

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM**AURANGABAD ZONE, AURANGABAD.****Case No. CGRF/AZ/ARC/740/2019/25****Registration No. 2019050055**

Date of Admission : 21.05.2019.

Date of Decision : 15.10.2019

M/s.NHK Automotive Components India Pvt.Ltd., : COMPLAINANT

Plot No.C-36, MIDC, Shendra Five Star,

Industrial Area, Jalna Road, Aurangabad

(Consumer No. 490039075300)

VERSUS

Maharashtra State Electricity Dist. Co. Ltd., : RESPONDENT

through it's Nodal Officer, EE (Admn),

Rural Circle, Aurangabad.

The Executive Engineer,

Rural Circle, Aurangabad

For Consumer : Shri. H.A.Kapadia

For Licensee : Shri. Y.B.Nikam

EE, Rural Circle, Aurangabad

CORAM

Smt. Shobha B. Varma, Chairperson

Shri. Makarand P Kulkarni, Tech. Member/Secretary

Shri. Vilaschandra S. Kabra Member

CONSUMER GRIEVANCE REDRESSAL FORUM DECISION

- 1) The applicant M/s.NHK Automotive Components India Pvt.Ltd. Plot No. C-36, MIDC, Shendra Five Star, Industrial Area, Jalna Road, Aurangabad is a consumer of Mahavitaran having Consumer No. 490039075300. 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 21.05.2019.

The brief facts of the dispute are as under:-

- 2) The complainant is authorized signatory of the above named company situated at Plot No. 36, MIDC, Shendra, Aurangabad. The complainant has taken 33 KV electricity supply for manufacturing of various types of springs required for automobile industries. The complainant is consumer of Respondent Company.
- 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, prior to filing this present grievance, has filed his grievance in the Internal Grievance Redressal Cell (hereinafter referred to as IGRC for sake of brevity) of MSEDCL on 25.02.2019. However, no order is passed by the IGRC.

- 5) In view to start spring manufacturing unit required for automobile industries, the complainant submitted application for release of 33kv HT connection with connected load of 2880 Kw and 1600 KVA contract demand in the office of Superintending Engineer, MSEDCL, Rural Circle Aurangabad on 13.10.2015.
- 6) It is submitted that Superintending Engineer, after visiting the site and after inspection, issued load sanction/demand letter bearing No. SE/ARC/HT billing/6801 dt. 31.12.2015 and asked the petitioner to pay following charges
- | | | |
|-------------------------------|---|-------------------------|
| a) Service connection charges | : | Rs. 696.00 |
| b) 1.3% Normative charges | : | Rs. 60,379.00 |
| c) Security deposit | : | Rs. 36,22,456.00 |
| d) Agreement, tariff booklet | : | Rs. 220.00 |
| e) Processing charges | : | Rs. 1700 |
| Total: | : | Rs. 36,85,451.00 |
- 7) It is further submitted that along with load sanction letter, the Superintending Engineer, MSEDCL Rural Circle, Aurangabad also issued Technical sanction letter on 31.12.2015. The technical sanction was accorded under 1.3% Normative Scheme. Respondent through the above sanction letter asked the petitioner to develop infrastructure required for providing supply to the factory.
- 8) It is submitted that application for load sanction and technical sanction letter confirms that the petitioner has not asked for dedicated power supply. The Respondent has asked to the petitioner to develop infrastructure required for providing supply to his factory.

Respondent has also permitted the petitioner to procure and install 33 kv metering cubicle and assured to refund its cost.

- 9) It is submitted that, as per sanction letter the petitioner has procured all the required material along with 33 kv metering cubicle etc. and completed the erection work under supervision of concerned MSEDCL officer. That, the petitioner has also obtained approval from Electrical Inspector Office before handing over the installation to Respondent.
- 10) It is submitted that after handing over of the installation and execution of agreement etc. 33 kv HT supply was released by MSEDCL to the factory on 21.10.2016.
- 11) The complainant has submitted that, as the amount spent toward infrastructure cost and metering cubicle was not refunded by MSEDCL, it filed grievance before IGRC on 13.02.2017. It is submitted that IGRC after hearing passed its order on 05.04.2017. Refund of meter cubicle cost was allowed; however it was held that on account of pendency of appeal before Hon'ble Supreme Court, infrastructure cost can't be refunded.
- 12) The complainant has submitted that after coming to know that Hon'ble Supreme Court has dismissed the appeal filed by MSEDCL, the complainant once again filed his grievance before IGRC on 25.02.2019 and requested to refund the cost of infrastructure incurred by the petitioner.
- 13) That, IGRC surprisingly took different stand and without giving proper reasoning rejected the grievance.

- 14) That he has not submitted application for release of 33 kv HT connection on dedicated line i.e. under DDF scheme. The technical sanction also confirms that the estimate was sanctioned under 1.3% normative charges.
- 15) The complainant has submitted that, from the technical sanction issued by Respondent, it is clear that the petitioner was asked to carry out the work of extension of existing 33 kv line from M/s Harmen Finochem to his factory and accordingly 33 kv poles and lines from Harmen factory to petitioner's factory were erected. The above facts disclose that neither it has submitted application for providing 33 kv supply on Dedicated Distribution facility (DDF) nor the supply provided to the Petitioner was from express feeder.
- 16) That, as per Hon'ble MERC has defined DDF line as "supply line emanating from substation and ending at consumer premises". The 33kv line work was mere extension; it can't be termed as DDF line.
- 17) 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
 - f) Circular No.7949 dt.19.03.2019
- 18) That, all above mentioned circular stipulates that, MSEDCL is duty bound for developing required infrastructure for releasing

connection to consumers. In case the same is developed by the consumer, the cost of infrastructure is required to be refunded to respective consumers.

- 19) It is prayed that
- 1) To direct MSEDCL to refund cost incurred by the petitioner towards development of infrastructure along with interest.
 - 2) To direct MSEDCL to pay suitable compensation.

The Respondent has filed reply (P.No.56 to 59) & raised following contentions:-

- 20) The supply of consumer was released on 21.10.2016. However the consumer original supply level was on 11 kv. This case is actually of load enhancement & consumer voltage level is changed from 11 KV to 33 KV level which was as per consumer demand.
- 21) IGRC has passed orders as contended by the petitioner.
- 22) The content for ground for appeal para no. A & B denied. At the time of taking connection, consumer has given undertaking on Bond paper of Rs.100/- in which consumer has agreed that "All required material for work will be as per MSEDCL's standard specification & will be procured the same at our own cost. MSEDCL has permitted us to work through L.E.C hence we aware that a rate of 1.3% of the normative charges will be applicable towards supervision charges". Consumer has also agreed that after completion of work the entire set up & equipment will be handed over to MSEDCL without any reservation / claim as it is sanctioned into 1.3% supervision charges.

- 23) Consumer also agreed that “we are ready to pay the charges for new power supply connection as per MSEDCL’s rule & will not be demanded for refund in any complication.”
- 24) The estimated cost of consumer was sanctioned in 1.3% supervision charges. In firm quotation & sanction, it was clearly mentioned that the consumer will have to execute the sanctioned work at his own cost under MSEDCL supervision & as per MSEDCL’s conditions, specification & standard of construction against payment of supervision charges. Hence as sanction was given in 1.3% supervision charges, cost of infrastructure should not be refunded to consumer.
- 25) Vide CE (Distribution) Circular dtd. 12.10.2017, guidelines were issued for refund of SLC, ORC & Meter cost, in which, it is clearly mentioned at point no.7 that SLC, ORC & Meter charges shall not be refunded in the case where consumers have opted for DDF supply. Hence, as sanction was given under 1.3% supervision charges, cost of infrastructure should not be refunded to consumer.
- 26) As consumer has applied for DDF scheme, no infrastructure cost should be refunded to consumer. Hence complaint may be dismissed.

The complainant has submitted rejoinder (P.No.60 to 66) as follows:-

- 27) The contention in the reply that, initial supply level was 11 Kv and the release of supply at 33 Kv voltage was actually load enhancement and the same was as per consumer’s demand is denied by the

petitioner. It is stated that, the application of complainant and the sanction accorded by Respondent clearly discloses that the initial supply released on 11 KV voltage level was for construction purpose wherein the tariff applied is HT commercial. After completion of construction activity, the complainant submitted application for release of new/fresh HT connection for industrial purpose. The load sanction letter dt.30.12.2015 issued by Superintending Engineer also confirms that the sanction accorded was for new/fresh power supply. The above facts confirms that the cost incurred by the complainant towards development of infrastructure is towards new/fresh HT connection.

- 28) That the complainant, in his application dt. 13.10.2015 has not demanded Dedicated Distribution Facility (DDF). However MSEDCL, after release of 33 Kv supply, wrongly issued bill as per express tariff. The complainant, on receipt of first bill of Oct-2016, immediately filed his grievance before IGRC on 24.11.2016. That IGRC, vide its order dt. 21.12.2016 allowed the complaint and directed MSEDCL to refund/adjust the excess amount in future bill. The IGRC also directed to treat the complainant connection as Non express.
- 29) Hon'ble Commission, through its various orders, has defined the DDF connection. Hon'ble Electricity Ombudsman, Nagpur and Mumbai have also passed various orders and MSEDCL's own circulars confirm that infrastructure cost is non refundable only in case consumers opt for DDF connection. That the Respondent is trying to mislead the Forum by contending that the 33 Kv supply given to the petitioner is

a DDF connection i.e. express feeder. The action of Respondent confirms its intention to deprive the petitioner from getting refund of cost incurred towards development of infrastructure work.

- 30) The complainant submits that, he submitted application for release of 33 Kv supply to his factory in the office of Superintending Engineer, MSEDCL, Rural Circle Aurangabad on 13.10.2015. At no stage the demand for release of supply on DDF as made by the complainant. The work carried out by the complainant under 1.3% Normative Charges scheme includes extension of existing 33 Kv Harmen feeder (Non Express feeder) up to his premises. However Respondent wrongly issued 1st electricity bill (Oct-2016) as per Express tariff. However, on complaint of the petitioner and after verifying its own record, IGRC directed to treat petitioner's connection as from NON EXPRESS i.e. Non DDF and also directed to refund the excess amount paid by him towards express feeder charges.
- 31) Second complaint was filed by the petitioner before IGRC regarding refund of metering cubicle cost and cost incurred towards development of infrastructure. IGRC allowed refund of metering cubicle cost, however as regards to refund of cost incurred towards development of infrastructure, IGRC refused to refund the same on the ground that appeal filed by MSEDCL before Hon'ble Supreme Court is pending and no guidelines are made available by its head office.

- 32) That, Hon'ble Supreme Court has dismissed the appeal filed by MSEDCL vide its order dt. 10.11.2016, i.e. prior to order passed by IGRC.
- 33) The complainant was therefore required to once again file his complaint before IGRC on 25.02.2019. The complainant submitted copy of order passed by Hon'ble Supreme Court along with grievance and once again requested to refund the cost of infrastructure incurred by him. However, in order to protect interest of MSEDCL, IGRC changed its stand and dismissed the grievance without going into depth and without giving proper reasoning.
- 34) In view of above submission, it is clear that the supply given by MSEDCL was not DDF. MERC has already defined and clarified the issue of DDF supply. Moreover, the appeal filed by MSEDCL before Hon'ble Supreme Court against the MERC order has been dismissed. All this facts alternatively confirm that, the petitioner is eligible for refund of cost incurred by him towards development of infrastructure cost.

The Respondent MSEDCL has submitted its additional reply (P.No.67) to the rejoinder as follows:

- 35) That the limitation described by MERC (CGRF & Electricity Ombudsman) regulation 2006, Regulation 6.6 would render the grievance raised by the complainant before the forum beyond limitation.
- 36) In the present matter the cause of action arose admittedly, when supply was released to the consumer on 21.10.2016. So consumer

has to approach before the forum within two years from the date 21.10.2016 i.e. up to 21.10.2018.

- 37) In the instant matter the complainant has filed the complaint before the forum on 15.05.2019 i.e. beyond the period of limitation as demarcated in regulation 6.6 MERC (CGRF & Electricity Ombudsman) regulation 2006.
- 38) This count of limitation is fortified in the judgment of Hon'ble Bombay High Court, Aurangabad Bench, in a bunch of Writ Petitions Nos.6859 to 6862/2017 filed by MSEDCL against M/s Jawahar Shetakri Soot Girni Ltd.
- 39) The grievance of complainant may be dismissed.

The complainant has submitted second rejoinder (P.No.81 to 84) & raised following submission:-

- 40) That application of consumer, sanction by MSEDCL, payment applicable tariff, provision of EA 2003 and MERC regulations are all part of legal agreement executed between consumer and MSEDCL before release of connection. The terms and conditions of the agreement are binding on both parties.
- 41) That in the sanction letter dt. 31.12.2005, Respondent at para 7(b) has agreed to refund cost of metering cubicle if the same is purchased by consumer. Since the said sanction letter is part of HT agreement, Respondent can't violate the terms and conditions of agreement on the ground of limitation. Various orders passed by Hon'ble MERC, Hon'ble Electricity Ombudsman and CEA Regulations

clearly stipulate that it is mandatory for all Distribution Licensee to provide metering to their consumers.

- 42) That, the complainant has raised the present grievance within time limit by filing the same before IGRC. Hence, the issue of time limit does not attract in present matter.
- 43) That, the appeal filed by MSEDCL was dismissed by Hon'ble Supreme Court vide order dt. 10.11.2016. The petitioner has submitted application for release of electricity connection on 13.10.2015 and Respondent has accorded load sanction on 31.12.2015, i.e. prior to order passed by Hon'ble Supreme Court. The HT connection was thereafter released to the factory in the month of October-2016.
- 44) The above fact confirms that the process of application and sanction was carried out before the order dt.10.11.2016 passed by Hon'ble Supreme Court. Now since Hon'ble Supreme Court has upheld the order passed by MERC and APTEL, MSEDCL is duty bound to comply same.

Third rejoinder is filed by the complainant (P.No.89,90) as under:-

- 45) There are total three orders passed by IGRC relating to dispute, first order is dt. 24.11.2016 regarding issuance of bill as per non-express tariff. Second complaint is dtd. 13.02.2017, order passed on it on 05.04.2017. Third complaint dtd. 25.02.2019 & order passed on 25.03.2019 the petition was dismissed.
- 46) In the application Page.No.108, it is stated that, the complainant tried his best to obtain copy of order dt. 25.03.2019 passed by IGRC. However, it is learnt that IGRC, instead of passing order referred the

matter to MSEDCL legal section on 25.03.2019. So, no order is passed by IGRC within stipulated period.

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

Sr. No.	POINTS	ANSWER
1	Whether the disputed connection is New or of load enhancement?	It is a new connection
2	Whether the petitioner is entitled to get refund of infrastructure cost together with interest as claimed?	No.
3	Whether the claim is within limitation?	No.
4	What order & cost?	As per final order.

REASONS

- 48) **POINT NO.1:-** On perusal of letter dt. 13.10.2015 (P.NO.12) it is seen that the petitioner, while writing the letter, made it clear that 11 Kv HT connection was taken for construction of petitioner's factory & for production activity petitioner has demanded 33 kv voltage level. Accordingly in the sanction letter dt. 31.12.2015 the MSEDCL has sanctioned New/Fresh power supply to the petitioner. Hence, the submission of Respondent that it is a case of load enhancement is incorrect & not acceptable. Accordingly, we answer point No.1 in affirmative.
- 49) **POINT NO.2: & 3:-** Parties are not at dispute that as per application dt. 13.10.2015 (P.No.12 & 13), Respondent MSEDCL sanctioned 33 Kv

HT connection with 2880 Kw & 1600 KVA contract demand to the petitioner. It is also not disputed that the petitioner has procured 33 Kv metering cubicle & completed the erection work under supervision of the Respondent. On seeking approval of Electrical Inspector the installation was handed over to the Respondent & then connection was released on 21.10.2016. The estimate was sanctioned under 1.3% Normative Charges.

50) The petitioner has referred following circulars:

Sr.No.	Circular No.	Date
1	22197	20.05.2008
2	39206	21.12.2009
3	5489	14.03.2018
4	9245	23.04.2018
5	10992	15.05.2018
6	7949	19.03.2019

51) In case No. 70/05 decided on 8th September 2006 by Maharashtra Electricity Regulatory Commission (for short purposes hereinafter 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 considered in ARR determination.”

- 52) In circular No.25097 dt.12 October 2017 clause No.7 stipulates that
“The SLC, ORC & meter charges shall not be refunded in the cases where consumers have opted for DDF supply.”
- 53) Circular No.22197 dt.20.05.2008 was issued subject to decision of pending appeal No.4305/2007 before Supreme Court , para 3 of it refers that:
“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 expenses so incurred through his energy bills. However, he will have to get the estimates & specifications sanctioned from the appropriate authorities & he will be required to pay supervision charges to MSEDCL.”
- 54) Some guidelines were also issued in above circulars.
- 55) Bearing in mind above guidelines, now let us see as to whether petitioner connection is DDF or Non DDF?
- 56) 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, wherein there is reference of order of Commission dt. 16.02.2008, wherein the 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 some premises or contiguous premises”.

57) In this case, the sanction letter (P.NO. 16 & 17) para 15 of additional conditions No. 2 & 5 refers to the fact that “Supply-voltage - 33 kv level” 33 kv MIDC Shendra Feeder. It is seen that petitioner has never claimed Dedicated Distribution Facility, nor it was approved at any point of time. Not only that, but the first bill issued by the Respondent for express feeder was challenged by the petitioner before IGRC, by lodging complaint dt. 26.11.2016 (P.No.92). That, IGRC, by passing order dt. 21.12.2016 (P.NO.66) declared that the consumer be treated as non-express feeder & refunded the excess amount of bill of October 2016 in the next bill. Considering these factors, it is clear that the petitioners’ connection is from Shendra i.e. common feeder & non – express & Non DDF.

58) One of the plank of argument submitted by Shri. Y.B. Nikam for Respondent is that, the petitioner has executed bond, thereby agreeing of not claiming the reimbursement of infrastructure cost. The copy of the bond is produced at P.No.111. It appears to be executed on 19.05.2015, by the petitioner, addressed to the Superintending Engineer, Rural Circle, Aurangabad in the form of undertaking. Amongst other conditions, clause No. 9 refers to as follows:-

“After completion of work, the entire setup & equipments will be handed over to MSEDCL without any reservation / claims as it is sanction under 1.3% charges.”

It bears sign of the petitioner. It is pertinent to note that, this particular clause is in derogation of the directions issued by Hon'ble MERC from time to time & also in case No.70/05 referred above. As such, this undertaking being not in accordance with law does not have binding force so as to deprive the petitioner from his claim of reimbursement of infrastructure cost. As such said document does not come in the way of the petitioner.

- 59) The appeal of 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 was dismissed by the Hon'ble Supreme Court on 10.11.2016. The implication of this is that any cost borne by the consumer on the infrastructure is to be refunded to him.
- 60) The petitioner had filed application (P.No.96) on 13.02.2017 before IGRC claiming refund of meter cubicle cost & infrastructure cost. That IGRC has passed order (P.No.24) on 05.04.2017 & allowed claim of refund of meter cubicle cost; however, as regards refund of infrastructure cost, it was ordered that Supreme Court case No. 20340/2007, being pending hence the said cost can't be refunded. It is to be noted that the said Case No.20340/2007 relates to appeal No. 4305/2007.
- 61) Thereafter on 25.02.2019, the petitioner filed second application (P.No.24) before IGRC, claiming that the appeal filed before Hon'ble Supreme Court was dismissed, therefore infrastructure cost be refunded together with interest. In order to clarify as to what order

was passed by IGRC, we have called record & proceedings of IGRC (total three cases) for our perusal. It is produced by Shri. Y.B. Nikam, Nodal officer of Respondent (P.No.113 to 177). It is seen from the record that on 26.03.2019, IGRC wrote a letter to Jr. Law Officer stating all facts & sought his legal opinion about refund of infrastructure cost. Since the second petition was not decided within sixty days by IGRC, the petitioner has filed present petition on 21.05.2019.

- 62) Considering the fact that first cause of action arose on 10th November 2016 i.e. date of decision of appeal pending before Supreme Court, the grievance raised for first time on 13.02.2017 before IGRC was within two years & well within limitation.
- 63) At this juncture we would like to refer ratio laid down in the judgment of Hon. High Court in W.P. No. 6859/2017, 6160/17, 6861/17, 6862/17 copy of it is produced at (Pg. No. 75 to 79) - MSEDCL, Division Office Dhule Urban Dist. Dhule V/s Jawahar Shetkari Soot Girni Ltd. decided on Dt. 21.08.2018 as follows:-.

“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”.

- 64) Considering the ratio laid down in the aforesaid writ petitions, herein this case considering the date of decision of Civil Appeal No. 4305/2007 i.e. 10th November 2016, so the petitioner was entitled to raise demand of refund of infrastructure cost from the date within two years as that being the first cause of action. The petitioner has rightly filed application for refund before IGRC within two years i.e. on 13.02.2017 & it was rejected on 05.04.2017. It is important to note that judgment declared by Supreme Court of India is presumed to be known to all from the date of its decision; still IGRC has shown their ignorance about judgment of Supreme Court & refused the relief on the ground of pendency of appeal. This is uncalled. As such cause of action again arose to the petitioner on 05.04.2017. However, against the order dt. 05.04.2017 passed by IGRC the petitioner neither has preferred appeal to CGRF under Regulation 6.4 of MERC (CGRF & EO) Regulations 2006, nor approached before forum within two years under Regulation 6.6 of MERC (CGRF & EO) Regulations 2006. But, the consumer has preferred second petition on 25.02.2019 before IGRC. It is important to note that, this second petition appears to be in the form of review; however there is no provision of review of its own order by IGRC. As such second petition

before IGRC was not maintainable, because once the relief claimed was refused by IGRC, the only remedy lies to file appeal /petition before CGRF either within 60 days or within two years from the date of cause of action i.e. 05.04.2017. In any case the second petition does not lie to IGRC. Had it been the fact that during pendency of appeal of Supreme Court, there was refusal by IGRC, then things could have been different as liberty could have remained to petition to file second petition before IGRC. The petitioner ought to have presented the petition before this forum within two years from 05.04.2017 i.e. up to 05.04.2019. However it is filed on 21.05.2019. As such considering the ratio of the above case the petition is not within limitation. Therefore, the petitioner is dis-entitled to claim refund of infrastructure cost & interest. Therefore we answer point Nos. 2 & 3 in the negative.

- 65) For the aforesaid reasons, the claim being time barred, hence not maintainable. We proceed to pass following order in reply to point No.4:

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Makarand P. Kulkarni
Member / Secretary

The final order is in point No.66 on Page No. 24

Dissenting Opinion Of
Shri. V.S. Kabra, Member(CPO) in Case No. 740/2019

I have gone through the application, say, rejoinder & all the documents placed on record by both the parties. Heard both sides at the

length during final hearing. I do not agree with the opinion presented by the Chairperson and Member secretary, of the Forum.

In my view, in this case there is continuous cause of action so, this case is in limitation.

But on the other hand, complainant submitted that, consumer has given undertaking on bond paper of Rs.100/- in which consumer agreed that all the required material for work will be as per MSEDCL's standards specification and will be procured the same at our own cost. **Distribution licensee (D.L.) taking bond as undertaking from complainant, opponent submitted that, the complainant has executed bond and thereby agreeing of not claiming the reimbursement of infrastructure cost.** The copy of the bond is produced at P.No.111. It appears to be executed on 19.05.2015, by the petitioner, addressed to the Superintending Engineer, Rural Circle, Aurangabad in the form of undertaking.

Consumer has also agreed that we are ready to pay the charges for new power supply connection as per MSEDCL's rule & will not be demanded for refund in any complication.

On the contrary D.L. stated that,

“१. एम.ई.आर.सी. आदेश दिनांक ०८.०९.२००६ केस नं.७०/२००६, महावितरण परिपत्रक क्र.४३ दिनांक २७.०९.२००६ नुसार मिटरिंग क्युबीकल हे ग्राहकाने खरेदी केलेले असल्याने महावितरणने सदर मीटर क्युबीकलची मंजूर रक्कम ग्राहकास त्यांच्या पुढील वीज बिलातून परत करण्यात यावी.

२. पायाभूत सोयीसाठी उभारण्यात आलेले विद्युत यंत्रणेसाठी झालेल्या खर्चाची रक्कम परत करण्याबद्दल कोणतेही परिपत्रक नसल्याकारणामुळे तसेच महावितरणने मा.सुप्रीम कोर्टासमोर

दाखल केलेली केस न.२०३४० वर्ष २००७ सध्यस्थितीत प्रलंबित असल्याकारणामुळे सदरचा खर्च परत करता येणार नाही”.

वरील दोन्ही बाजूंचे म्हणणे ऐकल्यावर व वरील बाजू पाहिल्यावर असे लक्षात येते की, तक्रारदाराच्या म्हणण्यानुसार महावितरण कंपनी Bond वर Undertaking लिहून घेते हे संयुक्तिक नसून त्याला Electricity Act, २००३ नुसार किंवा मा. MERC Regulation मध्येही कोठेही अशी provision नाही. त्यामुळे ग्राहक हा "नडलेला" असतो, त्यावेळी त्याला परवानाधारक कंपनी म्हणेल ते मान्य करावेच लागते.

दुसरे मा.सुप्रिम कोर्टाच्या निकालानंतर मा.विद्युत नियामक आयोगाने दिलेल्या वेगवेगळ्या निर्वाळ्यांमध्ये म्हटल्यानुसार पायाभूत सेवांसाठी ग्राहकाने केलेला खर्च परत करण्यासाठीच्या मार्गदर्शक तत्वांप्रमाणे विरोधी पक्षकार परवानाधारक महावितरण कंपनीने पायाभूत सुविधांसाठी दिलेल्या अटी व शर्तीच्या अधिन राहून केलेला खर्च ग्राहकाला परत देणे योग्य राहिल असे मला वाटते. करिता खालील आदेश मी पारीत करीत आहे.

आदेश

१. महावितरण कंपनीने ग्राहकास त्याने नवीन जोडणी घेतांना आपल्या अटी व शर्ती नुसार केलेल्या आगाऊ खर्चाला परत करावे किंवा पुढील बिलात कमी करून देण्यात यावे असे आदेश पारीत करीत आहे.
२. महावितरण कंपनीने ग्राहकांकडून बाँड घेवू नये, कारणे तसे Indian Electricity Act २००३ मध्ये कोठेही Bond वर Undertaking घेवून जोडणी देण्यास अनुमती नाही.

Sd/-
Shri. V.S. Kabra,
Member (CPO)

66) Considering the above discussion, we proceed to pass following order on majority view of Chairperson and Technical member in reply to point No.4

ORDER

- 1) Petition stands dismissed.
- 2) Parties to bear their own cost.
- 3) Records & proceedings of IGRC cases (3) produced by the Respondent on record be returned to the Respondent under due acknowledgement & after appeal period is over.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Makarand P. Kulkarni
Member / Secretary