

(2024) 07 BOM CK 0022

In the Bombay High Court

Case No : Writ Petition Nos. 7152, 7198, 7199 Of 2019, 1842, 9554 Of 2021, 14178, 14483 Of 2022, 729, 758, 2961, 5338, 5345, 5363, 12234, 12490, 12491 Of 2023

Maharashtra State Electricity Distribution Co. Ltd. Through
Supdt. Engineer

APPELLANT

Vs

M/s Jindal Polyfilms Ltd And Anr

RESPONDENT

Date of Decision : 16-07-2024

Acts Referred:

Constitution of India, 1950 — Article 227

Limitation Act, 1963 — Section 3, 29

Electricity Act, 2003 — Section 2(62), 42(5), 43, 46, 47, 56(2), 62, 62(5), 62(6), 64, 64(3), 82, 115(5), 181(2)(r), 182

Citation : (2024) 07 BOM CK 0022

Hon'ble Judges : Sharmila U. Deshmukh, J

Bench : Single Bench

Advocate : Harvinder Toor, Kiran Gandhi, Akash Kothari, Abhishek Karnik, Siddharth Varma, Varad Kilor, Siddharth Verma, Meeran Patel, Amol Doijode, Deepa Chawan, Dipali Sheth, Ruchi Patil, Akanksha Kothari, Harsh Shah

Final Decision : Dismissed

Judgement

Sharmila U. Deshmukh, J

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of the parties.

2. These group of petitions arises out of orders passed by the Consumer Grievance Redressal Forum (CGRF) in individual complaints. As common issues arises, with consent of the learned counsel for the parties, the petitions were taken up for hearing together and are being disposed of by this common judgment. By consent Writ Petition No.7152 of 2019 is taken as lead Petition and the facts of the said Petition are referred in the judgment.

FACTUAL MATRIX :

3. As various orders passed by the Maharashtra Electricity Regulatory Commission (MERC) form the background of the present controversy in as much as the applications made to the Consumer Grievance Redressal Forum (CGRF) alleged non-compliances by the petitioners-herein i.e. Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) of the orders of MERC, for ease of reference the orders of MERC as discerned from the record are set out in tabular form as under:

3rd September, 2013

MERC in Case No.28 of 2013 filed by Maharashtra State Power Generation Company Limited (MSPGCL) seeking implementation of judgment of Appellate Tribunal for Electricity (ATE) passed an order allowing MSPGCL to recover a total amount of Rs.106.44 Crore (including carrying cost) on account of impact of ATE Judgment in Appeal No.34 of 2012 from MSEDCL in six equal monthly installments starting from October, 2013.

MERC also allowed MSPGCL to recover the total amount of Rs.628.90 Crores (including carrying cost) on account of impact of ATE judgment in Appeal No.47 of 2012 from MSEDCL in six equal monthly installments starting from October, 2013.

MERC permitted MSEDCL to recover the variation in energy charge component of the amount billed by MSPGCL to MSEDCL from the consumers through Fuel Adjustment Charge (FAC) mechanism and also allowed MSEDCL to recover the variation in fixed charge component of the amount billed by MSPGCL to MSEDCL from the consumer in proportion to billing average rate of respective

consumer categories.

4th September, 2013

MERC in Case No.48 of 2013 permitted MSPGCL to recover the under-recovered fuel cost of Rs.28.05 Crores for infirm power supplied to MSEDCL in three monthly installments, after issuance of the order and also permitted MSEDCL to recover this amount through FAC mechanism.

MERC permitted MSPGCL to recover the difference in revenue recoverable in accordance with the Tariff approved in the order vis-a-vis the Provisional Tariff charged by MSPGCL in 6 equal monthly installments from October, 2013 onwards and to recover the fixed cost and energy charges as per the tariff approved till tariff for FY 2013-2014 is approved.

MERC permitted MSEDCL to recover variation in energy charge from consumers through FAC mechanism and to recover the variation in fixed charge component in proportion to average billing rate of respective consumer categories.

5th September, 2013

MERC in Case No.95 of 2013 in respect of suo- motu determination of supplemental charges of MSEDCL to give effect of other orders, directed MSEDCL to recover two additional charges from its consumers in the form of additional energy charge in the following manner :

"a.To recover the accumulated under-recovery of Rs. 2037.78 Crore accrued till the month of August 2013, which shall be levied by MSEDCL for a period of six (6) months with effect from the month of September 2013 till the month of February 2014.

Category wise Additional Energy Charge (AEC-1) to be levied to all consumer categories in the proportion to the approved Average Billing Rate of respective consumer categories, under intimation to the Commission.

b. To recover monthly fixed expense of Rs. 235.39 Crore. This shall be levied by MSEDCL from the month of September 2013 to its consumers on a monthly basis till further determination of MSEDCL tariff by this Commission. Category wise Additional Energy Charge (AEC-2) to be levied to all consumer categories in the proportion to the approved Average Billing Rate of respective consumer categories, under intimation to the Commission.

c. Further, the Commission hereby rules that from this Order onwards MSEDCL will recover the variation in energy charge component of the amount billed by MSPGCL to MSEDCL as approved by the Commission from the consumers through the FAC mechanism. Similarly, the Commission allows MSEDCL to recover the variation in fixed charge component of the amount billed by MSPGCL and amount billed by MSETCL to MSEDCL as approved by the Commission from the consumers in proportion to the approved Average Billing Rate of respective consumer categories, under intimation to the Commission."

7th September, 2013

MSEDCL issued Commercial Circular No.209 and raised demand for AEC and Additional FAC under the electricity bill of month of August, 2013.

29th January, 2014

Government of Maharashtra passed Resolution deciding to give concession in electricity rates to the consumers of MSEDCL by compensating MSEDCL from February, 2014 and the concessional tariff applicable from 1st February, 2014 against the payments to be made by MSEDCL to MSPGCL and MSETCL.

22nd August, 2014

Tata Motors challenged the order dated 5th September, 2013 passed by MERC in Case No.95 of 2013 before the ATE and the matter was remanded to MERC for fresh consideration.

26th June, 2015

MERC observed that MSEDCL started recovery from August, 2013 violating Commission's directives. MSEDCL was directed to review the refunds made by it, so far on account of wrongful premature billing and make any remaining refunds

due to consumers in the next billing cycle.

13th July, 2017

Paul Strips and Tubes Pvt. Ltd., a consumer of MSEDCL filed petition being Case No 78 of 2016 before MERC seeking compliance of tariff order modified by MERC vide order dated 5th September, 2013 and order dated 26th June, 2015 passed in Case No.95 of 2013. Direction was sought to MSEDCL to calculate the AEC and levied from 5th September, 2013 to be refunded with interest and to refund amount of AEC charged for period of 1st September, 2013 to 12th September, 2013 as the circular no 209 was uploaded on 12th September,

2013.

MERC held that the AEC approved in the order dated 5th September, 2013 was applicable for the period of 1st September, 2013 to 28th February, 2014 i.e. only for the electricity consumption during that period and therefore recovery of AEC on the electricity consumption prior to or after that

period would not be consistent with MERC's order dated 5th September, 2013. MERC directed MSEDCL to take a review of AEC levied on its consumers and take corrective steps accordingly as for instance if MSEDCL has recovered AEC in six installments on electricity consumptions of August, 2013 to January, 2014, it needs to refund the AEC collected on August, 2013 consumption and recover the AEC for consumption of February, 2014. Any correction required in the levy of AEC should be effected in all cases by the second billing cycle following the Order. MERC further held that in the circumstances of this matter, no carrying or holding cost shall be applicable.

11th February, 2016

MERC granted post facto approval to MSEDCL for charging to its consumers the FAC amount for period from October, 2013 to March, 2014 and permitted MSEDCL to recover the approved FAC in billing months of January, 2014 to June, 2014

respectively.

COMPLAINT BY THE RESPONDENT TO THE INTERNAL GRIEVANCE REDRESSAL CELL (IGRC):

4. The Respondent filed two complaints on 17th January, 2018 before the Internal Grievance Redressal Cell (IGRC). The first complaint was as regards

excess AEC and additional FAC charged in August, 2013, September, 2013 and December, 2013 and the second complaint was in respect of excess FAC recovered from November, 2012 to March, 2015 respectively.

5. As regards excess AEC and additional FAC is concerned, the order of MERC dated 5th September, 2013 was reproduced and it was contended that the Respondent has paid an excess amount of Rs.3,61,88,592.59 and sought refund of the excess amount recovered from the Respondent in August, 2013, September, 2013 and December, 2013 alongwith interest. It was stated that MERC has permitted MSEDCL to charge AEC I and AEC II from consumer from the billing months of September, 2013 to February, 2014, AEC III and AEC IV from October, 2013 to March 2014 and FAC from September, 2013 to November, 2013 and levying these charges in August, 2013, September, 2013 and December, 2013 is non-compliance of order dated 5th September, 2013, which is required to be refunded.

6. As far as recovery of excess FAC is concerned, it was contended MSEDCL has charged the Fuel Adjustment Charges (FAC) which is not as per the MERC's post facto approval for these months and MSEDCL had charged Rs.5,39,47,491.82 more than the approved tariffs/FAC to the Respondent. The application set out a detailed statement depicting the excess FAC amount charged over and above MERC approved rate and sought the refund of the excess amount of FAC levied on the Respondent.

ORDER OF IGRC:

7. Vide order dated 25th April, 2018, IGRC noted the submission of MSEDCL that additional AEC I to IV for August, 2013 was refunded in the bill of September, 2017, additional FAC for August, 2013 and December, 2013 is not refunded and AEC III and IV of September, 2013 is also not refunded because there is no circular regarding refund of the same. Without any discussion or finding on the aspect of refund sought by Respondent, IGRC recorded its decision in terms of the submissions of MSEDCL.

8. As regards refund of excess FAC recovered from November, 2012 to March, 2015, MSEDCL submitted that FAC was charged as per the commercial circular received from time to time and in identical manner, without any discussion or finding, IGRC passed an order in terms of the submissions of MSEDCL.

PROCEEDINGS BEFORE CONSUMER GRIEVANCE REDRESSAL FORUM:

9. Before the decision of IGRC on the complaints, the Respondent submitted representation to the Consumer Grievance Redressal Forum (CGRF) stating that the complaint filed with the IGRC was not decided within period of two months. CGRF decided to admit the case for hearing and issued notice to MSEDCL. MSEDCL submitted its say to the appeals filed by the Respondent through its Nodal Officer and Executive Engineer.

10. Before the CGRF, the Respondent in addition to the contention in the

complaints canvassed additional submissions that the CGRF by order No.175 dated 13th October, 2017 and No.61 dated 14th March, 2017 in the matter of representation by Swastik Pulp and Paper Pvt. Ltd. and CEAT Limited directed refund of excess FAC charged over and above MERC approved rates in the bills of the months from December, 2013 to December, 2014 with interest.

11. As regards the grievance of excess AEC and additional FAC, it was further contended that the CGRF by order No.175 dated 13th October, 2017 in matter of Swastik Pulp and Paper Industries Ltd. has directed refund of amount of AEC recovered in month of August, 2013 and excess recovered by billing for August, 2013 alongwith interest.

12. The response of MSEDCL was that AEC and Additional FAC were charged as per MERC order dated 4th September, 2013 passed in Case No.44 of 2013 and order dated 26th July, 2015 passed in Case No.95 of 2013. It was further contended that the AEC I to IV of August, 2013 was refunded and recovered of February, 2014 through IT billing system to all consumer in October, 2017 as per the instructions from the Chief Engineer's communication dated 13th October, 2017 and the IT calculation sheet was attached. FAC was charged as per the general commercial circular. It was further contended that as per MERC Regulation of 2006, Article No.6.6, the grievance has to be filed within period of two years from the date of cause of action. It was further

contended that the circular dated 13th October, 2017 was issued by MSEDCL directing implementation of MERC order as regards the refund of AEC collected in August, 2013 consumption and to recover the AEC for February, 2014 consumption as per the order of Paul Stripes and Tubes Pvt Ltd. The IT calculation sheet annexed to the say showed refund of AEC I to IV for August, 2013 in October, 2017 and recovery for February, 2014 in October 2017.

IMPUGNED ORDER OF CGRF DATED 29th JUNE, 2018:

SUBMISSIONS NOTED IN THE ORDER:

13. CGRF noted the representation of the Respondent as regards the cess FAC charged as well as excess AEC and additional FAC. The arguments of MSEDCL as noted in the order dated 29th June, 2018 is that the AEC charges and additional FAC was levied as per MERC order dated 4th September, 2013 passed in Case No.44 of 2013 and 26th July, 2015 passed in Case No.95 of 2013. CGRF noted the further arguments that as per circular dated 13th October, 2017, AEC I to IV is refunded of August, 2013 and recovered of February, 2014 as per MERC order 78 of 2016 through IT billing system to all consumers in October, 2017. The additional FAC of August, 2013 and December, 2013, is not refunded as also AEC III and IV of September, 2013 is not refunded because there is no circular from Head Office regarding the same. As regards the FAC charged, it was contended that the same is charged as per the General Commercial Circular Nos.189 to 193.

FINDINGS OF CGRF:

(a) The order of MERC dated 5th September, 2013 in case No.95 of 2013 permitted MSEDCL to recover AEC I in six equal installments and AEC II on monthly basis till issue of MYT tariff order in form of additional energy charges.

(b) Fixed Charges is to be recovered as AEC III and AEC IV as per MERC orders dated 3rd September, 2013 in Case No 28 of 2013 and 4th September, 2013 in Case No 44 of 2013.

(c) AEC I to IV were included and combined under a single head AEC which is indicated on the energy bill.

(d) Additional FAC was permitted to be recovered by order dated 4th September, 2013 passed in Case No.44 of 2013 in three monthly installments after issuance of the order.

(e) By order of 26th June, 2015, MSEDCL was directed to review the refunds made by it on account of wrongful premature billing as MSEDCL started recovery from August, 2013 itself and to make remaining refunds due to consumers in next billing cycle.

(f) If subsidy on account of AEC for month of February, 2014 is received from Government, AEC charged for February, 2014 is to be refunded with interest.

(g) MSEDCL issued commercial Circular No.209 dated 7th September, 2013 and raised demand for AEC and Additional FAC from the electricity bill of August, 2013.

(h) MERC had allowed AEC recovery from September, 2013 but recovery was made from August, 2013. MERC had allowed recovery of Additional FAC from month of September, 2013 for period of three months but MSEDCL has billed Additional FAC for five months from August, 2013 upto December, 2013.

(i) AEC III and IV was permitted to be recovered in six equal installments starting from October, 2013 and it should be confirmed whether AEC III and IV is recovered in six monthly installments starting from October, 2013 and if, recovered in the month of September, 2013 to be refunded with interest.

(i) Additional FAC was to be recovered in three months from September, 2013 to November, 2013, however, MSEDCL has recovered the same in five monthly installments starting from August, 2013 and December, 2013, so the extra amount recovered in August, 2013 and December, 2013 is to be refunded with interest.

(k) MERC had passed an order to refund the excess FAC recovered from September, 2013 to December, 2014 with interest.

ORDER OF CGRF OF REFUND:

"1. The Distribution Company should refund after confirmation whether the subsidy on A/c. AEC is in receipt for the month Feb. 14 if yes the Dist. Co. should refund the same if charged for the month of Feb 14 with interest as applicable.

2. The Dist. Co. should refund AEC III & IV ,if recovered, for the month Sept. 13 with an interest as applicable.
3. The Dist. Co. should refund Add. FAC recovered for the months Aug. 13 and Dec. 13 with interest as applicable.
4. The Dist. Co. should refund excess FAC recovered during Dec. 13 to Dec. 14 with interest as applicable.
5.
6.
7.

SUBMISSIONS :

14. Mr. Toor, learned counsel appearing for the Petitioner-MSEDCL submits that the claim for refund was barred by limitation and despite objection as to limitation, the same has not been dealt with by CGRF. Mr. Toor would further point out to Regulation No.6.6 and would submit that the said regulation read with Sections 3 and 29 of the Limitation Act, 1963, would make it clear that the limitation though not set up is required to be considered.

15. He would assail the order of CGRF of grant of interest by relying on the order dated 13th September, 2017 passed in the matter of Paul Strips and Tubes Pvt. Ltd, which specified that carrying or holding cost will not be applied.

16. He would further submit that CGRF has not factually verified whether any excess amount was recovered by MSEDCL and without any such finding could not have directed refund. He would further submit that the AEC I to IV were consolidated in AEC from August, 2013 to January, 2014 and the CGRF itself noted that all AEC I to IV were combined into a single head and despite thereof has directed the refund of AEC III and IV which cannot be segregated.

17. He would further submit that MSEDCL had already given the credit following the decision in the case of Paul Strips and Tubes Pvt. Ltd and without factually verifying the said position, CGRF directed the refund of AEC III and IV as well as additional FAC. He would further submit that there is no basis for directing refund of excess FAC as CGRF has factually erred in holding that MERC has passed an order to refund excess FAC recovered from December, 2013 to December, 2014. He would further submit that there was post facto approval by MERC for the FAC for the months of October, 2013 to March, 2014 and as such, there is no excess FAC charged. He submits that the excess FAC issue was not part of the MERC's order passed in Paul Strips and Tubes Pvt. Ltd. He submits that as there is no excess amount charged by MSEDCL without verifying the said fact, the direction to refund the AEC III and IV, additional FAC and excess FAC would amount to an unjust enrichment qua the Respondent.

18. He has taken this Court through the orders dated 3rd September, 2013 and

4th September, 2013 passed by MERC and submits that AEC III was permitted to be recovered by MSEDCL from the consumers in six equal monthly installments starting from October, 2013 and AEC IV was permitted to be recovered from consumers through FAC mechanism. He submits that AEC I and II was permitted to be recovered for the period from September, 2013 and February, 2014.

19. He would further submit that as far as the additional FAC is concerned, although the same was directed to be recovered from September, 2013 to November, 2013, the same was recovered not in three months but in five months, however, there is no excess amount which was recovered. He submits that the reason for filing of the complaint was the order dated 13th July, 2017 passed by MERC in the matter of Paul Strips and Tubes Pvt. Ltd.

20. He submits that as far as the issue of subsidy is concerned, MERC held that the matter between the State Government and the MSEDCL. He submits that MSEDCL did not recover AEC charges for months of January, 2014 and has reduced the tariff for months of January, 2014 and November, 2014. He would submit that as the issue of limitation was not considered, the matter is required to be remanded. In support, he relies on the following decisions:

[1] Secretary, Ministry of Works & Housing v. Mohinder Singh Jagdev [(1996) 6 SCC 229]

[2] M.S.E.D.C.L. v. J.S.S.G. Ltd. [2019(1) Mh.L.J.]

[3] Sahakari Khand Udyog Mandal Ltd. v. CCE [(2005) 3 SCC 738]

[4] M.S.E.D.C. Ltd. v. RSR M.S. & W. Mills Ltd. [2021 (4) Bom. C.R. 563]

[5] M.S.E.D. Co. Ltd. v. Lloyds Steel Industries Ltd. [AIR 2008 SC 1042]

[6] Eminent Sea Foods (P) Ltd. v. K.S.E.B. [2008 SCC OnLine Ker 469]

[7] V.V. Kudva v. E.S.I. Corporation. [AIR 1972 MYSORE 204]

[8] Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd. [(2021) 20 SCC 200]

[9] SBI V. Ajay Kumar Sood [(2023) 7 SCC 282]

[10] A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd. [(2016) 3 SCC 468]

[11] CIT V. Rashtradoot (HUF) [(2019) 5 SCC 149]

[12] U.P. SRTC V. Jagdish Prasad Gupta [(2009) 12 SCC 609]

21. Per contra, Ms. Chavan, learned counsel appearing for the Respondent in the lead Petition would submit that the tenor of the impugned order would indicate that the issue of limitation was considered by CGRF. On the aspect of grant of interest, she would submit that the carrying cost which was declined in the order of Paul Strips and Tubes Pvt. Ltd. is a cost applicable to utility and not to the consumers. She would further submit that the carrying cost and the holding cost

is different from the interest which is payable under Section 62(5) of the Electricity Act, 2003. Pointing out to the multi year tariff Regulation 2011, she submits that the carrying cost is applicable to utility which is taken into consideration for calculation of FAC component and it is different from the interest under Section 62 of the Electricity Act. She submits that the provisions of Section 62(6) pertaining to grant of interest is mandatory provision.

22. She submits that it was not permissible for MSEDCL to club AEC I to IV into AEC as per the orders of MERC. She submits that in any event, the cause of action for filing of the complaint arose upon the passing of the order of Paul Strips and Tubes Pvt. Ltd. on 13th July, 2017 and the complaint which has been filed in 2018 is within the period of two years.

23. Pointing out to the provisions of Section 42 (5) of the Electricity Act, 2003, she submits that the CGRF is constituted by the distribution licensee and is not a Tribunal and thus Section 29 of the Limitation Act will not be applicable to CGRF. She would further submit that order of MERC passed on 13th July, 2017 was an order in rem and the application filed in 2018 is within the period of limitation. She would draw attention of this Court to the additional affidavit filed by MSEDCL and would submit that in any event, it is contended by MSEDCL that as per order of 13th July, 2017 passed in Paul Strips and Tubes Pvt. Ltd. matters, the amount recovered for the month of August, 2013 has been adjusted in the bill for the month of October, 2017. She submits that the adjustment being in 2017, a challenge to the adjustment can be filed within a period of two years. She would submit that Section 62(6) of the Electricity Act provides for grant of interest and as such, no order of MERC can override the statutory provisions. She would further submit that the Regulation of 2006 is delegated legislation which cannot go beyond the parent Act.

24. She would further submit that the tariff determination is based on determination of tariffs/revenue gap and therefore billing to the consumption becomes continuous action. She would further submit that the Regulation of 2006 are guidelines by referring to Section 42(5) of the Electricity Act and that the guidelines do not create a legally enforceable right. She would further submit that the character of the redressal mechanism will decide as to whether the Regulation as regards the limitation would apply. She would further submit that CGRC is not a quasi judicial authority. She would further submit that the various provisions of the Electricity Act, such as Sections 43, 56(2), 64(3) and 115(5) prescribe the time limit and the Parliament has specifically refrained from providing any time limit to approach CGRF. She would further submit that the bare contention without pleading on the issue of limitation has been raised by MSEDCL and as such, the same is not required to be considered.

25. She would submit that before the IGRC, complaints were made for the excess AEC and additional FAC as well as for excess FAC and different complaint was filed as regards post facto approval granted by MERC. She would further submit that this Court in exercise of powers under Article 227 can consider the

issue of limitation and as the CGRF is not a quasi judicial authority the provisions of the Limitation Act would not be applicable. She would further submit that it is clear from the submissions which are recorded in the AGRC's order that no issue of limitation was raised and there is no pleading in the Petition that the submissions have been wrongly recorded by the CGRF.

26. Pointing out to the direction to refund the excess FAC recovered during December, 2013 and December, 2014, she submits that the post facto approval came in the year 2016 and as such, the complaint is filed within period of two years.

27. She would further submit that in exercise of powers under Article 227, this Court is concerned only with a decision making process and cannot exercise any appellate powers. On the submission of remand, she would submit that this Court will have to weigh quantity of evidence and come to a definite conclusion before an order of remand can be passed. She would further submit that remand cannot be sought when the opportunity of hearing was given.

28. On the conduct of MSEDCL she submits that MSEDCL has filed the present petition after a period of almost one year from the passing of the impugned order and only in respect of selective consumers. In support, she relies on the following decisions :

[1] State of Gujarat v. Gujarat Revenue Tribunal Bar Assn. [(2012) 10 SCC 353]

[2] Bharat Bank Ltd. v. Employees of the Bharat Bank Ltd. [1950 SCR 459]

[3] Union of India v. S.L. Abbas [(1993) 4 SCC 367]

[4] Engineering Mazdoor Sabha v. Hind Cycles Ltd. [1962 SCC OnLine SC 134]

[5] Jaswant Sugar Mills Ltd. v. Lakshmi Chand [1962 SCC OnLine SC 20]

[6] Global Energy Ltd. v. Central Electricity Regulatory Commission [(2009) 15 SCC 570]

[7] Bharathidasan University v. All-India Council For Technical Education [(2001) 8 SCC 676]

[8] Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise [(2016) 3 SCC 643]

[9] Additional District Magistrate (Rev.) v. Siri Ram [(2000) 5 SCC 451]

[10] Surya Dev Rai v. Ram Chander Rai [(2003) 6 SCC 675]

[11] H.B. Gandhi v. Gopi Nath & Sons [1992 Supp (2) SCC 312]

[12] State v. Navjot Sandhu [(2003) 6 SCC 641]

[13] Arvind Kumar Jaiswal v. Devendra Prasad Jaiswal Varun [2023 SCC OnLine SC 146]

[14] Tata Iron & Steel Co. Ltd. v. State of Jharkhand [(2004) 7 SCC 242]

[15] M.P. Steel Corpn. v. CCE [(2015) 7 SCC 58]

[16] Radhey Shyam v. Chhabi Nath [(2015) 5 SCC 423]

29. Mr. Kilor, learned counsel appearing for the Respondent in Writ Petition Nos.1842 of 2021, 12491 of 2023, 2961 of 2023, 5363 of 2023 and 5338 of 2023 adopts the submissions of Ms. Chavan. Mr. Meezan Patel, learned counsel appearing for the Respondent in Writ Petition No.7198 and 7199 of 2019 adopts the submissions of Ms.Chavan and would further supplement the submission. He submits that as regards the issue of limitation the cause of action arose upon the order passed in Paul Strips and Tubes Pvt. Ltd. matter. He submits that as per the Rules of MSEDCL, the parties are not permitted to be represented by an Advocate and as such, the issue of limitation cannot be reasonably argued by the party in-person. Pointing out to the Regulation 6.19, he submits that the Civil Procedure Code and the Evidence Act does not apply and if the over all findings can be supported, there cannot be any remand of the matter. He submits that only on the issue of limitation the matter may not be remanded and the powers under Article 227 cannot be exercised for that purpose. In support, he relies on the decisions of the Apex Court as under:

[1]

Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329]

[2]

K. Chinnammal v. L.R. Eknath [2023 SCC OnLine SC 611]

[3]

M/S Garment Craft v. Prakash Chand Goel [2022 SCC OnLine SC 29]

30. Mr. Karnik, learned counsel for the Respondent in Writ Petition Nos.729 of 2023, 758 of 2023, 12490 of 2023, 12234 of 2023 and 5345 of 2023 adopts the submission of Ms. Chavan.

31. In rejoinder, Mr.Toor, would submit that the order which has been passed by the CGRF would show that there are no conclusion and no reasoning for passing of the order. He would further submit that as per the provisions of Section 42(5) of the Electricity Act, the distribution licensee has to establish the CGRF in accordance with the guidelines as specified by the State Commission and under Section 2(62) of the Electricity Act, 2003 "specified" means specified by regulations made by the Appropriate Commission or the Authority.

32. He submits that as such, the establishment of the forum is as per the regulations which have a statutory force. He submits that the regulations provide for appointment of Nodal officers. He would further submit that cause of action arose in 2013-2014 when the bills were issued and not by reason of Paul Strips and Tubes Pvt. Ltd. orders. Pointing out to the Regulation 8.4, he submits that

the order of forum is required to be a reasoned order. He submits that the regulation itself provides for punishment for non-compliance of the order and are therefore fully enforceable having statutory force of law. He would submit that it is the admitted case of the Respondent that the electricity bills were issued in August, 2013, December, 2013 and as such, the complaint filed in 2018 is beyond the period of limitation.

REASONS AND ANALYSIS :

33. The impugned order has been passed by CGRF constituted under Section 42(5) of the Electricity Act, 2003. Before proceeding further, it would be profitable to refer to the statutory framework of the Electricity Act, 2003, enacted to consolidate the law relating to generation, transmission, distribution, trading and use of electricity and also for protecting the interest of the consumers and ensuring transparent policies regarding subsidies and promotion of efficient and environmentally benign policies and for constitution of various authorities and commissions under the Act. The State Regulatory Commission is appointed under Section 82 of the Electricity Act, 2003. One of the function of the State Commission is to determine the tariff for generation as well as supply and transmission of electricity within the State. Part IV of the Electricity Act, 2003 deals with the licensing for transmission, distribution of electricity and undertaking of trading in electricity.

34. Part VI deals with the distribution of electricity and makes provisions with regard to distribution licensees. Section 42 contained in Part VI provides for the duties of distribution licensee and provides for establishment of a forum i.e. CGRF for redressal of grievance of consumer in accordance with the guidelines as may be specified by the State Commission. Section 42(6) provides for making of representation before the Ombudsman in event of non-redressal of the grievance by the CGRF. Section 45 deals with the power to recover the charges by the distribution licensee and sub-section (2) thereof provides that the charges for the electricity supplied by distribution licensee shall be fixed in accordance with the methods and the principles as may be specified by the concerned State Commission. Section 46 provides for authorization by the State Commission for a distribution licensee to charge from the consumer any reasonable expenses incurred in providing an electric line and or electric plan and Section 47 deals with the power of distribution licensee to require security from the consumer.

35. Part VII of the Electricity Act deals with the tariff and Section 62 contained in Part VII provides for the determination of the tariff by the appropriate commission. Section 64 provides for making an application by the generating company on licensee for determination of tariff under Section 62 to the appropriate commission. Section 65 provides for provision of subsidy by the State Government in the tariff determined by the State Commission under Section 62.

36. Section 181 of the Electricity Act empowers the State Commission to make

regulations and rules to implement the provisions of the Act. Under Sub section (2) (r) of Section 181 the regulations may provide for the guidelines under sub-section (5) of Section 42. Under section 182, the rules and regulations are required to be laid before the State Legislature.

37. In exercise of the powers vested under Section 181 of the Electricity Act, the State Commission has framed the Maharashtra Electricity Regulatory Commission (Consumers Grievance Redressal Forum and Electricity Ombudsman) Regulation, 2006. Regulation 2.1(d) defines the "Internal Grievance Redressal Cell" as the first authority to be contacted by the consumer for redressal of grievance and Regulation 2.1(e) defines the "forum" as the forum for redressal for grievance required to be established under Section 42(5).

38. Chapter II of the Regulation of 2006 provide for the constitution of the forum for redressal of consumer grievance and Regulation 6 provides for the procedure for grievance redressal. Regulation 6.6 provides that the forum shall not admit any grievance unless it is filed within two years from the date on which the cause of action arises. Regulation 6.7 provides for the forum shall not entertain the grievances unless there is compliance with regulation 6.2 as regards intimation to IGRC and unless the consumer is aggrieved on account of his grievance being not redressed by IGRC within the period of set out in the regulation i.e. the period of two months.

39. Regulation 6.15 provides that a consumer, distribution licensee or any other person, who is a party to any proceedings before the forum may either appear in person or authorize any person other than an Advocate (within the meaning of the Advocates Act, 1961) to represent his case before the forum and to do all or any of the acts for the purpose. Regulation 6.17 provides as under:

"(a) The Forum shall be entitled to call for any record and / or require attendance of any person to facilitate and expedite the disposal of the Grievance. The Forum shall also be entitled to direct the Distribution Licensee to undertake an inspection.

(b) Notwithstanding sub-clause (a), the Forum may engage a third party to undertake such inspection with regard to the Grievance, as may be required for the expeditious redressal of the Grievance. Provided that the Forum shall record the reasons in writing requiring the engagement of third party to undertake such inspection.

(c) The expenses of such inspection to be undertaken by third party as referred to in sub-clause (b) shall be borne by the Distribution Licensee and to the extent reasonable and justifiable such expenses shall be allowed in the determination of tariff in accordance with the terms and conditions of tariff as specified by the Commission."

40. Regulation 8 deals with the findings of the forum and Regulation 8.4 provides that every order made by the forum shall be a reasoned order and shall be

implemented by the distribution licensee or the person required by the order to do so within the time stipulated in the order.

41. Upon a reading of the Regulations noted above, it is clear that the procedure prescribed by the Regulations for the grievance redressal provides for three tier system whereby the first authority is the IGRC and thereafter, if within a period of two months no remedy has been provided by the IGRC, the consumer is entitled to approach the Forum i.e. CGRF, who shall not admit the grievance unless it is filed within a period of two years from the date on which the cause of action has arisen and unless there is compliance of approaching the IGRC and there is no redressal within a period of two months and in any event there is non redressal of the grievance by CGRF, the consumer is entitled to approach the Electricity Ombudsman. The Regulations specifically preclude an Advocate from appearing before the Forum and it is only the parties who are entitled to appear in-person or any authorized person other than the Advocate before the Forum.

42. Considering that there is no legal representation and party in person is permitted to represent their case, vast powers are given to the Forum to ensure that the grievance have been adequately redressed and which powers are strengthened by Regulation 6.17 empowering the Forum to call for any record or summon the attendance of any person to facilitate and expedite the disposal of the grievance, to engage a third party to undertake such inspection as required for expeditious redressal of the grievance. A duty is cast upon the Forum under the Regulations to pass the reasoned order.

43. The complaints by the Respondent made in the year 2018 were in respect of two segments first in respect of the excess AEC charged and Additional FAC in August, 2013, September, 2013 and December, 2013 based on MERC order of 5th September, 2013, and second as regards excess FAC charged during the period November, 2012 to March, 2015 based on the post facto approval granted by MERC in the year 2016.

44. CGRF directed three components i.e. subsidy, AEC III and IV and Additional FAC and excess FAC to be refunded as under:

- (a) If subsidy received for February, 2014 to refund with interest.
- (b) If AEC III and IV recovered for September, 2013 to refund with interest.
- (c) To refund Additional FAC recovered for month of August, 2013 and December, 2013 with interest.
- (d) To refund excess FAC recovered during December, 2013 to December, 2014 with interest.

45. As far as subsidy received for February, 2014 is concerned, CGRF has directed the refund only if it is received. In event MSEDCL has not received the subsidy there is no question of refund.

AEC III AND AEC IV:

46. As per MERC's order dated 3rd September, 2013 and 4th September, 2013, MSEDCL was permitted to recover AEC III and AEC IV charges from October, 2013 to March, 2014 and Additional FAC from September, 2013 to November, 2013. It is undisputed that MSEDCL charged AEC I, II, III and IV in one combined head of AEC. MERC's order directed AEC I and II to be charged from September, 2013 for six months upto February, 2014 and AEC III and IV from October, 2013 to March, 2014. Despite thereof MSEDCL combined AEC I to IV in one single head. Claim was for AEC I and II for August, 2013 and AEC III and IV of August, 2013 and September, 2013.

47. What assumes significance is the stand of MSEDCL before CGRF where it accepts that AEC I to IV is refunded of August, 2013 and the reason for non refund of AEC III and IV of September, 2013 is the absence of any circular, amendment or letter from H.O. regarding the same. It is not the case of MSEDCL that as AEC I to IV were combined and included in one head, AEC III and IV cannot be computed independently and refunded. That apart, the order of MERC is very clear and specific that AEC I and II to be charged from September, 2013, which was charged by MSEDCL from August, 2013 and refunded and AEC III and IV to be charged from October, 2013 to March, 2014. Despite the different time period permitted by MERC for recovery of AEC I and II on one hand and AEC III and IV on other hand, there is no justification for MSEDCL to combine them all under one head of AEC. Pertinently the IT calculation sheet annexed to the written say of MSEDCL before CGRF indicates that the amounts refunded has been bifurcated by MSEDCL into AEC I and II and AEC III and IV. Thus it cannot be said that AEC III and IV cannot be computed for the period of September, 2013 and refunded. If as per the calculation sheet, for purpose of refund for August, 2013, AEC III and IV can be calculated independently, for month of September, 2013, the same can be calculated and refunded. The order of CGRF directs refund of AEC III and IV for September, 2013 if recovered. MSEDCL has to conduct the necessary exercise and if it finds that AEC III and IV is recovered for September, 2013, then the same is to be refunded. The emphasis of Mr. Toor is that specific finding should have been given by CGRF on the refund that excess amount has been recovered. However, no records were produced by MSEDCL to show that there is no excess amount recovered. I find no infirmity in order of CGRF directing refund if AEC III and IV is recovered for September, 2013. It is not disputed that AEC III and IV were to be charged from October, 2013. The Consumer is therefore entitled to refund of AEC III and IV if the same has been charged for September, 2013.

ADDITIONAL FAC:

48. As per the order of MERC dated 4th September, 2013 additional FAC was permitted to be recovered from the consumers from September, 2013 for period of three months i.e. September, 2013, October, 2013 and November, 2013. MSEDCL instead billed Additional FAC for five months from August, 2013 upto December, 2013 and thus Additional FAC was recovered for months of August,

2013 and December, 2013. The submission of MSEDCL in respect of excess Additional FAC is that Additional FAC of August, 2013 and December, 2013 is not refunded due to absence of any circular or letter from Head Office. The contention of MSEDCL for non refund of Additional FAC for August, 2013 and December, 2013 is not that there was no excess Additional FAC recovered but that there is no refund as there is no such circular issued by Head Office. To put it simply, the stand of MSEDCL is that if circular would have been issued by Head Office for refund of Additional FAC for August, 2013 and December, 2013, the same would have been refunded. It is for first time before this Court that submission is canvassed that there is no excess Additional FAC recovered as the amount of Additional FAC which was to be recovered in three months is recovered in five months. Neither this submission was raised before CGRF nor in the present Petition there is a pleading that the amount which was to be recovered in three months has been recovered in five months. All that is pleaded is that there is no excess Additional FAC recovered. MSEDCL was bound by the orders of MERC to recover Additional FAC for period of three months from September, 2013 to November, 2013. The admitted position is that MSEDCL has billed the consumer for Additional FAC from August, 2013 to December, 2013. The burden was upon MSEDCL to place necessary material before CGRF and demonstrate that there is no excess recovery of Additional FAC. The written say filed by MSEDCL and the contentions as recorded in the order of CGRF does not disclose any material placed or even a contention raised that Additional FAC permitted to be recovered in three months has been spread over and recovered in five months. Before assailing the order of CGRF on the ground of unjust enrichment by directing refund of Additional FAC for August, 2013 and December, 2013, necessary material should have been brought on record by MSEDCL to substantiate the same. Unfortunately the same has not been done.

EXCESS FAC:

49. CGRF has directed the excess FAC recovered during December, 2013 to December, 2014 to be refunded with interest. The Respondent had claimed that during November, 2012 to March, 2015 MSEDCL has charged FAC which is not in accordance with MERC's post facto approval for these months and a detailed statement was submitted as regards the excess FAC charged. As discerned from the impugned order of CGRF, during the hearing reliance was placed by the Respondent on the orders of CGRF in No 175 dated 13th October, 2017 in case of Swastik Pulp and Paper Pvt Ltd and No 61 dated 14th March, 2017 in case of CEAT Ltd, Satpur, Nashik. By the orders of 13th October, 2017 and 14th March, 2017, CGRF had directed MSEDCL to refund excess FAC charged in the bills for the months from December, 2013 to December, 2014 over and above the rates approved by MERC. The admitted position is that MSEDCL has not challenged the said orders passed in favour of M/s Swastik Pulp and Paper Pvt Ltd and M/s CEAT Ltd, Satpur, Nashik.

50. By a detailed tabular statement, the Respondent has set out the FAC levied

by MSEDCL and FAC rate approved by MERC. Considering the detailed statement produced on record, it was incumbent on MSEDCL to counter the same by producing their own statement to demonstrate that the FAC levied by MSEDCL is in consonance with the MERC approved FAC. The replies of MSEDCL which have been tendered across the bar upon a query by this Court, by way of an additional compilation would indicate that very vague reply has been filed sans any details or particulars. The pleading is that FAC is charged as per General Commercial Circular No.189 to 193. Reliance was placed on the same circular in the case of M/s Swastik Pulp and Paper Pvt Ltd and M/s. CEAT Ltd., Satpur, Nashik and CGRF had directed refund for December, 2013 to December, 2014. As it is not demonstrated that the present Respondent is not similarly placed as that of M/s Swastik Pulp and Paper Pvt Ltd and M/s. CEAT Ltd, Satpur, Nashik, the direction of CGRF to refund excess FAC recovered during December, 2013 to December, 2014 with interest cannot be faulted.

51. Mr. Toor would point out the finding at Clause 14 of the impugned order that CGRF has held that Commission passed to refund excess FAC recovered from December, 2013 to December, 2014 with interest. Upon a holistic reading of the impugned order it is evident that the reference in Clause 14 is to the orders of CGRF passed in M/s Swastik Pulp and Paper Pvt. Ltd. and M/s CEAT Ltd., Satpur, Nashik.

INTEREST CHARGED:

52. CGRF has directed refund of AEC III and IV, Additional FAC and excess FAC with interest as applicable. An objection is taken by Mr. Toor to the grant of interest by relying on the decision of M/s Paul Stripes and Tubes Pvt Ltd, wherein MERC has held that in the circumstances of this matter, no carrying or holding cost shall be applicable. In case of Paul Stripes and Tubes Pvt Ltd, refund of AEC was sought for months of August and September, 2013. The issue under consideration as recorded in order of MERC in Paul Stripes' Petition was the date of applicability of AEC approved by MERC in its orders dated 5th September, 2013 and 26th June, 2015. MERC noted that MSEDCL has understood the order to mean that AEC is to be levied in the consumer bills issued in the month of September, 2013 i.e. for the consumption of August, 2013. MERC clarified that AEC approved in the order dated 5th September, 2013 was applicable for the period of 1st September, 2013 to 28th February, 2014 only for electricity consumption during that period and recovery of AEC prior to or after that period was not consistent with order of MERC. MERC clarified the orders and directed MSEDCL to take corrective steps. As MSEDCL had misunderstood the order to mean that AEC is to be levied for consumption of August, 2013, MERC in that view of the matter held that no carrying or holding cost was applicable.

53. By order in Paul Stripes and Tubes Pvt Ltd, direction was given to MSEDCL to take corrective steps in respect of AEC levied on all its consumers. Despite the clarification and directions contained in the order of Paul Stripes and Tubes Pvt Ltd, MSEDCL did not adopt corrective steps as regards AEC levied and has

admitted that AEC III and IV and is not refunded as there was no circular from Head Office. As there is non compliance of order of Paul Stripes and Tubes Pvt Ltd., MSEDCL is liable to pay interest under Section 62(6) of Electricity Act, 2003 and cannot take benefit of non-application of carrying cost or holding cost as directed in Paul Stripes Petition. In event MSEDCL had followed the MERC order of Paul Stripes Petition and taken corrective steps within time, the interest would not have been applied. It is the failure to take corrective steps which invites the applicability of interest under Section 62(6) of the Electricity Act. CGRF has rightly held that MERC orders are clear and consumers are entitled to refund of amount of AEC recovered in August, 2013 which is wrongful premature billing alongwith interest.

54. In so far as payment of interest on Additional FAC is concerned, Additional FAC was permitted to be charged from September, 2013 to November, 2013 which has been wrongly charged by MSEDCL from August, 2013 to December, 2013. The contention of MSEDCL is that FAC is charged as per General Commercial Circular. As the MERC order was clear and binding on MSEDCL, the Additional FAC charged for August, 2013 and December, 2013 is liable to refunded with interest.

55. MSEDCL was bound by the orders of MERC and had to levy AEC and Additional FAC in the manner specified by MERC. The scheme of Electricity Act positions MERC as a regulator with the power to regulate all aspects of transmission, distribution and trading in electricity such as issuing of necessary licenses to determination of tariff order, regulating electricity purchase and procurement process of distribution licensees, adjudicating disputes between licensees and generating companies etc. The statutory scheme does not give liberty to the distribution licensee to deviate in any manner whatsoever whether in respect of the charges levied or the methodology specified by MERC for levying the charges. And if it so deviates, then the burden is upon MSEDCL to conclusively establish that though different methodology has been adopted, consumers are not charged excess than what was permitted by orders of MERC. In the present case, I do not find the burden discharged by MSEDCL.

PROCEDURE TO BE ADOPTED BY CGRF:

56. The submission of Mr. Toor is that CGRF did not give reasoned findings and there is no factual finding of excess charging by drawing support from Regulation 6.15 and 6.17. Regulation 6.15 precludes legal representation before CGRF and Regulation 6.17 provides that the Forum shall be entitled to call for record to facilitate and expedite disposal of grievance. In the present case, what is alleged by the Respondent is non compliance of various orders of MERC. Perusal of the order of CGRF indicates that CGRF has referred to the relevant orders of MERC and has come to a finding that there is non compliance of the said orders after considering the submissions of both the parties.

57. As far as AEC III and IV it is MSEDCL's own case that AEC I to IV was

refunded of August, 2013 in accordance with instructions from CE Commercial Ref. PR-3/Tariff/AEC/25310 dated 13th October, 2017. MSEDCL has thus accepted that AEC III and IV for August, 2013 could not be levied. As far as refund of AEC III and IV for month of September, 2013 and Additional FAC of August, 2013 and September, 2013 is concerned, the contention is that there is no refund as there was no such circular from Head Office. MSEDCL has not disputed that AEC III and IV and Additional FAC had to be refunded for the specified months. The contention of MSEDCL makes all the difference. If there was a dispute raised about the liability of MSEDCL to refund for those specified months, then the issue would have arisen whether CGRF was required to arrive at a factual finding that there is no excess AEC and Additional FAC recovered. In the absence of any dispute in that regard there is no question of calling for any record by CGRF. That apart, all the records were available with MSEDCL itself and could have been produced by them in event of it disputed its liability to refund. Regulation 6.17 enumerates the power of CGRF to call for record and cannot be construed as mandatory procedure to be followed in each case before rendering any finding.

58. MSEDCL is represented before CGRF by Nodal Officer. Regulation 2.1(g) defines Nodal Officer as under:

"Nodal Officer shall mean an officer having knowledge and experience in distribution and supply of electricity and so designated by the Distribution Licensee to act as a nodal officer who shall not be below the rank of any executive engineer of the Board or officer of equivalent rank of any other Distribution Licensee".

59. Regulation 6.12 provides for the complaint to be dealt with by the Nodal Officer and reads thus:

"A copy of the Grievance shall be forwarded forthwith by the Forum to the Nodal Officer designated by the Distribution Licensee for redressal or to file its reply to the Grievance. The Nodal Officer shall act as the co-ordinator for filing of reply, making submissions, providing issue wise comments on the Grievance, submitting compliance status/reports etc before the Forum and/or the electricity Ombudsman, as the case may be".

60. It is evident from the above two regulations that the Nodal Officer is a competent officer having expertise and knowledge in distribution and supply of electricity. The issues raised before the CGRF were particularly within the domain knowledge of the Nodal Officer and the submission is that only due to lack of circular from Head Office that AEC III and IV and Additional FAC was not refunded. Despite the Regulations providing for a person with domain knowledge and expertise to be appointed as Nodal Office, what is submitted as written say is a sketchy reply sans any details or particulars. The complaint of the Respondent was as regards the excess AEC, Additional FAC and excess FAC charged. The grievance was answerable by reference to the records maintained

by MSEDCL demonstrating the permitted recovery and actual recovery to substantiate that both tallied and there is no excess recovered. The issues before CGRF were not complicated issues of law which handicapped MSEDCL from raising appropriate submissions due to legal representation being precluded. The issues primarily called for adjudication on the calculation statements regarding AEC and FAC charged by MSEDCL and MSEDCL could have produced the records for resolving the dispute. Considering the above, the submission of Mr. Toor that as legal representation is precluded, appropriate submissions could not be advanced is liable to be rejected and it cannot be said that MSEDCL was handicapped in putting forth its case before the CGRF. It also needs to be noted that even the Respondent was denied legal representation and had appeared through authorised representative.

LIMITATION:

61. In the say filed by MSEDCL, contention taken is that the grievance has to be filed within a period of 2 years from the cause of action.

62. Regulation 6.6 provides that the Forum shall not admit any grievance unless it is filed within two years from the date on which the cause of action has arisen. Grievance has been defined in Regulation 2.1(c) as under:

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

63. The grievance in the present case falls within category (b) above i.e. non compliance of order of Commission and action taken in pursuance thereof. The Respondent was charged AEC I to IV from August, 2013 whereas AEC I and II should have been charged from September, 2013 and AEC III and IV should have been charged from October, 2013. A clarification was given by MERC in the order dated 13th October, 2017 of Paul Stripes and Tubes Pvt Ltd directing MSEDCL to take a review of the AEC levied on its consumers and to take corrective steps accordingly. Thereafter as per CE Commercial Ref PR-3/Tariff/AEC/25310 dated 13th October, 2017 AEC I to IV was refunded for August, 2013 and recovered of February, 2014 in respect of all consumers in October, 2017. It is not disputed that AEC III and IV was permitted to be charged from October, 2013 to March, 2014 and Additional FAC to be charged from September, 2013 to November, 2013 but had been charged from August, 2013. Despite the clarification issued in Paul Stripes and Tubes Pvt Ltd, MSEDCL did not take corrective steps. The cause

of action thus arose upon the decision of Paul Stripes and Tubes Pvt Ltd on 13th October, 2017 and the complaints are filed in the year 2018 is within limitation.

64. As far as excess FAC recovered is concerned, the post facto approval was granted by MERC vide order dated 11th February, 2016. Upon the approval being granted, the amount which MSEDCL was permitted to charge was crystallised and gave cause of action to consumer to seek refund of the excess charged. For the months of October, 2013 to March, 2014 the post facto approval was granted on 11th February, 2016. After the post facto approval, the adjustments (negative or positive) are required to be carried out by MSEDCL for recovery of FAC from consumers in a proportionate manner. The post facto approval being granted in the year 2016, in event of the adjustments are not carried out by MSEDCL would give rise to the cause of action. The complaints are filed in or about the year 2018 and thus within period of limitation.

65. Perusal of the reply filed by MSEDCL before CGRF indicates that apart from making a bald assertion as regards limitation of 2 years there are no particulars pleaded to demonstrate, how the complaint is beyond prescribed period of limitation. Before this Court also, there are no pleadings and no submissions advanced to demonstrate that the complaints are ex-facie barred by limitation. The only submission is that CGRF has not dealt with issue of limitation.

66. Apart from the above finding of fact on aspect of limitation, the issue of limitation prescribed by Regulation 6.6 was considered by Division Bench of this Court in MSEDCL vs RSR Mohota Spinning & Weaving Mills Limited (supra), while deciding the reference in view of the conflicting views taken by Learned Single Judge in MSEDCL vs Jawahar Shetkari Soot Girni Ltd. (supra) and in MSEDCL vs Electricity Ombudsman (supra). The Division Bench was considering the nature of limitation of two years in Regulation 6.6. of Regulations of 2006 whether directory or mandatory having force of law. The Learned Division Bench held that Regulation 6.6 for admitting grievance of a consumer to be directory in nature. The matter was carried to the Apex Court and the Apex Court stayed the operation and future effect of the impugned order till further orders. This Court is informed that the matter is pending before the Supreme Court.

67. The effect of the interim stay by the Apex Court on the decision of Division Bench of this Court will have to be considered as to whether the Division Bench judgment continues to be binding upon this Court. In Shree Chamundi Mopeds Ltd VS Church of South India Trust Association [(1992) 3 SCC 1], the Apex Court had observed that quashing of an order results in the restoration of the position as it stood on the date of passing of the order which has been quashed. The stay of operation of an order does not however lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.

68. In Chayya & Ors vs The Committee for Scrutiny and Verification of

Tribe Claims & Ors. [(2018) 6 BOM CR 492], Learned Single Judge of this Court was considering the judgment of Full Bench of this Court in Shilpa Vishnu Thakur vs State of Maharashtra which was stayed by the Apex Court and it was claimed that the Full Bench judgment does not have binding effect. The Learned Single Judge in view of decision of Apex Court in Shree Chamundi Mopeds Ltd (supra) held that stay by the Apex Court does not mean that such a law laid down in the said judgment ceases to apply. The Learned Single Judge agreed with the same view taken by Calcutta and Delhi High Court. The Learned Single Judge held thus:

“To comprehend the impact of interim order staying the operation of impugned order, distinction between quashing of an order and stay of its operation needs to be kept in mind. Quashing results in the restoration of the position on the date of the passing of the said order. The stay of its operation only does not lead to such a result. It only means that said order can not operate from date of grant of the stay. It does not mean that the impugned order is wiped out. Kolkatta and Delhi High Court, therefore find that the effect of the order of stay in a pending appeal before the Hon’ble Apex Court, does not amount to ‘any declaration of law’ but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting interim order, the Hon’ble Apex Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.”

69. Considering that Co-ordinate Bench in Chhaya & Ors. (supra) has held that the effect of stay order in pending appeal before the Apex Court does not take away the binding effect of the judgment under consideration as a precedent, I am bound by the decision of Division Bench of this Court in MSEDCL vs RSR Mohota Spinning and Weaving Mills Ltd. (supra) which holds that Regulation 6.6. is directory and not mandatory.

69. Although in view of the position of law laid down by the Division Bench in MSEDCL vs RSR Mohota Spinning and Weaving Mills Ltd. (supra) the issue of limitation need not have detained the Court. I have considered the aspect of limitation and answered the same against the Petitioners.

70. In view of the discussion above, the decisions of Maharashtra State Electricity Distribution Company Ltd., Dhule vs. Jawahar Shetkari Soot Girini Ltd., Morane, Dist.Dhule, V.V. Kudva v. E.S.I. Corporation. [AIR 1972 MYSORE 204], Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd. [(2021) 20 SCC 200], A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd. [(2016) 3 SCC 468], CIT V. Rashtradoot (HUF) [(2019) 5 SCC 149], M.P. Steel Corpn. v. CCE [(2015) 7 SCC 58] cited in support of the issue of limitation does not assist the case of Petitioners.

71. As I have held that the complaints are within limitation, it is not necessary to delve into the issue as to whether CGRF is a Tribunal and whether limitation can be prescribed by a subordinate legislation. In light of discussion above, the

absence of finding of limitation by CGRF does not render the impugned order unsustainable. The provision being held directory, there is no infirmity in order of CGRF.

JUDGMENTS CITED BY PETITIONER:

72. Coming to the decisions cited by Mr. Toor which have not been dealt with hereinbefore:

[A] ON THE ISSUE OF ABSENCE OF FINDINGS :

(i) In *State Bank of India vs. Ajay Kumar Sood* [(2023) 7 SCC 282], the Apex Court has emphasized the necessity of structured judgment and there is no quarrel with the said proposition. The CGRF has considered the orders of MERC and ensured compliance with the said order as the grievance pertained to non compliance. As regards undertaking a fact finding inquiry whether excess amount has been recovered, the say filed by MSEDCL does not dispute the claim of Respondent. There is not even a bare contention that no excess amount has been recovered. The records were with MSEDCL and could have been produced to establish that there is no excess recovery. Further MERC orders are binding upon MSEDCL and the manner in which and the period within which the amounts were to be recovered were specified in the order which were not complied with by MSEDCL. The orders of MSEDCL cannot be said to be non-reasoned order.

(ii) The decision in the case of *Lloyds Steel Industries Ltd.* (supra), was on the issue of the jurisdiction of the commission. In view of Section 42(5) of the Electricity Act, there is no such issue which has been raised in the present case and thus, the decision is not relevant for the purpose of present judgment.

(iii) By decision in the case of *Eminent Sea Foods (P) Ltd.* (supra), the parties were relegated to move the CGRF and is inapplicable to the facts of the present case, where no such issue arises.

[B] ON THE ISSUE OF UNJUST ENRICHMENT:

(i) The decision in the case of *Sahakari Khand Udyog Mandal Ltd.* (supra). In the said decision the Apex Court noted that doctrine of unjust enrichment has been accepted by the Courts in India and that unjust enrichment to mean that no person can be allowed to enrich inequitably at the expense of another. The Apex court held that the doctrine of unjust enrichment can be invoked to deny the benefit to which the person otherwise entitled and before claiming the relief of refund, it is necessary to show that an amount has been paid for which the relief has sought and if such a relief is not granted, he would suffer a loss. In the present case there is no contention much less material produced on record to even prima facie demonstrate that no excess amount has been recovered which would have compelled CGRF to conduct a fact finding inquiry into the amount actually recovered. The contention of MSEDCL is simply that AEC III and IV and Additional FAC was not refunded as there is no circular issued by H.O and FAC is charged as per General Commercial Circular. Despite a detailed statement

produced by Respondent showing excess FAC charged, there is no rebuttal contention on the figures in the statement.

CONCLUSION:

73. The discussion above leads to the following conclusions:

(a) The decision of Division Bench of this Court in MSEDCL vs RSR Mohota Spinning and Weaving Mills Limited and Another(supra) has held that the period of limitation prescribed by Regulation 6.6 of Regulations of 2006 are directory. The decision though stayed by the Apex Court, will not destroy the binding effect of the judgment as a precedent as the Apex Court has not laid down any proposition of law inconsistent with the one declared by the High Court which is impugned.

(b) The recovery of AEC III and IV was permitted by MERC to be recovered from October, 2013, however has been recovered from September, 2013 and thus constitutes violation of MERC order. AEC III and IV recovered for September, 2013 is thus required to be refunded.

(c) Additional FAC was permitted by MERC to be recovered in three months from September, 2013 to November, 2013 and admittedly has been recovered in five months from August, 2013 to December, 2013. There is no material produced on record by MSEDCL to establish that there is no excess Additional FAC recovered and what was permitted to be recovered in three months has been spread over and recovered in five months.

(d) Despite detailed statement produced by Respondent to show that FAC has been recovered in excess of post facto approval granted by MERC in the year 2016, there is no rebuttal records produced by MSEDCL to substantiate that the FAC was charged for December, 2013 to December, 2014 as per the rates approved by MERC. The orders of CGRF in Swastik Pulp and Paper Pvt. Ltd. and CEAT Ltd. directing refund of excess FAC charged in bills from December, 2013 to December 2014 was not challenged by MSEDCL and the Respondents being identically placed consumers cannot be denied the benefit of the refund of excess FAC for December, 2013 to December, 2014.

(e) The MERC order of Paul Stripes and Tubes Pvt.Ltd. directed that carrying or holding cost will not be applicable in the circumstances of the matter. MERC clarified the position that MERC order of 5th September, 2013 permitted the levy of AEC in the bills issued in month of September, 2013 for consumption of August, 2013 and directed MSEDCL to take corrective steps. In view of this clarification, the levy of AEC in month of August, 2013 by MSEDCL upon misreading of the order of MERC, was held by MERC not to attract the carrying or holding cost. However, despite the clarification if corrective steps were not taken by MSEDCL, the refund granted by CGRF ensuring compliance with MERC orders would attract interest under Section 62(6) of Electricity Act, 2003.

74. In Shalini Shyam Shetty vs Rajendra Shankar Patil (supra), the Apex Court

has held that in exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Court subordinate to it, is a possible view. In the case of M/s.Garment Craft (supra), the Apex Court has held that the supervisory jurisdiction is not to correct every error of fact or even legal flaw when the final finding is justified or can be supported. The Apex Court in the decision has noted the decision in the case of Estralla Rubber Pvt. Ltd. vs. Dass Estate (P) Ltd. [(2001) 8 SCC 97], wherein the Apex Court had held that exercise of this power in interfering with the orders of Courts or the Tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law of justice where the High Court does not interfere a grave injustice remains corrected.

75. On overall circumspection of the facts of the present case, I do not find any infirmity in the impugned order of CGRF dated 29th June, 2018. Accordingly all the Petitions are dismissed. Rule stands discharged.

76. In view of dismissal of the Petitions, interim application(s) does not survive for consideration and stand dismissed.

77. At this stage request is made for stay of this judgment for a period of eight weeks. Learned counsel for the Respondent vehemently opposed the stay, as the refund is pending since long. I am however, inclined to grant stay of the judgment for a period of eight weeks. Judgment is stayed for period of eight weeks from today.