

1) On being aggrieved by the decision of IGRC Akola issued vide SE/AKL/2127 dated 17/05/2019, the complainant Shri. Vijay Motilal Khudaniya for M/S Crystal Metals approached this Forum under clause 6.4 of MERC CGRF and OMBUDSMAN Regulation 2006 for resolving the grievance.

2) The complainant's case in brief is that complainant is industrial consumer of NA MSEDCL from 08/12/2018. According to complainant A-1 application for releasing electric connection was submitted to NA MSEDCL on 29/09/2018 with specific remark as requirement of electric connection in Non-DDF scheme. According to complainant in order to fulfil its universal obligation to provide required infrastructure NA MSEDCL floated Non-DDF CCRF Scheme dated 20/05/2008 wherein it provided reimbursement of the expenditure incurred by the consumers through energy bill. According to complainant NA MSEDCL stopped implementation of Non-DDF CCRF Scheme and refloated the scheme vide circular dated 15/05/2018 to be implemented from 01/10/2018. According to complainant NA MSEDCL lost its legal battle to recover the infrastructure cost from prospective consumers for new connection and hence NA MSEDCL is duty bound to provide infrastructure to all prospective consumers seeking new connection, as per the provisions of section 43 of EA 2003. According to complainant cause of grievance arose when NA MSEDCL by letter EE/AKL/R/4397 dated 02/11/2018 intimated with reference to application dated 29/09/2018 to submit consent under 'DDF' scheme as implementation of Non-DDF scheme was deferred to 31/12/2018, on stamp paper of Rs. 200/- in the prescribed format. According to complainant since huge investment in plant and machinery with civil work was incurred, the complainant was left with no other alternative and submitted the undertaking under protest conditionally with addition of clause at serial no. 07 which reads as, "Anything under this undertaking which is inconsistent with the constitution of India, EA 2003, regulations made there under and various judicial and regulatory orders shall be invalid". According to MERC guidelines issued in case no. 56 of 2007 dated 16/02/2008 DDF facility cannot be imposed and infrastructure should constitute DDF as per case no. 56 of 2007 and hence complainant requested Forum to direct NA MSEDCL to refund infrastructure cost with 12% interest as per WCR. Complainant annexed copy of IGRC order dated 17/05/2019, A-1 application with letter dated 29/09/2018, EE/R/Akola/letter/4397 dated 02/11/2018, letter under protest dated 03/11/2018 with undertaking signed by complainant, energy bill for Feb 2019 and relevant extract of case no. 56 dated 16/02/2008 alongwith the complaint.

3) Reply came to be filed belatedly by NA MSEDCL on 13/08/2019 without justifying the reason for delay. According to NA MSEDCL it is fact on record that complainant submitted A-1 application for new connection on 29/09/2018 under Non-DDF scheme. According to NA MSEDCL as implementation of circular no. CE/Dist/NSC/10992 dated 15/05/2018 was deferred to 31/12/2018 the complainant was intimated vide EE/AKL/4397 dated 02/11/2018 to submit option under DDF scheme on stamp paper of Rs. 200/- in the format provided by corporate office of MSEDCL. According to NA MSEDCL as Non-DDF Scheme were stopped for its implementation the connection under R,C,I were allowed in DDF scheme by corporate office of MSEDCL. According to NA MSEDCL as option under DDF is submitted on 03/11/2018, complainant cannot claim cost as per condition of undertaking. According to NA MSEDCL the estimate was revised as disparity observed in actual execution and sanctioned estimate on request of complainant dated 17/11/2018 and revised estimate was sanctioned on 09/12/2018. According to NA MSEDCL complainant did not protest about "DDF" while submitting request on 17/11/2018 and was aware of provisions of refund under DDF and hence not entitled for refund under DDF and requested Forum to dismiss the complaint. NA MSEDCL annexed letter CE/Dist/14747 dated 15/06/2018, EE/R/4397 dated 02/11/2018, xerox copy of undertaking and A-1 application, circular no. CE/Dist/10992 dated 15/05/2018 and some invisible copies of letter of MSEDCL with the reply.

4) Shri. Ashish S. Chandarana representative for complainant and Shri. Ashish Kalawate, Dy. Executive Engineer MSEDCL Balapur were present for the hearing held on 14/08/2019. Shri. Ashish S. Chandarana representative for complainant reiterated the grievance complaint on record and specifically brought to the notice of Forum that A-1 application for new connection under Non-DDF scheme and NA MSEDCL letter dated 02/11/2018 imposing DDF scheme on complainant which has not been disputed by NA MSEDCL in their reply and are established facts on record and also brought on record circular issued by corporate office of MSEDCL dated 15/05/2018 directing field staff to release new connection under Non-DDF scheme to be implemented from 01/10/2018 which was further deferred for its implementation from 01/01/2019. Shri. Ashish S. Chandarana submitted written note of argument and brought to the notice of Forum that NA MSEDCL 'tampered' the undertaking submitted by complainant and also referred the addition of clause no. 7 in the undertaking which invalidated the undertaking itself. Shri. Ashish S. Chandarana brought to the notice of Forum that HT line is provided by tapping existing network which does not constitute

DDF as per guidelines given by MERC in case no. 56 of 2007 dated 16/02/2008 and being common network cost is liable to be refunded by NA MSEDCL being their universal obligation as per section 43 of EA 2003. Shri. Ashish S. Chandarana urged before Forum to allow interest on refund amount as per “Practice Direction” issued by MERC by order dated 22/07/2019, and filed on record practice direction order dated 22/07/2019 MSEDCL circular no. 9245 dated 23/04/2018, 10992 dated 15/05/2018, no. 23264 dated 29/09/2018 and CE/Dist/26088 dated 31/10/2018, and order passed by High Court Nagpur bench in writ petition no. 468 of 2018 dated 20/03/2019.

5) Shri. Ashish Kalawate, Dy. Executive Engineer Balapur and authorised representative for MSEDCL urged that since the infrastructure work is executed by complainant under ‘DDF’ as per undertaking on record the refund is not admissible and requested Forum to dismiss the complaint.

6) On conclusion of the hearing, the Forum directed NA MSEDCL to file on record work completion report of infrastructure work executed by complainant for releasing the connection duly acknowledged by complainant on or before 21/08/2019.

7) NA MSEDCL filed on record as directed by Forum work completion report amounting Rs. 7,28,442.56/- on 21/08/2019.

8) Having heard the parties and considering material placed on record Forum is of the view that dispute to be resolved is whether ‘DDF’ Facility extended by MSEDCL is in accordance with various provisions under Electricity Act 2003, supply code regulation 2005 read with SOP Regulation 2014 and MERC guidelines issued in case no. 56 of 2007 dated 16/02/2008. The various provisions are reproduced below.

Dedicated Distribution Facility (DDF) as per Regulation 2 (g) of supply code Regulation 2005

2(g) “Dedicated Distribution facilities means such facilities, not including a serviceline, 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 group of consumers on the same premises or contiguous premises.”

As per MERC guidelines in case no. 56 of 2007 dated 16/02/2008.

1. The commission observed that consumers should not be burdened with infrastructure cost which are the liability of MSEDCL.
2. It was observed that Dedicated Distribution Facility should be provided on specific request by the consumer and not as per direction of MSEDCL DDF cannot be shared or imposed. DDF shall remain as dedicated connection forever.
3. DDF asset ownership remain with consumer and shall be entitled to the depreciated value of such DDF on termination of agreement or May be retained by consumer.
4. Mere extension or tapping of the existing line (L.T or H.T) cannot be treated as DDF.
5. DDF 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.
6. The commission observed that if paucity of funds is the actual reason behind burdening consumers for DDF MSEDCL May seek the recovery of the same as an annual revenue requirement.

As per SOP regulation 2014 clause 4.6

Where an applicant seeks Dedicated Distribution Facilities (DDF), the distribution licensee shall intimate the charges to be borne by applicant within 30 days.

On going through the various provisions as above Forum is of the view that first condition for extending the DDF is that consumer should seek or request for such facility at the time of application for new connection and in present grievance, complainant has submitted A-1 application for new connection dated 29/09/2018 with specific remark 'Non-DDF' connection which is not denied by MSEDCL, and is established fact, so also the fact that complainant was asked to submit option as required by MSEDCL by letter dated 02/11/2018 amply demonstrate the imposition of DDF by NA MSEDCL. Forum do not find any substance in the plea taken by MSEDCL that no scheme other than DDF was available or corporate office directed to release connection in DDF only, as paucity of funds cannot be a reason for burdening consumer with infrastructure cost as observed by MERC in case no. 56 of 2007 dated 16/02/2008. Forum is of the view that infrastructure of HT line which is provided by tapping to existing network of MSEDCL and not denied by MSEDCL does not constitute DDF and amounts to not providing DDF facility as observed by Hon'ble High Court Nagpur

bench in writ petition no. 468 of 2018 dated 20/03/2019, and it could not be said that the said claim for refund with interest raised by complainant was without any merit. Forum have gone through the various circulars filed on record issued by corporate office of NA MSEDCL. According to circular no. CE/9245 dated 23/04/2018 at serial no. 3, DDF scheme is made compulsory for RCI connections and shifting of HT/LT lines. Forum is of the view that provisions of law and guidelines issued by MERC in case no. 56 of 2007 dated 16/02/2008 are violated while extending the facility of DDF for new connection, without verifying whether actual infrastructure on site constitute DDF or not. Forum is of the opinion that extending the facility for shifting of HT/LT line under DDF amounts to revenue loss to MSEDCL in form of depreciation as shifting of HT/LT line cannot be a dedicated facility though the cost has to be borne by the consumer. Forum is of the view that said circular dated 23/04/2018 is issued in violation of MSEDCL board resolution no. 1055 dated 21/11/2017 incorporated in the circular no. 10992 dated 15/05/2018 issued by CE(Dist) vide which Board of Directors of MSEDCL resolved that, "A-1 the electrical infrastructure to supply electricity to a person up to distribution mains will be developed by MSEDCL at its own cost except in DDF and will claim the expenditure in ARR as per governing regulations. NA MSEDCL vide their circular CE/Dist/10992 dated 15/05/2018 have taken the corrective action as per their resolution no. 1055 dated 21/11/2017 commensurate with existing provisions under Act and supply code regarding DDF facility and universal obligation in releasing the new connection but deferred the implementation till 01/01/2019 as brought on record compelling NA MSEDCL in present grievance to impose DDF on complainant which in the opinion of forum is unlawful and infrastructure cost incurred by complainant under forceful DDF scheme should be refunded to complainant with interest. Forum is also of the view that corporate office of NA MSEDCL should review the applicability of circulars which are in violation of EA 2003, supply code regulation 2005 read with SOP regulation 2014 and MERC guidelines issued in case no. 56 of 2007 dated 16/02/2008, so that unnecessary litigations could be avoided. As complainant filed on record the practice directions issued by MERC dated 22/07/2019 regarding applicability of interest on refund amount, Forum is of the view that NA MSEDCL should refund the infrastructure cost as per WCR with interest rate equivalent to the Bank rate declared by the Reserve Bank of India prevailing during the relevant period

With these observations, Forum proceeds to pass following unanimous order.

ORDER

1. That the Complaint No. 36 of 2019 Dated 11/07/2019 is hereby partly allowed.
2. That the NA MSEDCL is directed to refund the infrastructure cost incurred by complainant as per work completion report with interest at a rate equivalent to Bank rate declared by Reserve Bank of India prevailing during the relevant period and total refund amount be credited in the ensuing energy bill payable by the complainant.
3. That the NA MSEDCL is directed to submit a compliance report to this Forum within one month of this order.

S/d/-
Member (CPO)

S/d/-
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, Shrikrupa, Vijaynagar,
Chhaoni, Nagpur-440 013. Phone:- 0712-2596670.

No. CGRF/AKZ/Akola/191

Dt :- 29.08.2019

To,

The Nodal Officer
Executive Engineer,
MSEDCL, O. & M.
Rural Division Akola.

The order passed on **29.08.2019** in the Complaint No. **36 of 2019** is enclosed herewith for further compliance and necessary action.

Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Akola Zone, Akola.

Copy s.w.r. to:-

- 1) Chief Engineer, MSEDCL, Akola Zone, Akola.
- 2) Superintending Engineer, MSEDCL, O. & M. Circle Akola.

Copy to :-

Shri. Vijay Motilal Khudaniya, LS 54 Village Mandoli Tq. Balapur dist. Akola, C/o
Ashish S. Chandarana, Flat no. 302, Satguru villa Apartment
Sahakar nagar, Gorakshan Road, Akola 444004.