

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM  
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/AZ/AUC/724/2019/09  
Registration No. 2019020033**

Date of Admission : 05.02.2019

Date of Decision : 27.06.2019

M/s. Loya Pre Engineering Building Pvt.Ltd : COMPLAINANT  
Gut No.13, Shendra  
Jalna Road, Aurangabad.  
(Consumer No. 49053904207)

**VERSUS**

Maharashtra State Electricity Dist. Co. Ltd., : RESPONDENT  
Through it's Nodal Officer /

The Executive Engineer, MSEDCL,  
Rural Circle, Aurangabad.

For Consumer : Shri. H.A.Kapadia.

For Licensee : Shri. Y.B.Nikam, EE  
Rural Sub Dn-II, Rural Dn.ARC A'bad.

**CORAM**

Smt. Shobha B. Varma,	Chairperson
Shri Laxman M. Kakade,	Tech. Member/Secretary
Shri Vilaschandra S. Kabra	Member.

**CONSUMER GRIEVANCE REDRESSAL DECISION**

1) The applicant M/s. Loya Pre Engineering Building Pvt.Ltd. Gut No.13, Shendra Jalna Road, Aurangabad is a consumer of Mahavitaran having Consumer No. 49053904207. The applicant has filed a complaint against the respondent through the Executive Engineer i.e. Nodal Officer, MSEDCL, Rural Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 05.02.2019.

**BRIEF HISTORY & FACTS RELATING TO THE GRIEVANCE:**

The complainant has submitted his grievance as under :-

2) The Complainant is director and authorized signatory of the above named company situated at Gut No.13, village Shendra, Jalna Road, Aurangabad. The complainant has taken 11 kv electricity supply for manufacturing of pre Engineering building material from the Respondent company and is therefore consumer of Respondent.

3) The Respondent is authorized and Responsible officer of Maharashtra State Electricity Distribution Company which is engaged in distribution of electricity in Aurangabad and within state of Maharashtra.

4) The complainant has filed his grievance in the internal grievance Redressal Cell (hereinafter referred to as IGRC for sake of brevity ) of MSEDCL, however as the decision dt. 08.01.2019, passed by the IGRC is not accepted, the complainant has filed the petition.

5) It is submitted that in view to start precast building fabrication works; the complainant has submitted application for release of 11 KV HT connection

with connected load of 260 Kw and contract demand of 188 KVA in the office of MSEDCL on 19.07.2008.

6) That, after receipt of application, Respondent issued demand letter on 23.10.2008 for payment of Rs.1,44,395/- along with estimate sanction letter. That, as per provision of Electricity Act-2003 & guidelines issued by Marashtra Electricity Regulatory Commission (hereinafter referred to as MERC), the infrastructure is required to be developed by Distribution Licensee. However, as the material required for development of infrastructure work was not available with Respondent, the complainant was permitted to carryout infrastructure development work by making payment of 1.3% towards supervision charges. That, the total cost of development of infrastructure was worked out as Rs.4,11,000/- and the complainant was asked to pay Rs.5343/- towards 1.3% supervision charges.

7) That, as per terms and conditions laid down in the sanction estimate, the complainant has procured all required material and completed the work of development of infrastructure under supervision of concerned officer of Respondent Company and then handed over the same to the Respondent before releasing electricity supply to his premises.

8) It is submitted that since the 11 KV metering cubicle which is required to be provided by Distribution Licensee was also not available with the Respondent, so complainant was asked to procure and install the same. Accordingly complainant has procured and installed the same in his premises.

9) That, it is only after making huge expenses towards infrastructure development and 11 kv metering cubicle, Respondent has released 11 Kv HT connection to complainant's premises on 20.04.2009. The consumer No. allotted bears No. as 490539042070.

10) It is submitted that, as per provision of Electricity Act 2003 and MERC Regulations, Respondent was expected to refund the cost of infrastructure and cost of 11kv metering cubicle incurred by the complainant either directly or through energy bills.

11) It is stated that, on persuasion to Respondent for refund of above said expenses, it was informed that the MSEDCL has filed appeal before Hon'ble Supreme Court on similar issue and decision of refund will be the taken after outcome of decision.

12) It is submitted that, in view of expansion the complainant has submitted application for enhancement of load and contract demand from existing 260 Kw & 188 KVA to 476 Kw and 225 KVA respectively in the office of Respondent on 12.10.2018.

13) That the Respondent, after receipt of said application accorded approval vide its sanction letter No. SE/ARC/HT billing/4674 dt. 02.11.2018 wherein Respondent asked the complainant to pay following amount.

a) Service connection charges	:	273/
b) 1.3% supervision charges	:	1257/
c) Security deposit	:	192099/
d) Agreement etc.	:	220/
e) Processing charges	:	2400/
f) Testing charges	:	3000/
g) GST	:	1247/
Total :		Rs.2,00,496/

14) The complainant has submitted that, the Respondent, through its sanction letter asked him to procure new 11 kv metering cubicle along with CTS and PTS of specifications laid down by their head office.

15) That, the complainant procured new 11kv metering cubicle as per specifications given by Respondent in its sanction letter. The additional load, thereafter, was released by the Respondent in the month of Nov.2018.

16) That, after coming to know about the order passed by Hon'ble Supreme Court the complainant has submitted his grievance before the IGRC on 04.12.2018 and requested to refund cost incurred towards development of infrastructure and 11 kv metering cubicle. However, in spite of clear directives and order, IGRC by its order dt. 08.01.2019 refused the claim of the complainant.

**A) Refund of Infrastructure cost :**

17) The complainant has incurred Rs. 4,11,000/- towards development of infrastructure which is required to be developed by Distribution Licensee. That DDF facility is given to consumer who opts for dedicated supply, i.e. consumer demanding supply on Express feeder. The 11 kv HT supply extended to complainant's premises from existing 11 kv MIDC feeder which cannot be termed as express feeder, as per definition of express feeder laid down by Hon'ble MERC.

18) That, the complainant has not submitted application for releasing supply on Express feeder. Respondent issued monthly electricity bills as per HT\_I (Non express) tariff which alternatively confirms that the supply was released from 11kv feeder which is not Express feeder.

19) The complainant has stated that, the respondent refused to refund cost of infrastructure incurred by him on the ground that the matter is pending before Hon'ble Supreme Court. Now Hon'ble Supreme Court has passed the order and quashed the appeal filed by MSEDCL.

20) It is submitted that MSEDCL used to recover cost of development of infrastructure under various heads like ORC, SLC etc. The order passed in the above said matter confirms that MSEDCL is not authorized to recover any cost from consumer towards development of infrastructure required for providing supply to consumers.

In view of above facts, the complainant is eligible to get refund of the cost incurred by him towards development of infrastructure.

**B) Refund of cost incurred towards 11kv Metering cubicle.**

21) The complainant has submitted that, Hon'ble MERC, through its various orders has directed Distribution Licensee to provide metering cubicles to all consumer at its own cost.

22) That , on the basis of order dt. 08.09.2006 passed by Hon'ble Commission in case No.70/2006, MSEDCL has published its own circular bearing No.43 dt. 27.09.2006 and circular No. 34307 dt. 03.09.2007, wherein direction to provide metering cubicle at MSEDCL cost has been issued. The said circular further directs its field staff to refund the cost of metering cubicle, if the same is purchased by the consumers.

**It is Prayed that**

- 1) The order dt. 08.01.2019 passed by IGRC may be quashed.
- 2) MSEDCL may be directed to refund Rs.4,11,000/- spent by the petitioner towards development of infrastructure work along with interest.
- 3) MSEDCL may be directed to refund cost of Two Nos. of 11 kv metering cubicles.

**The Respondent has submitted reply as follows:**

23) That the M/s Loya Pre-Engineered Building Pvt.Ltd.Gut No.13,Shendra, Jahangir is an existing HT consumer under Rural Circle, Aurangabad. The consumer has requested for load of 260 KW on dtd. 19.07.2008.

24) After receipt of application, MSEDCL has issued Technical Sanction under 1.3% supervision charges vide letter No.SE/ARC/TS/Comm/ HT/5173 dtd. 23.10.2008. It is clearly mentioned in sanction that "The consumer will have to execute the above sanctioned work at his own cost under MSEDCL supervision charges & as per MSEDCL's conditions, specifications & standard method of construction against payment of 15% supervision charges. The ownership of the assets would remain with the MSEDCL after completion of work involved. 1.3% supervision charges of Rs. 5343/- & all allied charges will be collected by this office."

25) The agreement bond paper between consumer & MSEDCL dtd. 31.03.2008, regarding handing over of 11 KV line allied work to MSEDCL.

26) As per Circular from CE(Dist.) vide letter No. CE/Dist./D-IV/MSRC/25079 dtd.12.10.2017, guideline was given for refund of SLC. ORC and meter cost to consumers. As per circular, point no.7, it is clearly mentioned that "The SLC, ORC & meter charges shall not be refunded in the cases where consumers have opted for DDF supply." As consumer has opted 1.3% supervision charges & sanction is given in ORC SE/ARC/ORC/HT/2008-09/10 dtd.30.05.2008, consumer is not liable for refund of infrastructure cost & meter cost.

26 A) As per MERC (CGRF & Electricity Ombudsman) Regulation 2006 clause 6.6 the grievance is not filed within 2 years from the date on which cause of action has arisen. Hence, complaint is not maintainable.

27) Consumer has made application for load enhancement from existing 188 KVA to 225 KVA on 12.10.2018. The Respondent after receipt of said application accorded approval on 02.11.2018 & asked to pay FQ of Rs. 200496/-.

28) As load is increased from 188KVA to 225KVA, for accurate measurement of units it is necessary to replace 10/5A CT as per commercial circular 291 dt. 29.06.2017 of MSEDCL.

29) That the as per MERC Case No. 70 of 2005, in its order dt. 08.09.2016 it is clearly specified that meter for new connection should be provided by the licensee and the cost of meter & meter box shall be borne by the licensee except where a consumer elects to purchase the meter from licensee. This is as per CEA Regulation 6 (2) (a) of CEA Reg 2006 of dtd. 17<sup>th</sup> March 2006.

30) The consumer undertaking of DDF about relinquishment the claim towards infrastructure for work being taken under DDF Scheme.

31) That in this case it is a load extension as requested by consumer.

Therefore it is prayed that the complaint is beyond limitation period & devoid of any merit and deserves to be dismissed.

**32) Rejoinder (P.No.50) is filed by the complainant raising following contentions:-**

That the complainant has not demanded supply on express feeder line nor the work, as specified in the sanction letter, pertains to express feeder line. The sanction letter dt. 23.10.2008 discloses that the work involved was extension of 11 kv Shetkari Baliraja feeder by laying 04.Km HT line. The cost of same, as per estimate was worked out to Rs. 4,11,004/-.



33) That MSEDCL has published following circulars which are related to refund of infrastructure and meter cost:-

- a) Circular No. 22197 dt.20.05.2008.
- b) Circular No. 39206 dt.21.12.2009.
- c) Circular No. 5489 dt.14.03.2018.
- d) Circular No. 9245 dt.23.04.2018.
- e) Circular No. 10992 dt.15.05.2018.

34) That all above mentioned circulars stipulates that, MSEDCL is duty bound for development of infrastructure required for releasing connection to consumer and except in case of DDF consumers, the cost of infrastructure and meter, if, incurred by consumer is required to be refunded to respective consumers.

35) The complainant has also relied on the verdict of Honable Ombudsman, Nagpur in.

- 1) Representation No. 68/2018 dt.10.12.2018
- 2) Representation No.34/2017 dt. 28.07.2017

36) That, the Hon'ble Supreme Court has dismissed MSEDCL appeal filed against MERC in case No.70/2005. Hence infrastructure cost is required to be refunded.

37) About refund of meter cubicle cost, it is submitted that the complainant submits that as CEA Regulations and MERC order dt. 08.09.2006 incase No.70/2006 and MSEDCL circular No. 43 dt. 27.09.2006 the metering is required to be provided by Distribution Licensee i.e. MSEDCL.

38) Hon'ble MERC, Hon'ble Electricity Ombudsman and all other C.G.R.F. including CGRF, Aurangabad has passed many orders in past and directed

MSEDCL to refund cost of meter to respective consumers if the same is procured by them.

39) That, inspite of all above orders passed by Hon'ble Authorities, MSEDCL is deliberately avoiding to refund the cost of meter incurred by consumer and compelling consumers to enter into unnecessary litigations.

**Respondent submit his Rejoinder as follows (P.No.89):**

40) That the work is sanctioned under 1.3% supervision charges scheme hence the consumer has to execute the work as per scheme where as the claimant has not produced any cogent proof about Express feeder work is to be taken in 1.3% Sup. Scheme. The complainant has reproduced the reference of CE (Dist.) Letter No.25079 dtd.12.10.2017 about Para No.7 same Para is reproduced as "The SLC, ORC & Meter charges shall not be refunded in the cases where consumers have opted for DDF supply.

41) The complainant has made reference of various circulars of MSEDCLs out of which the circular of 2008 & 2009 are not related with this case while the circular of 2018 are the latest circular & which do not have any retrospective effect.

42) The complainant has referred Hon'ble EO, Nagpur order of dated 10<sup>th</sup> December 2018 & 28<sup>th</sup> July of 2017 which both are not relevant with this case.

43) In IGRC order, there is no mention of Hon'ble Supreme Court order regarding refund of infrastructure cost, hence submission made by complainant are wrong & denied.

44) The contents of Para No. B that the as per MERC Case No.70 of 2005, in its order dtd. 08.09.2016 it is clearly specified that meter for new connection should be provided by the licensee and the cost of meter & meter box shall be borne by the licensee except where a consumer elects to purchase the meter

from licensee. This is as per CEA Regulation 6(2) (a) of CEA Reg 2006 of dtd.17<sup>th</sup> March 2006.

45) As per Circular from CE (Dist) vide letter No. CE/Dist./ D-IV/MSRC/25079 dtd.12.10.2017, guideline was given for refund of SLC, ORC and meter cost to consumers. As per circular point no.7, it is clearly mentioned that "The SLC, ORC & meter charges shall not be refunded in the cases where consumers have opted for DDF supply". As consumer has opted 1.3% supervision charges & sanction is given in ORC/SE/ARC/ORC/HT/2008-09/10 dtd.30.05.2008, consumer is not liable for refund of infrastructure cost & meter cost.

46) That, the complaint filed by complainant is beyond limitation period & devoid of any merit and deserves to be dismissed.

**The Complainant has submitted additional rejoinder as under:**

47) The Respondent in his additional reply stated (Para 1) that no cogent proof regarding confirmation of whether the feeder on which 11 kv supply was released was an express feeder.

48) That, Respondent at the time of releasing fresh HT connection accorded his sanction which bears No.as SE/ARC/ORC/HT/2008-09/10 dt.30.05.2008.

49) The above facts confirm that the sanction was accorded under ORC scheme and not under DDF scheme. Further the issuance of bills from date of release of connection as per Non express tariff confirms that the complainant has never applied for express feeder connection.

**The additional rejoinder filed by the Respondent wherein following contentions are raised:-**

50) As per MERC (CGRF & Electricity Ombudsman) Regulation 2006 clause 6.6 the grievance is not filed within 2 years from the date on which cause of action has arisen. However prayer is not acceptable. The judgment is passed by Hon'ble Bombay High Court in WP no.6859/2017 filed by MSEDCL V/s Jawahar Shetkari Soot Girni Ltd. Pronounced on dated 21.08.2018 where in Hon'ble High Court has clarified that the journey of the litigation must reach the CGRF within the period of Two year from the actual cause of action and not from the date of submission of the claim before the IGRC (Annex- A). Complaint may be dismissed.

51) Following points arise for our determination & we have recorded its findings for the reasons to follow:-

Sr.No	POINTS	ANSWER
1	Whether the claim of refund & infrastructure cost of meter cubicle cost is within limitation?	No.
2	Whether the petitioner is entitle for refund of infrastructure cost alongwith interest & two Nos. of meters cubicle cost as claimed?	No.
3	Whether order of IGRC is just, legal & correct?	Yes
4	What order & Cost?	As per final order

**REASONS:**

52) **PONIT NO.1:** Parties are not at dispute about the fact that the application was submitted by the petitioner for release of 11 KV HT connection on Dt.19.07.2008. That the sanction letter (P.No.19 to 23 & 24 to 25) were issued by the Respondent on Dt. 23.10.2008. That on completing

infrastructure development work by the petitioner & installation of metering cubicle, connection was released by the Respondent on Dt. 20.04.2009.

53) The petitioner has come out with a case that on persuasion by the Company for refund of infrastructure cost, the Respondent has informed about pendency of appeal before Honable Supreme Court on similar issue & decision will be taken after decision of the same. However, there is no document forthcoming to support the version.

54) That, guidelines were issued by Honable MERC in case No.70/2005 decided on 8<sup>th</sup> September 2006 about refund of infrastructure cost & meter cubicle cost. MSEDCL has challenged those guidelines by filing civil Appeal No. 4305/2007 before Honable Supreme Court. It was dismissed on 10<sup>th</sup> November 2016. Copy of order is at P.NO.56. The petitioner has submitted application before IGRC on Dt. 04.12.2018. Copy of order of IGRC is at P.No.18.

55) It is strenuously submitted by Shri. Y.B.Nikam, Executive Engineer of MSEDCL, that the present petition is not within limitation, for that purpose, he has pressed in to service that recent Judgment of Honable Bombay High Court in W.P.6859/2017, 6160/2017, 6861/17, 6862/ copy of it is produced at P.No.177.

56) MSEDCL, Division Office Dhule Urban Dist. Dhule V/s Jawahar Shetkari Soot Girni Ltd. decided on Dt. 21.08.2018 wherein following ratio is laid down:-.

“42) I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company 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 and 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”.

“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) ineffective. 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”.

“44) Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08.08.2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27.08.2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26.06.2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08.08.2016 with reference to the FAC Bills of December 2013, February and May 2014”.

“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”.

In view of judgment of Honable High Court observations made by Honable Ombudsman in case of M/s Suruchi Spices Pvt. Ltd. in Representation No.60118 (P.NO.216) does not prevail.

57) The case of Hindustan Petroleum Corporation V/s MSEDCL, WP No.9455/2001, decided by single Bench of Bombay High Court on Dt. 19.01.2012 & the case MSEDCL V/s Electricity Ombudsman, Nagpur W.P.No./650/2012 decided on Dt. 10.07.2013, are considered in above recent judgment.

58) In case of Rastriya Ispat Nigam Ltd. V/s M/s Pratusha Resources & Infra Pvt.Ltd., civil Appeal No.3699 of 2006, decided on 12<sup>th</sup> February 2016 (copy is produced at P.No.110 to 114) observations at para 5 are material. It is reproduced below.

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

59) Another case is National Insurance Co.Ltd. V/s Hindustan Safety Glass Ltd. C.A. No.3883/2007 with C.A. No.1156/2008, National Insurance Co.Ltd. V/s Kanoria Chemicals & Industries Ltd. decided by Hon. Apex Court on Dt.07.04.2017 (P.No.129 to 137). It was claim of made by the insured following observations are made at Para 18.

*“In our opinion, in a dispute concerning a consumer, it is necessary for the courts to take a pragmatic view of the rights of the consumer principally since it is the consumer who is placed at a disadvantage vis-à-vis the supplier of services or goods. It is to overcome this disadvantage that a beneficent legislation in the form of the Consumer Protection Act, 1986 was enacted by Parliament. The provision of limitation in the Act cannot be strictly construed to disadvantage a consumer in a case where a supplier of goods or services itself is instrumental in causing a delay in the settlement of the consumer’s claim. That being so, we have no hesitation in coming to the conclusion that the National Commission was quite right in rejecting the contention of National Insurance in this regard”.*

60) Keeping in mind the observations, the dispute requires to be seen. It is important to note here in this case R.6.6 of MERC Regulations (CGRF & Ombudsman) speaks as under:-

*“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”.*

61) It is important to note that in the present dispute, cause of action arisen on Dt.20.04.2009 i.e. the date of release of connection. True that, on that date C.A. No.4305/2007 (referred above) was pending before Honable Supreme Court. However, there was no restriction on the petitioner to demand his claim for refund of infrastructure. Though the petitioner has pleaded about raising such demand to the Respondent however, its particulars are absent in the petition. There is not a single written letter showing such demand by the petitioner & that it is blanket statement. Further, there is no such reference made by the claimant In his petition submitted before IGRC.

62) Be the fact as it may, even if the period of pendency of C.A.4305/2007 is considered, the said appeal was disposed of on Dt.10<sup>th</sup> November 2016. So, the



petitioner was entitle to raise the demand of refund from Dt.10.11.2016 that is also the date of cause of action. Considering the ratio laid down in the case Jawahar Sutgirni, W.P.No.6859/2017 (Cited Supra), the petitioner ought to have raised his demand within two years from Dt. 10.11.2016 i.e. up to Dt. 10.11.2018. However, it is made on Dt. 04.12.2018 before IGRC, hence is also not within limitation.

63) In the given circumstances it cannot be said that the Respondent was itself instrumental in causing delay ( as laid down in C.A. 3883/2007 cited Supra).

64) The pleadings about demand of consumer, being found without any support of documents is not acceptable. Resultantly, it is found that since Dt. 20.04.2009, till before Dt.04.12.2018 demand was never made by consumer. Demand on Dt. 04.12.2018 is found time barred as discussed above. In the given circumstances the ratio laid in case of National Insurance Co.Ltd. C.A. No.3883/2007 (Cited Supra) does not prove helpful to the petitioner. Thus we hold that petition is not within limitation as per R6.6, MERC Regulations (CGRF & Ombudsman). We answer Point No.1 in the negative.

65) **PONIT NO.2:** As regards refund of infrastructure cost & two Nos. meter cubicle cost, admittedly, as per sanction Dt.23.10.2018, produced at P.No. 19 & 24, the infrastructure development work was carried out by the petitioner by making payment of 1.3% towards supervision charges. Total cost expended was according to petitioner is Rs. 4,11,000/-.

66) In respect of refund of infrastructure cost & meter cubicle cost in In case No. 70/05, decided on 8<sup>th</sup> September 2006, by Maharashtra Electricity Regulatory Commission (hereafter for short purposes referred as MERC) in para 6.4 laid down following guidelines:-

*“As per the provisions of the Act, developing infrastructure is the responsibility of Licensee. The commission therefore directs that the cost towards infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL. The recurring expenses related to capital investment on infrastructure shall be considering ARR determination”.*

67) As regards meter cubicle cost in para 5.4, Honable MERC has issued following directives.

*“5.4, The Commission directs MSEDCL not to recover any cost towards meter & meter box except where the consumer options to purchase the meter from MSEDCL & in case of lost & burnt meter (Regulation 14.1 & 14.2 Supply code) the charges applicable in case the consumer elects to purchase the meter from MSEDCL & in case of lost & burnt meter are indicated at Annexure-3 [For detailed Ruling refer section III (5) ]”.*

68) Civil Appeal No.4305/2007 preferred by MSEDCL before Honable Apex Court was dismissed on 10<sup>th</sup> November 2016, copy of order is produced at P.No.85, 86 & 87.

69) Based on the aforesaid order the MSEDCL has issued circular No. 25079 Dt. 12<sup>th</sup> October 2017 (Produced at P.No.46).

70) Clause No.7 stipulates that,

*“ The SLC, ORC & meter charges shall not be refunded in the cases where consumers have optioned for DDF Supply”.*

71) Circular No.22197 Dtd. 20.05.2008 (Copy produce at P.No.55) was issued subject to decision of Appeal pending before Honable Supreme Court & directs that,

*Para 3 “ The list of pending applications in order of chronology (Category wise) shall be maintained. In case any consumer or group of consumers wants*

*early connections out of its own volition or choice , he may get the work executed at his expenses under MSEDCL supervision & get the refund of the expenses under MSEDCL supervision & get the refund of the expenses so incurred through his energy bills. However, he will have to get the estimates & specifications sanctioned from the appropriate authorities and he will be required to pay supervision charges to MSEDCL”.*

72) Some guidelines were also issued in following circulars produced on record.

Sr.No.	Circulars No.	Date	Page No.
1	009245	23.04.2018	60
2	10992 (applicable to new connection)	15.05.2018	64
3	34307 (About refund of meter cost)	03.09.2007	97
4	07949 (applicable to new connection)	19.03.2019	221
5	30011 (applicable to new connection)	20.12.2018	224

73) One of the objection raised by the Respondent is that, the petitioners connection is on express feeder & hence DDF supply.

74) In this respect referring to judgment delivered by Honable Bombay High Court in the case MSEDCL Nag. V/s Darpan Multi Polypack (India) Pvt.Ltd., W.P.No. 468/2018 decided on 20.03.2019, (produced at P.No.167) is material, wherein there is reference of order of commission dt. 16.02.2008, wherein the scope of definition of DDF is considered . It is as follows:-

*“12 (9) Dedicated Distribution Facilities - means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly & solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises”.*

75) It is important to note that the sanction letter Dt. 23.10.2018 (P.No.24) refers that,

*“ The sanction of load as above at 11 KV level under Estimated Cost schemed by executing provision of 11 KV tapping line of 0.4 Km to the existing 11 KV shetkari Baliraja feeder by using ACSR 100 Sqmm. Conductor and 4x4 ½ RSJ pole of 9 Mtr. along with matching line material”.* It specifically goes to show that such extension or tapping being part of common network will be affected due to any fault or outages on the common network & can't be considered as a facility solely or clearly deducted for giving supply. As such, it is clear that the present consumer is Non-express feeder & Non DDF. The bill Dt.02.01.2019 produced at P.No.11 also refers tariff HT-1A & “Express feeder flag –No.”. In this premises the document of “Sample undertaking for DDF” (P.No.48) Dt.26.06.2018 does not prove helpful to the Respondent. As such the objection of Non entitlement because of DDF does not prove obstacle to the petitioner for purpose of refund.

76) In the following cases decided by Hon'ble Ombudsman Nagpur (Smt.Chitkala Zutshi) order is passed for refund of infrastructure cost, those cases are as under:-

1) Sandeep Dwellers Pvt.Ltd. V/s The Superintending Engineer, Nagpur Urban Circle, Representation No.34/2017, decided on 28<sup>th</sup> July 2017 (JProduced at P.No. 78 to 82).

2) Virba Industries, Hinganghat V/s The Superintending Engineer, Wardha Representation No.68/18, decided on dt.10.12.2018 (Produced at P.No.72).

3) M/s Shrinath Oil Industries, At Arvi, Wardha V/s Superintending Engineer, Wardha Representation No.66/2018. decided on dt. 27.11.2018(produced at P.No.140).

4) M/s Maa Vaishnodevi oil Industries V/s The Superintending Engineer, Wardha Representation No.62/2018, decided on dt.27.11.2018 (Produced at P.No.230).

77) In cases at referred above Sr.No. 2 to 4 Hon'ble Ombudsman Nagpur has consistently held that,

*“The appeal of the MSEDCL pending before the Hon'ble Supreme Court of India, seeking permission for the recovery of the infrastructure cost & challenging the MERC Order Dt. 08.09.2006. This appeal was rejected by the Hon'ble Supreme Court on Dt.10.11.2016. The implication of this is that any cost borne by the consumer on the infrastructure is to be refunded to him.”*

78) Considering the ratio of the above cases, after decision of appeal the infrastructure cost, though is refundable , however in present petition the petitioner's demand is not made within two years from the date of order passed by Hon'ble Supreme Court & thus found time barred causing his dis-entitlement for such refund.

79) In case of Vision Research V/s Superintending Engineer, Nagpur Representation No.69/2016, decided on Dt. 17.04.2017 (P.No.236) by Hon'ble Ombudsman, Nagpur, liberty was granted to the appellant to seek refund of infrastructure cost after decision of appeal 4307/2005 pending before Hon'ble Supreme Court.

80) Considering the ratio of all the aforesaid orders passed by Hon'ble Ombudsman, Nagpur & MERC order No.70/2005, & the above referred circulars issued by the MSEDCL, the infrastructure cost incurred by the consumer under payment of 1.3% supervision charges is refundable. However, in this peculiar case, since the date at releasing connection i.e. Dt. 20.04.2009, till before filing the grievance Dt.04.12.2018 before IGRC, the consumer has never demanded the infrastructure cost to the Respondent. His claim is found time barred.

81) Apart from it, the petitioner neither has given any specification about expenditure incurred by him for various items while raising infrastructure nor has produced on record a single bill of purchasing material. These bills are never produced by the petitioner before MSEDCL for verification. The work completion report is also not produced on record by the Respondent. In absence such specifications & WCR the figure of infrastructure cost can't be deduced. In that case the order would not be properly executable.

82) As regards claim of refund of first meter cubicle cost of 2008, the claim is not found within limitation. About refund of second meter cubicle cost i.e. for meter installed at the time of enhancement of load & contract demand vide sanction letter Dt. 21.11.2018, the cost is not refundable. It is for the reason that circular No.34307 DT. 03.09.2007 (P.No.97) specifically refers to refund of meter cost for new connection only. As such the petitioner is not entitled for refund of second meter cubicle cost installed at the time enhancement of load.

83) Considering the total circumstances, the petitioner claim for infrastructure cost & first meter cubicle cost is not found within limitation & prayer for refund of second meter cubicle cost (about enhanced load) is not maintainable. We thus answer point No.2 in the negative.

84) **PONIT NO.3:** Order of rejection of the claim passed by IGRC is found correct; hence point No.3 is answered in the affirmative.

85) Cumulative effect of above discussion is that, the claim of petitioner for infrastructure cost & first meter cost being time barred is untenable; regarding refund of second meter cost is not maintainable & deserves to be dismissed. We proceed to pass following order in reply to point NO.4.

**ORDER**

- 1) The complaint stands dismissed.
- 2) Parties to bear their own costs.

Sd/-  
Shobha B. Varma  
Chairperson

Sd/-  
Laxman M. Kakade  
Member / Secretary

Sd/-  
Vilaschandra S.Kabra  
Member