

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6859 OF 2017

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Division Office, Dhule Urban,
Dhule, District Dhule
Through Executive Engineer
2. The Executive Engineer and
Nodal Officer,
MSEDCL, Division Office,
Dhule Urban, District Dhule – PETITIONERS

Versus

Jawahar Shetkari Soot Girni Ltd.,
Hutatma Shirishkumar Nagar,
Morane, Tq. And Dist. Dhule,
Through Managing Director
(Consumer No.091599000246) – RESPONDENT

WITH
WRIT PETITION NO.6860 OF 2017

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Division Office, Dhule Urban,
Dhule, District Dhule
Through Executive Engineer
2. The Executive Engineer and
Nodal Officer,
MSEDCL, Division Office,
Dhule Urban, District Dhule – PETITIONERS

Versus

Jawahar Shetkari Soot Girni Ltd.,
Hutatma Shirishkumar Nagar,
Morane, Tq. And Dist. Dhule,

Through Managing Director
(Consumer No.091599000246)

– RESPONDENT

**WITH
WRIT PETITION NO.6861 OF 2017**

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Division Office, Dhule Urban,
Dhule, District Dhule
Through Executive Engineer

2. The Executive Engineer and
Nodal Officer,
MSEDCL, Division Office,
Dhule Urban, District Dhule

– PETITIONERS

Versus

Jawahar Shetkari Soot Girni Ltd.,
Hutatma Shirishkumar Nagar,
Morane, Tq. And Dist. Dhule,
Through Managing Director
(Consumer No.091599000246)

– RESPONDENT

**WITH
WRIT PETITION NO.6862 OF 2017**

1. The Maharashtra State Electricity
Distribution Company Ltd.,
Division Office, Dhule Urban,
Dhule, District Dhule
Through Executive Engineer

2. The Executive Engineer and
Nodal Officer,
MSEDCL, Division Office,
Dhule Urban, District Dhule

– PETITIONERS

Versus

Jawahar Shetkari Soot Girni Ltd.,
Hutatma Shirishkumar Nagar,

Morane, Tq. And Dist. Dhule,
Through Managing Director
(Consumer No.091599000246)

– RESPONDENT

Mr.A.S.Shelke, Advocate for the petitioners.
Mr.K.C.Sant, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

Reserved on : 31/07/2018
Pronounced on : 21/08/2018

PER COURT :

1. In all these 4 petitions, the same petitioners are aggrieved by the identical orders passed by the Consumer Grievances Redressal Forum established u/s 42(5) of the Electricity Act, 2003. In all these impugned orders, the grievances put forth by the respondent consumers have been entertained and the petitioner has been directed to refund the excess fuel adjustment costs.

2. Considering the identical issues involved and since the petitioner / company and the respondent consumer are identical, these petitions have been taken up for final hearing at the admission stage, by the consent of the parties.

3. The following terms/abbreviations are being used in

this order :-

- [a] The petitioner - the company,
- [b] The respondent - the consumer,
- [c] Fuel Adjustment Costs - FAC
- [d] Maharashtra Electricity Regulatory Commission -
MERC
- [e] Consumer Grievances Redressal Forum - the Forum
- [f] Internal Grievance Redressal Cell - the Cell
- [g] The Electricity Act, 2003 - The 2003 Act
- [h] Maharashtra Electricity Regulatory Commission
Regulations 2006 - The 2006 Regulations.

4. I have heard the extensive submissions of the learned Advocates for the petitioner and the respondent.

5. The petitioner Company has raised certain FAC bills for various months in different financial years in these petitions by which the Fuel Adjustment Costs are sought to be recovered from the consumer. By raising those bills, the consumer was informed about the FAC that it has to pay. The consumer has paid the said bills and has raised a grievance before the Cell by filing a representation on

08/08/2016 and thereafter, in the respective cases. The Cell declined to entertain the grievance/representation of the consumer by order dated 27/10/2016 on the ground that the representations were filed after 2 years which was the limitation period for raising a grievance before the Forum. The Consumer, therefore, approached the Forum which has entertained the grievance of the consumer and has delivered the impugned orders directing the petitioner/company to refund the amounts of FAC bills to the consumer.

6. The petitioner has placed reliance upon :-

[a] The judgment dated 19/01/2012 (Coram : G.S.Godbole, J., as he was then) in M/s Hindustan Petroleum Corporation Limited Vs. Maharashtra State Electricity Distribution Co.Ltd., and others in WP No.9455/2001.

[b] The judgment dated 10/07/2013 (Coram : A.V.Nirgude, J.) in Maharashtra State Electricity Distribution Company Limited and another Vs. Electricity Ombudsman, Nagpur and another in WP No.1650/2012.

7. The respondent has relied upon the following judgments :-

[a] *S.S.Rathore Vs. State of M.P. [AIR 1990 SC 10 (7 Judges Bench)]*

[b] *The Commissioner of Sales Tax U.P. Lucknow Vs. M/s Parson Tools and Plants, Kanpur [AIR 1975 SC 1039 (3 Judges Bench)]*

[c] *The Additional Special Land Acquisition Officer, Bangalore Vs. Thakoredas, Major and others [AIR 1994 SC 2227]*

[d] *Shewalkar Developers Limited Nagpur Vs. Rupee Co-operative Bank Limited, Pune [2016(1) Mh.L.J.382]*

8. The learned Advocate for the petitioner has primarily raised two issues. Firstly, that the limitation prescribed by the 2003 Act would render the grievance raised by the respondent before the Forum, beyond limitation. Secondly, the Forum, while allowing the claims of the respondent, has considered such commercial circulars which were inapplicable to the case and if this Court concludes that the grievance raised by the respondent was within limitation, the matter needs to be remitted to the Forum for enabling the petitioner to cite the appropriate commercial circulars pertaining to the periods for which the consumer was charged for electricity consumption.

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, co-ordinated 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. Regulation 2(2.1)(d) defines the “Cell” as under :-

“Internal Grievance Redressal Cell” or “IGR Cell” means such first authority to be contacted by the consumer for redressal of his/her Grievance as notified by the Distribution Licensee.”

13. 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.”

14. Regulation 6 (6.1 till 6.10) read as under :-

“6. Procedure for Grievance Redressal :-

6.1 *The Distribution Licensee shall have an Internal Grievance Redressal Cell to record and redress Grievances in a timely manner. The IGR Cell of the Distribution Licensee shall have office(s) in each revenue district in the area of supply.*

Provided that where the area of supply is the city of Greater Mumbai and adjoining areas, the IGR Cell of the Distribution Licensee shall have at least one (1) office for the area of supply. The Distribution Licensee shall endeavour to redress Grievances through its IGR Cell.

6.2 *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.*

Provided that where such Grievance cannot be made in writing, the IGR Cell shall render all reasonable assistance to the person making the Grievance orally to reduce the same in writing :

Provided also that the intimation given to officials (who are not part of the IGR Cell) to whom consumers approach due to lack of general awareness of the IGR Cell established by the Distribution Licensee or the procedure for approaching it, shall be deemed to be the intimation for the purposes of these

Regulations unless such officials forthwith direct the consumer to the IGR Cell.

6.3 (a) *The office of the IGR Cell shall issue acknowledgement of the receipt of the Grievance to the consumer within five (5) working days from the date of receipt of a Grievance. Where the Grievance has been submitted in person, the acknowledgement shall be provided at the time of submission :*

Provided that where the Grievance is submitted by email to the IGR Cell acknowledgement of the receipt of the Grievance to the consumer shall be provided by return email as promptly as possible :

Provided further that the IGR Cells shall keep such electronic records in hard form for ease of retrieval :

Provided further that where the Grievance is submitted by email hard copies of the same shall be submitted forthwith separately to the IGR Cell. (b) Notwithstanding sub-clause (a), the written acknowledgement of receipt of grievance provided by officials (who are not part of the IGR Cell) shall be deemed to be the acknowledgement for the purposes of these Regulations.

6.4 *Unless a shorter period is provided in the Act, in the event that a consumer is not satisfied with the remedy provided by the IGR Cell to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the consumer may*

submit the Grievance to the Forum. The Distribution Licensee shall, within the said period of two (2) months, send a written reply to the consumer stating the action it has taken or proposes to take for redressing the Grievance.

***6.5** Notwithstanding Regulation 6.4, a Grievance maybe entertained before the expiry of the period specified therein, if the consumer satisfies the Forum that prima facie the Distribution Licensee has threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any of the provisions of the Act or any rules and regulations made thereunder or any order of the Commission, provided that, the Forum or Electricity Ombudsman, as the case may be, has jurisdiction on such matters.*

Provided further that no such Grievance shall be entertained, before the expiry of the period specified in Regulation 6.4, unless the Forum records its reasons for the same.

***6.6** The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.*

6.7 The Forum shall not entertain a Grievance:

(a) unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his Grievance in the specified form, to the Forum;

(b) unless the consumer is aggrieved on account of his

Grievance being not redressed by the IGR Cell within the period set out in these Regulations;

(c) unless the Forum is satisfied that the Grievance is not in respect of the same subject matter that has been settled by the Forum in any previous proceedings; and

(d) where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

6.8 *If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:*

(a) unauthorized use of electricity as provided under section 126 of the Act ;

(b) offences and penalties as provided under sections 135 to 139 of the Act;

(c) accident in the distribution, supply or use of electricity as provided under section 161 of the Act; and

(d) recovery of arrears where the bill amount is not disputed.

6.9 *The Forum may reject the Grievance at any stage if it appears to it that the Grievance is:*

(a) frivolous, vexatious, mala fide;

(b) without any sufficient cause;

(c) there is no prima facie loss or damage or inconvenience caused to the consumer ;

Provided that no Grievance shall be rejected in respect of sub-clauses (a), (b) and (c) unless the applicant has been given an opportunity of being heard.

6.10 *Every Grievance must be submitted in writing to the Forum in the format set out in Schedule A to these Regulations :*

Provided that where such Grievance cannot be made in writing, the Forum shall render all reasonable assistance to the person making the Grievance orally to reduce the same in writing and in filling up the format set out in Schedule A to these Regulations. The Grievance may also be lodged by registered post acknowledgement due, by speed post or by courier service or by any other means of transmission of documents (including FAX message) :

Provided further that the Distribution Licensee shall, in its website, upload the format set out in Schedule A to these Regulations in word form so as to enable consumers, at their option, to submit their Grievance in electronic form.

Provided further that all enclosures to such Grievance submitted in electronic form shall be submitted in scanned form.

Provided also that submission of Grievance in electronic form shall be as per the rules and procedures of the Distribution Licensee as in force from time to time.”

15. The learned Advocate, therefore, submits that in all these cases, the consumer was mandated by Law to approach the Forum within 2 years from the date of the cause of action. The Company had issued specific bills to the consumer in view of the fluctuating tariff under the FAC. The tariff under FAC is governed by various commercial circulars and one such circular at issue is No.189 dated 24/12/2013. A similar commercial circular was issued on 08/05/2014. There is no dispute that in all these cases, the disputes have been raised by the consumer on 08/08/2016 and thereafter stale disputes have been dug out. The consumer cannot pretend that it has raised the disputes within 2 years from the date of the knowledge because the cause of action and the alleged legal injury is the FAC bills raised for various months in different years. Since these bills have to be paid, failing which, the electricity supply is disconnected by the company, the consumer has paid all these bills thereby clearly indicating that it has the knowledge of the purported legal injury caused by the bills. Once such bills are paid, may be under protest or not, the limitation for the cause of action would begin only from the date of the said bills.

16. Per contra, the contention of the consumer is that it had approached the Cell and therefore had lost valuable time. It is, however, conceded that the consumer had approached the Cell, not the Forum, much after the expiry of two years which is prescribed for any consumer to challenge the bills before the Forum and the Cell had disposed off the representation within 2 months. It is, however, contended that the consumer cannot directly approach the Forum since Regulation 6.7 mandates that unless the consumer has approached the Cell, no grievance can be lodged with the Forum.

17. What needs consideration therefore is that, as the Regulations of 2006 are framed u/s 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 u/s 181 (r and s) by which guidelines u/s 42(5) and settlement of grievance u/s 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).

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 10/07/2013 in M.S.E.D.C.L. (supra), after adverting to the judgment delivered in H.P.C.L. dated 19/01/2012 (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.

30. In the instant cases, the proceedings filed by the consumer before the Forum under Schedule A clearly set out the following 3 prayers :-

“8. NATURE OF RELIEF SOUGHT FROM THE FORUM:

(Please enclose any proof to support claim, if any) :

1. Allow refund of the above excess FAC amount

Rs.7,94,434/- collected illegally for the period mentioned alongwith accrued interest.

2. To pay interest as per section 62(6) of Elect.Act – 2003 at bank rate to be calculated till date of release of actual payment.

3. Compensation for mental agony, man hrs for follow up, travelling exp. Etc. Rs.25,000/-”

31. From the above prayers put forth by the consumer in his grievance cases before the Forum, it is obvious that the consumer was assailing the FAC bills. There was no challenge to the decision of the Cell refusing to entertain the consumer's representations which were filed beyond 2 years from the date of the grievance. In the specific facts of this case, it is apparent that this consumer is aggrieved by the cause of action originating from the FAC bills and not by the refusal of the Cell in entertaining his grievances/representations. Similar prayers depending upon the FAC amounts, have been set out in all these cases. Nowhere has the consumer put forth a prayer that the order of the Cell be quashed and set aside. Similarly, it is obvious from the facts of these identical cases that the consumer has approached the Cell beyond 2 years (in some cases after 4 and 6 years)

and the Cell has refused to deal with the intimation of the consumer's grievance.

32. Regulation 6.2, therefore, indicates that the litigating journey of the consumer, begins with the date of his grievance as regards the FAC bills and has to be completed by approaching the Forum within 2 years. Having held that the origin of the consumer's grievance is the FAC bill of the petitioner company, he has a two years period for reaching the Forum. On his way upto the Forum, he can approach the Cell.

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-ss. (2) and (3) of [s. 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 [s. 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 r/w 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) 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 alongwith 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) 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 s. 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 law-giver; 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) r/w Regulation 6.2, 6.4, 6.6 and 6.7 co-exist harmoniously, I am

of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore co-exist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are

subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.

47. The learned Advocate for the petitioners submits that the amounts deposited in this Court by virtue of the order dated 03/07/2017, may be refunded to the petitioners along

with accrued interest.

48. Mr.Sant, learned Advocate for the Consumer, submits that since a judgment is delivered in these matters, the consumer may decide the future course of his litigation and the amount deposited may be retained in this Court at least for a period of (4) four weeks from today.

49. In view of the above, the amount deposited by the petitioners in this Court shall not be withdrawn for a period of 30 (thirty) days from today. Thereafter, the amount may be withdrawn by the petitioners by tendering an application of the authorized representative duly identified by the learned Advocate along with an identity proof and the authorization letter from the petitioner/company.

(Ravindra V.Ghuge, J.)

Kranti
Hansraj
Shekatkar

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