Forum, requested the Forum to grant extension of time limit to file the reply and the same is extended to 30.03.2019. N.A. MSEDCL filed the reply on date 03.04.19 before the scheduled hearing on date 04.04.2019. The copy of the reply was handed over to the complainant on date 03.04.19, however the complainant refused to accept the reply. The reply was accepted and acknowledged on date 04.04.19 at the time of the hearing. As per N.A. MSEDCL's say the reply was filed belatedly due to exigencies of work.

**The Non Applicant submits the reply as below:-**

- 1) The estimate for supply residential layout at Sr no 87/1, 87/2,87/3 and 87/4 , Chintamani Vihar, Mouza Lohara, Dist Yavatmal was sanctioned under DDF scheme. It cannot be said that due to unavailability of funds N.A. MSEDCL expressed inability to provide supply to the layout and asked the complainant to carry out the works. The consent to carry out the works under DDF scheme was given by the complainant and accordingly N.A. sanctioned the estimate for Rs 24,79,410,- under DDF scheme. The complainant has paid 1.3% supervision charges Rs 36,209/- vide M.R no.1105962 dated 14.08.2015 as per demand issued by N.A. The consent to carry out the works under DDF scheme was given by the complainant and had paid the requisite supervision charges to carry out the said works.
  
- 2) As per the provisions of MERC order in case no 70 of 2005 dated 08.09.2006 it was the responsibility of N.A. to develop the infrastructure and provide supply to the complainant's residential flat scheme. However the complainant had opted for DDF facility and submitted the consent for the same. MERC order in case no 70/2005 dated 08.09.2006 "The Commission totally rejects MSEDCL's proposal to recover Service Line Charges from the prospective consumers except in cases of consumers requiring dedicated distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of the Licensee. The Commission , therefore directs that the cost towards infrastructure from delivery point of transmission system to distribution mains should be borne by MSEDCL".
  
- 3) In light of the Hon'ble Supreme Court's decision in civil appeal no 35067 /2013 the charges deposited under pressure cannot be considered as consent by the complainant. However it is to submit that the applicant complainant has paid the necessary supervision charges and has carried out the work to develop the infrastructure through a licensed electrical contractor. In the said grievance the consumer has not denied that the supply given to Sr no 87/1, 87/2,87/3 and 87/4 , Chintamani Vihar, Mouza Lohara, Dist Yavatmal. is DDF. In the grievance the term DDF is not defined completely by the complainant. MERC case no 56/2007, "Thus, in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a substation or a switching station laid exclusively for giving supply to a consumer or a group of consumers".
  
- 4) N.A.MSEDCL denies to refund the infrastructure cost to the complainant as the work carried out to develop the infrastructure constitutes a DDF arrangement as per MERC order in case no 70/2005 wherein it is clear that, "The Commission totally rejects MSEDCL's proposal to recover Service Line Charges from the prospective consumers except in cases

of consumers requiring dedicated distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of the Licensee. The Commission , therefore directs that the cost towards infrastructure from delivery point of transmission system to distribution mains should be borne by MSEDCL”.

5) The complainant has paid the supervision charges Rs 36,209/- vide M.R no.1105962 dated 14.08.2015 and in the present status the case should be barred on ground of time limitation. NA takes the reference of clause 6.6 of MERC (CGRF & EO) Regulations 2006 and has also cited the judgement in the WP No. 6859/2017 MSEDCL Vs Jawahar Shetkari Sut Girni Limited decided by Hon. Bombay High Court, Aurangabad Bench on 21-08-2018.The N.A.MSEDCL admits that the complainant is not a consumer of N.A. MSEDCL hence the complaint cannot be registered. N.A. reiterates that the complainant does not fall in the definition of a consumer and is only a builder /developer of the said premise at Sr no 87/1, 87/2,87/3 and 87/4 , Chintamani Vihar, Mouza - Lohara, Dist Yavatmal.

### **Submission during the hearing before the Forum:**

#### **By the Applicant:**

Representative of applicant did not made any additional submission and relied on written submissions made during the hearing.

#### **By the Non Applicant-MSEDCL:**

Non applicant MSEDCL reiterated in its written submission claiming that the applicant complainant is not a consumer on record and had contended that the complainant is merely a developer /builder who had carried out the work of providing the supply to residential layout at Chintamani nagar, Mouza Lohara, Yavatmal and the actual plot owners who have availed connections are billed on regular basis

The Forum examined the record submitted by both the parties during hearing itself and found that insufficient documents are placed on record by both the parties in support of their submissions. To decide the case correctly forum directed the complainant to submit the following documents by 6<sup>th</sup> of April 2019 by E-mail.

- 1) The sale deed of the plots wherein connections estimated was sanctioned under DDF.
- 2) The sanctioned map of the layout to ascertain the number of plots.

Forum directed N.A. to submit:

- 1) The energy bills of the actual owners / occupiers of the Sr no 87/1, 87/2,87/3 and 87/4 , Chintamani Vihar, Mouza - Lohara, Dist Yavatmal.
- 2) The standard procedures to frame and sanction the estimate on the Builder/developer's request.

Complainant did not submit the deed of declaration whereas N.A MSEDCL submitted energy bills of 4 nos. consumers of the said apartments at Sr no 87/1, 87/2, 87/3 and 87/4, Chintamani Vihar, Mouza - Lohara, Dist Yavatmal. N.A MSEDCL also filed a circular in relation to revised guidelines of requirement of adequate land which has no relevance in the present matter as the issue is related to land is not dispute.

Having heard both the parties and the material placed on record before the Forum, the Forum is of the view that,

The complainant had initially approached the distribution licensee as a developer and not as a consumer. Further as on date, the said complainant is not a consumer of NA MSEDCL on the premises in question. Therefore at the outset, the Forum is of the opinion that Shri. Kamalkishor Gurudas Jaiswal not being a direct consumer of the NA MSEDCL, the complaint before the Forum does not constitute any grievance as per definition under clause 2.1(c) of MERC (CGRF and EO) Regulations 2006. Hence the Forum feels that it has no jurisdiction to examine the merit in this case.

Hence the Forum proceeds to pass the following unanimous order.

### **ORDER**

- 1) As the complaint no. 3/2019 does not constitute any grievance, the complaint is disposed off.

Sd/-  
(M.H.Ade)  
Member Secretary

Sd/-  
(Smt.S.P.Joshi)  
Member (CPO)

Sd/-  
(Dr.V.N.Bapat)  
Chairman

Contact details of Electricity Ombudsman appointed by MERC(CGRF & EO)REGULATIONS 2006 under regulation 10:  
THE ELECTRICITY OMBUDSMAN,  
Office of Electricity Ombudsman (Nagpur)  
Plot No.12, Shrikripa, Vijai Nagar, Chhaoni,  
Nagpur- 440013.

