

(2020) 01 BOM CK 0098

In the Bombay High Court

Case No : Writ Petition No. 1588, 4826 Of 2019

Maharashtra State Electricity Distribution Company Limited
And Ors

APPELLANT

Vs

Electricity Ombudsman And Ors

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Limitation Act, 1963 — Section 14(2)
Electricity (Amendment) Act, 2003 — Section 42, 42(5), 42(6), 42(7), 42(8), 45, 181
Administrative Tribunals Act, 1985 — Section 20(2), 20(3), 21
Limitation Act, 1963 — Article 58
Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum
And Electricity Ombudsman) Regulations, 2006 — Regulation 2(c), 2(2.1)(c), 2(2.1)
(d), 2(2.1)(e), 6.2, 6.4, 6.6, 6.7, 6.7(a)

Citation : (2020) 01 BOM CK 0098

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

**Advocate : S.V. Purohit, Aniket Waghdhare, R.D. Bhuibhar, Aniket Waghdhare,
S.V. Purohit**

Final Decision : Allowed/Dismissed

Judgement

1] The first petition has been filed by the Maharashtra State Electricity Distribution Company Limited, Nagpur challenging the order of the Electricity Ombudsman dated 17.10.2018. The second petition is filed by the consumer challenging the same order.

2] For the sake of brevity, the Maharashtra State Electricity Distribution Company shall be hereinafter referred to as the Company and the petitioner in the second petition M/s. Mahamaya Agro Industries, shall be hereinafter referred to as the Consumer.

3] The dates and sequence of events which are common to both the petition since they emerge from the same proceedings, are as follows:

A] The consumer moved an application on 24.04.2014 seeking a special HT connection (which is a high tension connection).

B] The said application was sanctioned on 30.07.2014. C] In the sanction letter dated 30.07.2014, the payment of Rs.4,01,698/- that the consumer would be required to make, was mentioned. It was also stated that a separate agreement will have to be signed by the consumer with the company.

D] Such an agreement was voluntarily signed by the consumer with the company on 23.01.2015.

E] The consumer, prior to entering into the above agreement, paid all the charges as were required, on 15.09.2014 and the consumer did not lodge any protest and did not reserve any right to seek the refund of the said charges.

F] The consumer had entered an affidavit dated 27.04.2014 agreeing to bear all the charges for establishing the connection.

G] On 22.01.2015, the connection was released.

H] On 14.12.2016, the consumer approached the Internal Grievance Redressal Cell which is commonly known as the Cell. The said representation was rejected by the Cell on 17.02.2017.

I] The consumer then approached the Consumer Grievances Redressal Forum on 06.05.2017, which is commonly known as ('C.G.R.F.') or the Forum.

J] The Forum rejected the claim of the consumer, for being beyond limitation.

K] The consumer approached the Ombudsman, who partly allowed the claim for reimbursement.

4] The learned Advocates appearing on behalf of the consumer submit that regulation 6.6 of M.E.R.C. (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 mandates a period of two years to file/raise a dispute. The said limitation would begin only after the Cell rejects their grievance as is held in the case of M/s. Hindustan Petroleum Corporation Limited v. Maharashtra State Electricity Distribution Co. Ltd., and others reported in 2012 Mh.L.J. Online 43 and that there is no limitation prescribed for approaching the Cell. A consumer can approach the Cell for raising a grievance as regards the billing made by the company and it is after the rejection of the grievance that the limitation of two years would start for approaching the C.G.R.F. i.e. Forum. This contention has been rejected by the C.G.R.F. and subsequently, by the impugned order, has been accepted by the Ombudsman.

5] The learned Advocates further submit that this Court has taken a view in the matter of Maharashtra State Electricity Distribution Company Ltd., Dhule and another v. Jawahar Shetkari Sooti Girni Ltd., Morane, Dist. Dhule reported in 2019(1) Mh.L.J. 342 and the said view is contrary to the view taken in H.P.C.L. It is therefore, contended that as the view taken in M.S.E.D.C.L. (supra) is contrary

to the view taken in H.P.C.L. (supra), the matter deserves to be referred to a Larger Bench.

6] I find that, since the issue of limitation is primary to these proceedings, it would be appropriate to deal with the said issue before proceeding to decide the merits of the claim of the consumer.

7] The learned Advocate appearing on behalf of the company submits that the judgment delivered by this Court in M.S.E.D.C.L. (supra) is not a view taken contrary to the view taken in H.P.C.L. (supra). This Court has considered the Electricity Act, 2003 and the Regulations of 2006 and has specifically interpreted the provisions to conclude that section 42(5) has to be read conjointly with regulations 6.2, 6.4, 6.6 and 6.7.

This interpretation has to be a harmonious interpretation so as to ensure that these provisions coexist. All these provisions were not brought to the notice of the Court in H.P.C.L. (supra).

8] It is further submitted that this Court has, for the first time, interpreted as to what would a grievance mean and by relying upon regulation 2 (2.1) (c), this Court considered the definition of grievance as is mentioned in the regulations applicable to these parties. Based on such interpretation and the rules cited, this Court has concluded that in H.P.C.L. (supra), this Court has held in paragraph 13 that a consumer cannot approach a forum directly and has to first approach the cell for the redressal of his grievance in a timely manner. In paragraph 14, it was noted that the cause for submitting a grievance to the forum arises when the cell does not redress the grievance of the consumer.

9] It was then held in paragraph 15 that though the time spent wrongly by the party before the Consumer Court cannot be excluded, one cannot lose sight of the fact that the party approached the cell for the first time on 14.10.2010 and the grievance was rejected by the cell on 27.10.2010. The Court in H.P.C.L. has therefore, pardoned the time spent by the consumer before the Consumer Court and by concluding that he had approached the cell after the time spent before the Consumer Court, the cause of action for filing the complaint before the forum arose after his grievance was not redressed by the cell, is the submission.

10] I find from the judgment delivered in M.S.E.D.C.L. (supra) that this Court had considered the view taken in H.P.C.L. (supra) and had also considered the view taken by another learned Single Judge of this Court in the matter of MSEDCL and another v. Electricity Ombudsman, Nagpur and another reported in 2014(1) Mh.L.J. 930.

11] Since the learned Advocates for the consumer have contended that the case be referred to a Larger Bench, I deem it appropriate to refer to the judgment delivered in M.S.E.D.C.L. (supra). In paragraph nos. 9, 10 and 11, this Court had referred to the various provisions that would be germane to the cause of action and observed as under:

9. My attention is drawn to section 42 of the 2003 Act which reads as under:-

"42. Duties of distribution licensee and open access.- 1. It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

2. The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is Provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

Provided also that the State Government shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.

3. Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

4. Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to

supply.

5. Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

6. Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

7. The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

8. The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights, conferred upon him by those sub section." [Section 42 (5, 6, 7 and 8) are relevant.]

10. It is then contended that section 42(5) mandates the petitioner to establish a Forum within 6 months from the appointed date or the date of grant of license, whichever is earlier, for the redressal of the grievances of the consumers. Section 42(6) enables a consumer to approach the Ombudsman if he is aggrieved by the decision of the Forum.

11. Regulation 2(2.1)(c) of the 2006 Regulations defines a "Grievance" 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 licence, 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 inter alia (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."

12] Dealing with the facts of the case in M.S.E.D.C.L. (supra), this Court interpreted the word 'MAY' appearing in regulation 6.2 and while considering the provisions under the regulations and the guidelines, has observed in paragraph nos.17 to 24 as under:

17. What needs consideration therefore is that, as the Regulations of 2006 are framed under section 42(5) of the 2003 Act, the consumer is given the option of approaching the Cell which is the first Authority to be contacted by the consumer for the redressal of his grievance. The word used in Regulation 6.2 is "MAY" while permitting a consumer to intimate the Cell of its grievance with regard to the FAC Bill or any grievance. Regulation 6.2 provides that "a consumer with a grievance

MAY intimate the IGR Cell of such grievance in the form and manner and within the time frame as stipulated by the distribution licensee in its rules and procedures for redressal of grievances." Under Regulation 6.4, a consumer can approach the Forum if the Cell does not decide the fate of his representation within 2 months from the date of intimation. Regulation 6.6 provides that the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Regulation 6.7(a) provides that the Forum shall not entertain a grievance unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his grievance in the specified form to the Forum.

18. In the above backdrop, it appears that a consumer may have the option of approaching the Cell before approaching the Forum. However, the language used in Regulation 6.7(a) indicates that the Forum 'SHALL NOT' entertain a grievance unless the consumer has complied with the procedure under Regulation 6.2.

19. The submissions of the learned Advocate for the consumer is that there is no limitation prescribed for a consumer to approach the Cell and hence, such a consumer may approach the Cell at any time. If the Law does not prescribe a limitation, the Court cannot read or introduce a limitation period. He, therefore, submits that in such a backdrop, the consumer may approach the Cell at any time, be it after 5 years or 10 years from the date of the cause of action. Thereafter he can approach the forum within two years.

20. Learned Advocate for the Company counters this submission by stating that a consumer cannot pretend to have no knowledge of the cause of action because the moment he is aggrieved by the FAC Bill, which he is compelled to pay if the electricity supply is to be continued for the next month, he is aware of the cause of action. Once he is compelled to pay the amount mentioned in the FAC Bill, it goes without saying that he has derived the knowledge of the purported legal injury.

21. In view of the above, what is required to be considered is as to whether the contention of the consumer that he can approach the Cell at any point in time and can then approach the Forum within 2 years upon being aggrieved by the decision of the Cell, could be sustained in the face of Regulation 6.6 which provides that the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen.

22. The term "cause of action" would mean a legal injury caused to the consumer. In other words, it would mean a grievance of a consumer as the term "cause of action" has not been defined in the Regulations, though the term "Grievance" has been defined under Regulation 2(2.1)(c) which means any fault or imperfection or shortcoming or inadequacy, etc.

23. Regulation 2 (2.1)(d) defines the Internal Grievance Redressal Cell as the First authority to be contacted by the consumer for redressal of his/her grievance as notified by the Distribution Licensee.

Regulation 2 (2.1)(e) defines a "Forum" as under:-

"Forum" means the forum for redressal of grievances of consumers required to be established by Distribution Licensees pursuant to sub-section (5) of section 42 of the Act and these Regulations."

24. It is, therefore, obvious that as the Regulations have been introduced under section 181 (r and s) by which guidelines under section 42(5) and settlement of grievance under section 42(7) have been introduced under the M.E.R.C. Regulations 2006, the Cell can be accepted to be a statutory authority which can consider / redress the grievance of a consumer. Consequentially, the mandate of Regulation 6.7 that the Forum shall not entertain a grievance unless the consumer has approached the Cell under Regulation 6.2, convinces me to conclude that the word "MAY" in Regulation 6.2 will mean "SHALL" considering the phraseology of Regulation 6.7 and the definition under Regulation 2 (2.1)(d).

13] It is, therefore, obvious that as this Court noticed that a consumer could not approach the forum without first approaching the cell, the word 'MAY' appearing in regulation 6.2 was interpreted to mean 'SHALL' because regulation 6.7 (A) indicates that the 'Forum shall not entertain a grievance unless the consumer has approached the cell under regulation 6.2'.

14] The learned Single Judge of this Court at Nagpur followed M/s. H.P.C.L. in MSEDCL v. Shilpa Steel & Power Limited and Ors. 2018(1) Mh.L.J. 740. Though the said judgment is reported, the Court had fully relied upon the judgment in H.P.C.L. which was reported earlier and has delivered a short judgment placing reliance upon the earlier judgment. I am therefore, not required to deal with the judgment delivered in Shilpa Steel (supra), separately.

15] While dealing with the judgment delivered in H.P.C.L., this Court has observed in paragraph nos.25 to 29 as under:

25. In M/s H.P.C.L. (supra), this Court concluded in paragraph No.13 of the judgment that a consumer cannot directly approach the Forum, but has to first approach the Cell to record and redress his grievance in a timely manner. It is then concluded in paragraph No.14 that the cause for submitting a grievance to the Forum arises when the Cell does not redress the grievance. It was further concluded in paragraph No.15 that, "Though time spent by the petitioner before the consumer Court cannot be excluded, one cannot lose sight of the fact that the petitioner approached the Internal Consumer Grievances Cell for the first time on 14th October, 2010 and that grievance was rejected by the Internal Consumer Grievances Cell on 27th October, 2010. This, according to me, is the date on which the cause of action for filing a complaint or grievance before the Forum as defined under Regulation 2(c) really arose."

26. It was, however, concluded in paragraph No.16 that, "Internal Consumer Grievances Cell" is not the Forum for redressal of the grievances of the consumer as contemplated by Section 42(5) of the Act but the C.G.R.F. is the said Forum

established under sub-section 5 of section 42. The Regulation 6.6 uses the word "Forum" which obviously means C.G.R.F. and not the I.G.R.Cell of the Distribution License." It was thus held in paragraph No.17 that the grievance made by the petitioner was within limitation and could not have been dismissed on that ground.

27. I, however, find that this Court in H.P.C.L. (supra) did not have the occasion to deal with the aspect of what would be the effect of the limitation period of 2 years from the date of the first cause of action in order to raise a grievance before the Forum. This issue has been dealt with by this Court in the judgment subsequently delivered on 10-7-2013 in M.S.E.D.C.L. (supra), after adverting to the judgment delivered in H.P.C.L. dated 19-1-2012 (supra) in details. In paragraph No.10 of the later judgment in M.S.E.D.C.L (supra), this Court held as under:-

"Internal Consumer Grievances Cell is not the Forum for redressal of the grievance of the Consumer as contemplated by section 42(5) of the Act, but the CGRF is the said forum established under sub-section 5 of section 42. The Regulation 6.6 uses the word "Forum" which obviously mean CGRF and not the IGR Cell of the Distribution Licensee."

28. I do not find any conflict of view in between the two learned Judges of this Court who have decided the H.P.C.L. case and the M.S.E.D.C.L case. Both have concluded that the Cell is not the Forum as contemplated by section 42(5) of the Act and the C.G.R.F. is the Forum established for adjudicating upon the cause of action put forth by a consumer. However, in the M.S.E.D.C.L case (supra) this Court concluded that even if a consumer is to approach the Cell, it should be within a reasonable time.

29. In both of the cases in H.P.C.L. and M.S.E.D.C.L. (supra) , both the learned Judges did not have the occasion to deal with as to what should be the period within which a consumer should approach the Cell so as to ensure that he does not overshoot the limitation prescribed for approaching the Forum. It is unquestionably evident that the cause of action is the FAC Bills in the instant cases, which is the origin of the legal injury caused to the consumer. The litigation journey begins from this cause of action and the law mandates that he should reach the Forum, if his grievance is not redressed by the Cell, within 2 years from the cause of action.

16] It was brought to the notice of this Court while dealing in M.S.E.D.C.L. (supra) that the provisions which were cited before this Court, were earlier not brought to the court's notice in H.P.C.L. which made passing reference in paragraph 15 that since the consumer had spent time before the Consumer Court and had then approached the cell, the time spent had to be excused and as the cell decided the fate of the grievance of the consumer within 13 days, the outer limit being two months, it was held that the cause for raising a grievance before the forum was within limitation.

17] In M.S.E.D.C.L. this Court noticed that the consumer had raised a grievance as against the F.A.C. bills and such grievance was raised for the first time after two years. A similar argument was advanced, as is now advanced in the two cases in hand, that a consumer can approach the cell at any time and there is no limitation of two years and therefore, the cause of action would arise only after the cell rejected the grievance of the consumer. The facts of the case in H.P.C.L. being distinct in the backdrop of the consumer having approached the Consumer Court, cannot be considered to mean that this Court has practically allowed any consumer to raise any grievance against any bill, at any point in time and that there was no limitation prescribed. If this contention is accepted, a grievance could be raised by a consumer even after ten years or twenty years or even thirty years.

18] This aspect was considered in M.S.E.D.C.L. (supra) and this Court noted the stages of the litigation journey of such consumers and had observed in paragraph nos.33 to 45 which read as under:

33. Considering the scheme of the Act and the Regulations, it appears that the consumer while assailing the cause of action, has to complete his litigation journey within 2 years, meaning thereby that he must assail the FAC Bill before the Cell and must reach the Forum if dissatisfied with the view taken by the Cell within 2 years. If the cause of action is stage 1, the consumer approaching the Cell can be stage 2 and he must reach the Forum at stage 3 from the date of the cause of action. The consumer has relied upon the Law laid down by the Hon'ble Apex Court in the matter of S.S. Rathore (supra). It was concluded that, "in the case of a service dispute, the cause of action must be taken to arise not from the date of the original adverse order but on the date when the order of the Higher Authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen." It is further held that "this principle has no application when the remedy availed of has not been provided by Law." (Emphasis supplied).

34. The Hon'ble Apex Court has dealt with the doctrine of merger and has concluded that if a statutory appeal is provided by way of a remedy in a service dispute, the date on which the Appellate Authority refused relief to the applicant, would be the date of the cause of action. The observations of the Hon'ble Apex Court in paragraph Nos. 17 to 22 read as under:-

"17. In this background if the original order of punishment is taken as the date when cause of action first accrues for purposes of Article 58 of the Limitation Act, great hardship is bound to result. On one side, the claim would not be maintainable if laid before exhaustion of the remedies; on the other, if the departmental remedy though availed is not finalised within the period of limitation, the cause of action would no more be justiciable having become

barred by limitation. Redressal of grievances in the hands of the departmental authorities take an unduly long time. That is so on account of the fact that no attention is ordinarily bestowed over these matters and they are not considered to be governmental business of substance. This approach has to be deprecated and authorities on whom power is vested to dispose of appeals and revisions under the Service Rules must dispose of such matters as expeditiously as possible. Ordinarily a period of three to six months should be the outer limit. That would discipline the system and keep the public servant away from a protracted period of litigation.

18. We are satisfied that to meet the situation as has arisen here, it would be appropriate to hold that the cause of action first arises when the remedies available to the public servant under the relevant service Rules as to redressal are disposed of.

19. The question for consideration is whether it should be disposal of one appeal or 'the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of sub-sections (2) and (3) of section 20 of the Administrative Tribunals Act. There, it has been laid down:

"20(2). For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievances; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

20. We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this

principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.

21. It is appropriate to notice the provision regarding limitation under section 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub-section (3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation." (Emphasis supplied)

35. The Hon'ble Apex Court has also concluded that this liberty may not be applicable when the remedy availed of has not been provided by Law and is a mere representation. The 2 Judges of this Court in H.P.C.L. and M.S.E.D.C.L (supra) have concluded that the Cell is not the Forum for the redressal of the grievances of the consumer and the Forum can embark upon the adjudication of the grievances of the consumer. The Electricity Act has not provided for a Cell though the regulations appear to have introduced the Cell for an in house quick resolution to the grievance of a consumer.

36. The Hon'ble Apex Court in S.S. Rathore (supra), while dealing with the departmental authority entertaining statutory appeals under the Administrative Tribunals Act has concluded that as undue delay sometimes occurs in departmental appeals when departmental authorities cause such undue delay in the redressal of grievances of employees, great hardship is bound to be caused to the aggrieved person since he would not be able to approach the Tribunal within the prescribed limitation. However, in the case in hand, I find that in the scheme of law in the 1983 Act and the 2006 Regulations, it is specifically provided that after a consumer approaches the Cell by intimating his grievance, the Cell shall have to decide the fate of the grievance within 2 months from the date of the intimation and if no remedy (could be also read as relief) has been provided within the period of 2 months to the consumer, he is at liberty to approach the Forum, notwithstanding the pendency of his representation. Hence time of only 2 months is granted to the Cell to resolve the grievance of the consumer, failing which, he can approach the Forum. This also indicates that the law expected an urgent in-house relief to the Consumer. If the Cell does offer any relief within 2 months, the Consumer was expected to rush to the Forum.

37. As such, owing to these distinguishing features in the Electricity Act read with the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another, 2008(2) Mh.L.J. (S.C.) 715 = (2008) 3 SCC 310 that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute along with the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others 2014 MhLJ Online (S.C.) 89 = (2014) 12 SCC 65, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

40. As such, in this case while considering section 45 and the Regulations with reference to the limitation period of 2 years, I can gather assistance from the case of Commissioner of Sales Tax (supra), wherein the Hon'ble Apex Court has observed in paragraph Nos.17 and 18 as under:-

"17. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum, only upto a specified time-limit and no further, than the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time-limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of section 14(2) of the Limitation Act.

18. We have said enough and we may say it again that where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty

of the court to give full effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the lawgiver; more so if the statute is a taxing statute. We will close the discussion by recalling what Lord Hailsham (at p.11 in Pearlberg V. Varty (1972) 2 All ER 6) has said recently, in regard to importation of the principles of natural justice into a statute which is a clear and complete Code, by itself :

"It is true of course that the courts will lean heavily against any construction of a statute which would be manifestly fair. But they have no power to amend or supplement the language of a statute merely because in one view of the matter a subject feels himself entitled to a larger decree of say in the making of a decision than a statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment."

41. Thus, it is held that when a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the maximum only upto a specified time limit and no further, then the Tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time limit specified in the statute.

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) read with Regulations 6.2, 6.4, 6.6 and 6.7 coexist 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 coexist 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 8-8-2016. In the second petition, the FAC Billing from June to November 2012 subject matter of the representation dated 27-8-2016. 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 8-8-2016 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.

19] It is well settled that the law would not assist a sleeping litigant. The conduct of the litigant also has to be considered to assess as to whether a litigant has approached the Court with clean hands and whether the factual background indicates laches or mala fides that could be attributed to his conduct.

20] The consumer in the instant case, had approached the company for a special HT connection. This HT connection cannot be equated with a normal connection so as to canvass that the company is duty bound to supply electricity as a part of public amenity at the door step of every citizen. The company brought it to the notice of the consumer that he would have to spend Rs.3,97,000/- approximately towards the installation and laying of the electricity lines. From the transmission line meant for high tension consumers, the consumer itself arranged for the infrastructure and the stringing of the electricity wires upto the metering room of the consumer. Considering the costs of the equipment utilized, the consumer itself spent Rs.3.97 lakhs. As the consumer desired to have the HT connection, being a Plastic Industry indulging in manufacturing activities, the said amount was spent without any protest or murmur. No right was reserved to seek reimbursement of the said amount, in as much as, there was no grievance made by the consumer that the company is forcing the consumer to spend.

21] The construction of a meter room is meant to house the meter and protect the infrastructure. The company called upon the consumer to allot a place and construct a small meter room so that the meter could be installed and be protected in the said room. The consumer did not pay any costs for erection of such meter room to the company and it got the said meter room constructed as per the agreement between the parties and spent Rs.3.22 lakhs for the said construction. It is the consumer who now submits that the meter room was not necessary, the meter and the electricity connection could have been installed even outside the premises of the factory and the company should therefore, reimburse the charges of Rs.3.22 lakhs to the consumer.

22] I find the conduct of the consumer to be unacceptable and to say the least, unethical. To begin with, as the consumer desired to commence its manufacturing activity it showed its willingness to spend on the infrastructure to install the HT connection. The meter room was also constructed as the company desired that the infrastructure and the meter should be adequately protected. The consumer had spent on these activities being convinced that it was necessary. After more than two years, the consumer now desires that the

infrastructure costs should be borne by the company and the meter room constructed for the maintenance and protection of the meter and connecting wires, should also be at the costs and expenses of the company. Had the consumer denied to spend for these necessary items, the company would not have granted the connection since the wires transmitting the high tension electricity upto the meter are to be well protected and if they are installed in the open exposing them to any physical contact, the risk of a serious accident could not have been ruled out.

23] I find that this aspect was completely lost sight of by the Ombudsman who has over turned the findings of the forum on the ground that the company could not have charged for the infrastructure of over head and underground connections. Subsequently, this demand as regards the reimbursement of over head and underground connections, was given up by the consumer.

24] The Ombudsman interfered with the finding of the forum as regards infrastructure expenses. It was held that the infrastructure over a distance of 0.4 Kms of laying the HT line between the main distribution line and the distribution point should be borne by the company by concluding that the length of 0.4 Kms or 400 meters cannot be defined as a service connection. It relied upon clause 1.3.4 from the order passed by the M.E.R.C. dated 08.09.2006 which would indicate that 20 meters would be an average normative length in place of the average normative length of 30 meters of the service connection and the revised schedule submitted is based on 20 meters as the average normative length.

25] The consumer contends that the M.E.R.C. vide ruling dated 08.09.2006 in Case No.70/2005, has held in paragraph 1.4 that the commission has decided to rationalize the normative charges by reducing the load slab proposed by M.S.E.D.C.L. The normal service connection charges as approved by the commission are indicated in Annexure-A and the commission approves a rate of 1.30% of the normative charges to be recovered towards supervision charges in case M.S.E.D.C.L. permits an applicant to carry out works through a licensed electrical contractor. It is also held that the commission allows M.S.E.D.C.L. to recover the normative charge for the total load - contract demand as per the applicable load - slab.

26] The learned Advocate for the company clarifies that the amount of Rs.3.97 lakhs was not an amount deposited by the consumer with the company. An estimate report dated 25.07.2014 was prepared and it was indicated to the consumer that it would have to spend about Rs.3,97,220/- on the infrastructure establishment for distribution of the HT supply to his factory. 1.3% would be supervision charges as the experts of the company would be supervising such installation. The consumer accorded it's consent to bear the costs of infrastructure as the same had to be erected over a distance of 400 meters.

27] It is further pointed out that the estimate as regards the expenses was informed to the consumer by communication dated 30.07.2014. The summary

report contains an abstract which is also placed on record which indicates the costs of the 11 KV line, the total labour charges and the supervision charges of the company which is 1.3%. The total amount was Rs.3,97,200/- out of which the consumer has actually paid the company an amount of only 1.3%. The rest of the amount is utilized by the consumer for purchasing of the infrastructure material and for making payments of the labour charges for installation of the 11 KV line.

28] I have considered the contentions of the litigating sides on the merits of their claim as they insisted that I should deal with their entire submissions, notwithstanding the issue of limitation. I find that the conduct of the consumer of agreeing to the expenditure which the consumer has actually incurred for installing infrastructure facilities and the meter store room and then turn around after the entire laying of 11 KV line has been completed and after the consumer has enjoyed the electricity supply for its industrial purposes, is inappropriate.

29] It must be noted that the petitioner company has not raised an issue in these proceedings as to whether the claim of the consumer for reimbursement would amount to a 'Grievance' under Regulation 2 (2.1)(c) of the 2006 Regulations.

30] In view of the above, the first Petition No.1588/2019 filed by the company is allowed in terms of prayer clause (1). The impugned order dated 17.10.2018 shall stand quashed and set aside to the extent of the challenge and the conclusions arrived at by the forum by its order dated 25.06.2018 are sustained.

31] Consequentially, the second Petition No.4826/2019, stands dismissed.