Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3708 OF 2019

Maharashtra State Electricity
Distribution Company Limited (MSEDCL)
Through its Superintendent Engineer
Administrative Building, Vidyut Bhavan,
1st Floor, Palghar – Manor Road,
Palghar (West), Maharashtra – 401 404. **.. Petitioner**

Versus

M/s. Viraj Profile Ltd.
Unit – V, Survey No.114,
At Mahagaon, Boisar (R),
District – Thane, Pin – 401 506. **.. Respondent**

....

- Mr. Kiran Gandhi a/w. Mr. Aakash Kothari i/by Little & Co. for Petitioner.
- Mr. Shardul Singh a/w. Kezer Kharawala i/by Lex Juris for Respondent.

....

CORAM : MILIND N. JADHAV, J.

RESERVED ON : JANUARY 03, 2023.
PRONOUNCED ON : NOVEMBER 28, 2023

JUDGMENT:

1. Rule. Heard Mr. Gandhi, learned Advocate for Petitioner and Mr. Singh, learned Advocate for Respondent. By consent of parties, Writ Petition is taken up for final hearing.

2. This Writ Petition is filed under Article 226 of the Constitution of India by the Petitioner i.e. MSEDCL for the following reliefs:-

> *"a. That this Hon'ble Court be pleased to issue a writ of Certiorari, or a Writ in the name of Certiorari, or any other appropriate Writ, Order or direction calling for the papers and proceedings leading to the passing of the impugned order dated 29.08.2018 by the learned CGRF and after going into the legality, validity and propriety thereof, to quash and / or set aside the same;*
>
> *b. That pending the hearing and final disposal of the Writ Petition, this Hon'ble Court be pleased to stay the operation, implementation and effect of the impugned order dated 29.08.2018 passed by the learned CGRF;*
>
> *c. Alternatively, this Hon'ble Court be pleased to issue a writ of Certiorari, or a Writ in the name of Certiorari, or any other appropriate Writ, Order or direction calling for the papers and proceedings leading to the passing of the impugned Order dated 29.08.2018 passed by the learned CGRF and after going into the legality, validity and propriety thereof remand the matter for fresh de-novo adjudication."*

3. Petitioner is the State Electricity Distribution Company in the State of Maharashtra (for short "**MSEDCL**"). Respondent is a consumer of electricity having Consumer No.003019031500. Respondent is engaged in the business of stainless steel manufacturing unit at Boisar, Palghar with open access capacity 4550 KVA and MSEDCL contract demand of 500 KVA.

4. By the present Writ Petition, Petitioner has taken exception to the order dated 29.08.2018 passed by the Consumer Grievance Redressal Forum (for short "**CGRF**") and in the alternative sought quashing aside and a fresh remand of the matter for *de novo* adjudication.

5. Briefly stated, facts which have resulted in the filing of the present Writ Petition are outlined herein under:-

(i) On 30.12.2014, Respondent applied for Medium Term Open Access (for short "**MTOA**") permission for quantum of 4550 KVA and reduction in Contract Demand from 5000 KVA to 500 KVA as it desired to retain quantum of 500 KVA towards Contract Demand. (Such MTOA Application can be made for a minimum period for 3 months and a maximum period of 3 years.)

(ii) On 20.05.2015, Chief Engineer (Commercial), MSEDCL approved the Application and issued sanction for Open Access of 4500 KVA and retention of Contract Demand of 500 KVA.

(iii) On 21.09.2016, Respondent made Application to the Superintendent Engineer, MSEDCL, Palghar for revision of Contract Demand from 500 KVA to 2000 KVA and consequentially reduction of Open Access quantum / capacity from 4500 KVA to 3000 KVA. At the same time, Application was also endorsed to the Chief Engineer (Commercial), MSEDCL.

(iv) On 21.10.2016, Superintendent Engineer issued sanction for enhancement of contract demand from 500

KVA to 2000 KVA to Respondent and consequent reduction in Open Access quantum / capacity.

(v) On 07.02.2017, Respondent applied to the Chief Engineer (Commercial) for revision in Contract Demand and reduction in Open Access capacity as sanctioned by the Superintendent Engineer.

(vi) On 11.05.2017, Chief Engineer (Commercial) allowed revision of Contract Demand from 4000 KVA to 3000 KVA, but made it effective only from the month of May 2017 onwards, though revision was already effected from 21.10.2016 (date of sanction by the Superintendent Engineer).

(vii) Being aggrieved, by the above order granting revision effective from May 2017 and not from the date of sanction by the Supdt. Engineer i.e. 21.09.2016, Respondent filed a Grievance Application before the Internal Grievance Redressal Forum (for short "**IGRC**") of Petitioner, which was dismissed by order dated 28.06.2018.

(v) Being aggrieved, Respondent filed complaint before the Consumer Grievance Redressal Forum (for short "**CGRF**") which was allowed by order dated

29.08.2018, *inter alia*, directing Petitioner to implement the order of reduction / revision of open access and enhancement / revision of contract demand retrospectively w.e.f. the billing of month of November 2016 and directing refund of excess amount recovered alongwith interest as per the rate of Reserve Bank of India to Respondent.

(vi) Being aggrieved, Petitioner has impugned the order dated 29.08.2018 of CGRF in the present Writ Petition.

6. Mr. Gandhi, learned Advocate for Petitioner has pleaded and raised a singular ground of jurisdiction in the present Petition. He would submit that the impugned order passed by CGRF is without jurisdiction as it does not have any jurisdiction over the subject matter. According to him dispute pertaining to reduction in Open Access capacity lies within the domain of the Maharashtra Electricity Regulatory Commission (**MERC**) only. He would submit that the provisions of MERC (Distribution Open Access) Regulations, 2016 take away the power of CGRF to adjudicate any dispute pertaining to Open Access capacity. He would submit that matters relating to reduction of Contract demand in MTOA are governed by Standards of Performance of Distribution Licensees (Period for Giving Supply and Determination of Compensation) Regulations, 2014 for deciding the time line only, however any other dispute is mandatorily governed by the MERC (Distribution Open Access) Regulations, 2016 only. He would next submit that the nodal agency for seeking reduction in Open Access capacity is the Chief Engineer (Commercial) and not the Superintending Engineer (Palghar) to whom the Application was made by Respondent in the present case, which was known to the Respondent. Despite this knowledge the Application was made by Respondent to the Superintending Engineer only. According to him, all MTOA Applications have to be made to the nodal agency i.e. the Chief Engineer (Commercial) only. In respect of any application made for reduction in Open Access capacity as well as increase in Contract demand, any dispute with respect thereto comes within the preview of MERC (Distribution Open Access) Regulations, 2016. He would submit that this is a case of a consumer seeking change / reduction in Open Access capacity to which Standards of Performance of Distribution Licensees (Period for Giving Supply and Determination of Compensation) Regulations, 2014 cannot apply and hence the grievance before the IGRF and CGRF is impermissible in law.

6.1. In support of his aforesaid submissions, Mr. Gandhi has drawn my attention to the following provisions / statutory regulations which according to the Petitioner are relevant and applicable to the

Respondent's dispute / case:

(i) Regulation 2.1 (c) of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 defines "Grievance" which means any fault, imperfection, short coming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by the Distribution Licensee in pursuance of the Licence, Contract, Agreement or under the Electricity Supply Code or in relation to Standards of Performance of Distribution Licensees;

(ii) Regulation 4.14 of MERC (SoP) Regulations, 2014 provide that upon request made by the consumer for reduction / sanction of the load, licensee is required to reduce or sanction the same before expiry of the second billing cycle after receipt of such application;

(iii) Regulation 2.1 (g) of MERC Regulations, 2006 provide for the Officer so designated by the Distribution Licensee to act as a Nodal Officer;

(iv) MERC (Distribution Open Access) Regulations, 2016 notified on 30th March 2016 define the Nodal Agency as specified in Regulation 8. Regulation 8 provides that application for Open Access shall be made in the prescribed form to the Nodal Agency. It is provided that the Nodal Agency shall be the Distribution Licensee and Nodal Agency is to specify on its website the name, designation and contact details of the Nodal Officer. In the present case, Petitioner has notified the name and designation of its Chief Engineer (Commercial) as the Nodal Officer;

(vi) Regulation 8.5 provide that MTOA Application is required to be accompanied by all requisite documents;

(vii) Regulation 32 provide that any dispute under the Regulations shall be adjudicated upon by the Commission;

(viii) Regulation 38.4 of Regulation 2016 provide that nothing in the Regulations shall bar the Commission from dealing with any matter or exercise any power under the Act;

(ix) Regulation 4 of MERC (SoP) Regulations, 2014 provide the timeline for reduction or sanction of Contract demand, *inter-alia,* if a complete Application is made in accordance with the MERC Supply Code Regulations.

7. Based on the above applicable provisions to the Respondent's case to challenge the impugned order, Mr. Gandhi has made the following submissions:-

(i) That under Section 2(47) a consumer has a right to procure power from the supplier other than the Distribution Licensee; they can use the existing transmission and distribution Infrastructure after paying appropriate charges as determined by MERC i.e. Transmission charges, wheeling charges and OA charges etc.; that for grant of approval of OA permission Discom requires to carry out system study for the feasibility of the Grid;

(ii) That the impugned order dated 29.08.2018 passed by CGRF is without jurisdiction; that as per Regulation 32 of MERC (Distribution Open Access) Regulation, 2016, the jurisdiction lies with the Commission i.e. MERC; that Regulation 4.14 of MERC SoP Regulations, 2014 relied upon by CGRF merely provide for the timeline for reduction of Contract demand and not for deciding any dispute about Open Access quantum / capacity;

(iii) that Respondent being an existing Open Access consumer and due to the approval / permission granted by the Chief Engineer (Commercial) earlier was clearly aware of the procedure to make the appropriate application before the Nodal Agency i.e. the Chief Engineer; that before approval of reduction or sanction of the load, the Nodal Officer is required to verify the technical feasibility of the grid and capacity of the distribution system, otherwise the entire grid may collapse; hence the Application has to be made to the Nodal Officer only and not to the Superintendent Engineer as has been done in the present case;

(iv) MERC Regulations 2006 and Regulations 2014 do not apply to the Respondent's case as Application for reduction of Contract demand was admittedly made by Respondent on 21.09.2016. In the present case, MERC (Distribution Open Access), Regulations, 2016 are only applicable and any dispute with respect thereto is to be referred to the Commission as per Regulation 32 read with Regulation 38.4;

(v) That Respondent has relied upon the procedure notified for Distribution of Open Access capacity issued by Petitioner which has been notified after enactment of the MERC (Distribution Open Access) (First Amendment) Regulations, 2019 on 08.06.2019 and therefore the said procedure is not applicable to the Respondent's case / application which was made in 2016;

(vi) That in view of the decision of the Supreme Court in the case of ***Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. and Ors.***[1], it is decided that all disputes between the Consumer and Distribution Licensee are required to be referred to the Commission i.e. MERC only. That this is in view of the fact that the Commission has all powers to determine the disputes and ensure that Rules and Regulations as laid down are complied with by the Licensee and Distribution Company;

(vii) That reliance of the Respondent on the judgment and order dated 28.07.2011 passed by the Appellate Tribunal for Electricity (Appellate Jurisdiction) in the case of ***Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulatory Commission and Ors.***[2] is not tenable in

1 (2007) 8 SCC 381
2 Appeal No.36 of 2011

view of the fact that the said judgment considers applicability of MERC Open Access Regulation, 2005 which have been subsequently superseded by MERC Open Access Regulations, 2016 and as per Regulation 32 of the Regulations, the Commission has the jurisdiction to decide the disputes between the Consumer and Distribution Licensee and the jurisdiction of the CGRF is barred; that while deciding the aforesaid decision the Supreme Court relied upon Regulation 22.2 of the 2005 Regulations and stated that there was nothing in the Act or the Regulations which affected or limited the inherent power of the Commission; that the 2016 Regulations are in *pari materia* with Regulation 38.04 exists which also provide that there is nothing in the Act or the Regulations which affect or limit the inherent power of the Commission.

7.1. On the basis of the above submissions, Petitioner would submit that the impugned order passed by CGRF is wholly without jurisdiction. The dispute between the Consumer (Respondent) and MSEDCL (Petitioner) is required to be adjudicated by the Commission only. Hence, it is prayed that the impugned order passed by CGRF be quashed and set aside and the dispute be remanded to the Commission i.e. MERC.

8. ***PER CONTRA,*** Mr. Singh, learned Advocate for Respondent has at the outset drawn my attention to the affidavit-in-reply dated 22.02.2019 and further affidavit-in-reply dated 02.03.2019 filed by the Respondent. He would submit that the present Petition is not maintainable since if Petitioner was aggrieved with the impugned order dated 29.08.2018 passed by CGRF, Petitioner ought to have approached the Appellate Authority i.e. Ombudsman to challenge the said order. He would submit that despite the Petitioner having agreed to refund the excess amount recovered by Petitioner to Respondent as contained in Petitioner's letter dated 11.12.2018 informing the Respondent that Petitioner had forwarded the bills to its Chief Engineer (Commercial), Prakashgad, Bandra for obtaining necessary approvals and after receiving the same from the Competent Authority, further action would be initiated, Petitioner has filed the present Petition. He has drawn my attention to letter dated 11.12.2018 which is appended at (Exh. "D" - page 106 to the affidavit-in-reply dated 22.02.2019). He would submit that Respondent approached the CGRF with its grievance in view of the fact that the dispute related to the SoP violation in not granting reduction of Open Access capacity and enhancement of Contract demand and both these disputes fall within the definition of a "Grievance" as per Regulation 2 under the MERC (CGRF & Ombudsman) Regulations, 2016. He would submit that the CGRF considered the issue of maintainability raised in the present Petition by Petitioner and was pleased to allow the Application of Respondent seeking refund and excess amount to be recovered from Petitioner from November 2016 onwards along with interest at the rate of RBI. According to him, remedy for challenging the order passed by CGRF was by way of filing a representation before the Hon'ble Ombudsman which has jurisdiction to try and decide the grievance, if any, against the order passed by CGRF which is in the nature of an Appeal. In that view of the matter, present Petition filed under Article 227 invoking extra ordinary superintending jurisdiction is not maintainable. He would submit that once the Petitioner in its letter dated 11.12.2018 had categorically informed the Respondent that its bills were forwarded to the Commercial Department for obtaining necessary approvals from the Competent Authority, Petitioner was estopped from filing the present Petition.

8.1. Next he would submit that the ground alleged by Petitioner that Respondent had made Application seeking change / reduction in Open Access capacity to the Superintending Engineer (Palghar) instead of the Chief Engineer (Commercial) being the Nodal agency is also incorrect. According to Respondent, there is clear suppression of facts by Petitioner in this regard. He would submit that Respondent had specifically filed Application with the Chief Engineer seeking reduction in Open Access capacity on 14.09.2016. This Application dated 14.09.2016 is appended at Exh. “2” to the further affidavit-in-reply dated 02.09.2019 at page No. 141 of the Petition. I have perused the same. The same is duly addressed to the Chief Engineer (Commercial) which is the Nodal agency. This letter is suppressed by Petitioner according to Respondent though it finds a reference in the letter at Exh. “E” – page No. 84 of the Petition relied upon by Petitioner. At page No. 84, letter dated 21.09.2016 is addressed by Respondent to the Superintending Engineer duly referring to the two letters addressed to the Chief Engineer (Commercial), Mumbai. In fact, it is seen that those letters are also annexed to the letter dated 21.09.2016 as annexures. Mr. Singh has also drawn my attention to the letter dated 26.07.2016 wherein the Chief Engineer (Commercial) has informed the Superintending Engineer of all circles about the revision in Contract demand by Open Access customers to execute fresh agreements once the Contract demand is reduced after granting Open Access permission by Petitioner. That letter dated 26.07.2016 is at Exh. “3” – page No. 143 of the further affidavit-in-reply. Said letter states that it was observed that the consumers availing Open Access capacity submit their consent to revise their Contract demand retained with MSEDCL as per provisions contained in the Distribution Open

Access Regulations, 2016. Letter further states that it has been decided that the Contract demand once revised / reduced at HO level while granting Open Access permission shall be governed by the provisions of the Electricity Supply Code and the MERC SoP Regulations.

8.2. In support of the above submissions, Mr. Singh has referred to and relied upon the following statutory regulations / provisions :-

a. Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 ('Supply Code') - these Regulations deal with basic operations such as application for fresh electricity connection, revision in demand and billing etc.

b. Maharashtra Electricity Regulatory Commission (Standard of performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 ('SOP Regulations') - these Regulations deal with quality and system of supply, complaint and complaint handling etc.

c. Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 ('CGRF Regulations') (now replaced by the 2020 Regulations which remove the IGRC mechanism).

d. Maharashtra Electricity Regulatory Commission (Distribution Open Access) Regulations, 2016 ('Open Access Regulations') - these Regulations deal with Open Access.

(ii) Section 42 of the Act provides for duties of the Distribution Licensees ('**DL**') and Open Access. Sub-section (5) of Section 42 provides that every DL shall establish a forum for redressal of grievances of the consumers in accordance with the guidelines specified by the Commission.

(iii) Regulation 4.2 of the Open Access Regulations provide that a revision of Contract demand shall be governed by the provisions of the Supply Code and the SoP Regulations.

8.3. On the strength of the above submissions and statutory provisions, he would submit that according to Petitioner's own letter, any consumer seeking Open Access revision may revise his Contract demand as per the provisions of the Electricity Supply Code and MERC SoP Regulations, 2014 and therefore there is no adjudicatory exercise which is involved or required to be performed upon receipt of an Application from the consumer. In fact there is no dispute whatsoever. He would submit that under Regulation 4.14 of SoP Regulations, 2914, reduction of Contract demand once applied for has to be effected before the second billing cycle after receipt of such a request. He would submit that any grievance under the Electricity Supply Code or SoP Regulations, 2014 is to be adjudicated in accordance with the CGRF Regulations since a billing dispute is a grievance under the Electricity Supply Code or SoP Regulations. Hence, he would submit that the present Petition is not maintainable as CGRF has correctly determined and adjudicated the *lis* and given effective direction to the Petitioner as required under the statutory provisions. Respondent has therefore prayed for dismissal of the present Petition.

9. I have heard Mr. Gandhi and Mr. Singh, learned Advocates appearing for Petitioner and Respondent and with their able assistance, perused the statutory provisions and pleadings in the case.

10. Short question that arises for determination in the Petition is "*Whether CGRF has jurisdiction to entertain the grievance of the*

Respondent or whether the jurisdiction to adjudicate the same is with MERC (Commission) as contended by Petitioner?" . In this context, it is seen that Petitioner is a Distribution Licensee and Respondent is a consumer within the meaning of the Electricity Act, 2003. It is seen that admittedly the grievance of the Respondent is a billing dispute since the Respondent has not been given due benefit of reduction of Open Access capacity and increase in Contract demand capacity from the due date after the application / change having effected and hence, Respondent had sought refund which was not duly reflected in the second billing cycle after the Application was made by Respondent.

11. The Scheme of the Electricity Act would show that for different objects and purposes, different authorities are established. It is an act which, *inter alia,* consolidates the laws relating to generation, transmission, distribution of electricity, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, constitution of Electricity Authority and Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto. Perusal of the various statutory provisions reveal that if there is a dispute regarding regulating tariff within the State, inter-state transmission or adjudication of dispute between generating companies and transmission licensees, then the adjudicating authority is the Central

Commission. In the case of regulating tariffs within the State, intra-state transmission and adjudicating dispute between generating companies and licensees, then the jurisdiction lies with the State Commission. Then there is the Appellate Tribunal provided to hear Appeals against the orders passed by the Central Commission or State Commissions or any adjudicating officer appointed by such Commissions. For redressal of individual consumer grievances, the adjudicating authority is the CGRF and any Appeal against the order of CGRF lies to the Ombudsman. Under Section 126, assessment of electricity charges by person engaged in 'unauthorized use' of electricity is adjudicated by the Assessing Officer. Appeal against the order of the Assessing Officer is provided to the Appellate Authority under Section 127. Under Section 143 the authority to hold an inquiry on any matter by the Commission lies with the Adjudicating Officer. Special Courts are established under Section 153 to conduct trials of cases of theft of electricity under Section 135 of the Electricity Act and under Section 158 Arbitration Authority is provided to refer dispute between the generating companies and licensees to arbitration.

12. In the present case, it is seen that a billing dispute is raised by Respondent as a grievance which is an individual billing dispute. In fact, there is no dispute about the bill. Rather it is a question of giving the benefit to the Respondent of its electricity consumed under Open

Access and Contract Demand capacities from a particular date, which is deemed to the consumer (in this case the Respondent) by agitating in this Petition that its Application was made to the wrong Authority and its jurisdiction would lie with the Commission and not the CGRF. Such a billing dispute is to be referred to CGRF only since it is an individual billing dispute pertaining to the grievance raised by Respondent regarding inaction in not granting refund / adjustment of reduction in open access capacity by Petitioner. Petitioner reliance on Regulation 32 of the Open Access Regulations to contend that such dispute can only be adjudicated by MERC is however not sustainable because Regulation 32 itself begins with the words "*Save as otherwise provided…..*". This clearly means that only in cases where a dispute resolution mechanism is not provided under the Electricity Act or any other regulations thereunder, only then such dispute shall be referred to MERC. It is imperative to note that functions of MERC are of a specialized and specific nature as stipulated under Section 86 of the Electricity Act. MERC is the specialized body meant for adjudication of disputes, *inter alia*, pertaining to regulating tariff, intra-state transmission etc between licensees and generating companies under its jurisdiction. The present dispute is an individual dispute raised by Respondent which is in nature of an individual consumer grievance. In the decision of the Supreme Court in the case of ***MERC Vs. Reliance***

Energy Ltd & Ors[3] in paragraph No. 13 thereof, it has been held that the Commission (MERC) cannot adjudicate disputes relating to grievances of individual consumers since the adjudicatory function of the Commission is limited to the matters prescribed under Section 86(1)(f). Paragraph No. 13 of the said decision is reproduced herein below for reference:-

> *"13. It may be noted from a perusal of Section 86(1)(f) of the Act that the State Government has only power to adjudicate upon disputes between licensees and generating companies. It follows that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f)."*

12.1. In this context, Regulation 32 which is sought to be referred to and relied upon by Petitioner if read can be harmoniously construed to mean that only those disputes for which there is no other authority prescribed under the Act or Regulations shall be referred to adjudication by MERC. The impugned order dated 29.08.2018 passed by CGRF is a detailed speaking order which deals with the issues on merits as also the issue of jurisdiction. It is at Exh. "A" – page Nos. 20-23 of Petition. It is seen that Petitioner had raised two issues; one of jurisdiction of CGRF to entertain the grievance and secondly the jurisdiction of the Superintending Engineer to sanction reduction in Open Access capacity and enhancement of Contract demand. Sole reliance was placed by Petitioner on Regulation 32 of MERC

3 (2007) 8 SCC 381

(Distribution Open Access) Regulations, 2016. It is reasoned by the CGRF that the dispute in question relates to SoP violation in not granting reduction of Open Access and enhancement of Contract demand consequentially raising a billing dispute and the remedy provided for the same is within the definition of "Grievance" as per Regulation 2 of MERC (CGRF & Ombudsman) Regulations, 2006. The CGRF has come to the conclusion that when there is a remedy provided under the definition of "Grievance" as per Regulation 2 referred to herein above, provisions of Section 32 would not apply as Section 32 itself defines "disputes" as "save and otherwise provided, any dispute under these Regulations shall be adjudicated upon by the Commission". In so far as the second issue is concerned, it has come on record that Respondent had applied to the Chief Engineer simultaneously and the reference to the same was also stated in the Application made to the Superintending Engineer and hence that issue would no longer survive.

13. The gamut of various regulations, rules, provisions, adjudicating authorities etc. under the Indian Electricity Act, 1925 has to be user friendly for the benefit of the consumer. In the present case, there is no dispute on facts. Respondent applied for reduction in Open Access capacity and increase in Contract demand capacity. Once the said Application was made to the Chief Engineer which is the

Nodal agency, all that was required to be done was to implement the same after the second billing cycle from the date of such request which was not done in the Respondent's case. Respondent sought refund of the excess billing amount recovered by Petitioner and sought adjustment of the same in future bills. Petitioner in fact by letter dated 11.10.2018 informed the Respondent that they have forwarded the bills of Petitioner to its Chief Engineer (Commercial) for obtaining necessary approval. Said letter is at Exh. "D" – page No. 106 of Petition. It is appended to the affidavit-in-reply filed by Respondent. I find it necessary to reproduce the said letter addressed by the Petitioner to the Respondent as it is relevant and speaks about the action taken by the Petitioner. The scanned copy of this letter is reproduced below:-

Exh. D   106

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO.LTD.
O&M PALGHAR (Small) Circle

MAHADISCOM
Palghar (Small) Circle

Office of the Superintending Engineer,
"Vidyut Bhavan" 1st floor, Manor Rd,
Palghar (West) Pin- 401 404.
Fax No. 02525-257364.
E-Mail ID : sepalghar.msedcl@gmail.com

Ref. No : SE/ PLG/Accts/ HTB/ No-4110   Date : 11 DEC 2018

To,
M/s.Viraj Profile Ltd.,
Unit-V, Survey No. 114,
At. Mahagaon, Boisar(R)
Tal & Dist - Palghar

Sub : Processing of Hon. CGRF order, Kalyan dated 29/08/2018 in respect of M/s. Viraj Profiles Ltd., Unit-V, Survey No. 114, At. Mahagaon, Boisar (R), Dist. Palghar (HT Consumer No. 003019031500)

Ref : 1. EE/CGRF/Kalyan/242 dated 29/08/2018 – Decision of Forum in grievance registered with the Forum vide No. K/E/1426/1677 of 17-18.
2. SE/PLG-S/Tech/Viraj/3784 dated 05-11-2018

Sir,

With reference to the above subject, as per Hon. CGRF order in respect of load reduction of OA CD and enhancement of MSEDCL contract demand with effect from Nov-2016 to Apr-2017 and the refund of excess recovered amount, it is to inform that, the bills are forwarded to CE Commercial, Prakashgad Bandra for obtaining necessary approval. After receiving the same from competent authority, further action will be initiated. copy.

Thanking you in anticipation with and expecting kind co-operation.

Yours Faithfully

(K. H. Nagaonkar)
Superintending Engineer
M.S.E.D.Co.Ltd., Palghar Small Circle

Copy s.w.r.to:-
1. The Director (Commercial), MSEDCL, Prakashgad, Bandra (E), Mumbai.
2. The Regional Director, MSEDCL, Konkan Region, Kalyan.
3. The Chief Engineer (Commercial), MSEDCL, Prakashgad, Bandra (E), Mumbai.
4. The Chief Engineer, MSEDCL, Kalyan Zone, Kalyan.

True Copy
Adv. for Respondent

13.1. It is seen that the subject matter of the said letter states that it is with regard to processing of Hon. CGRF order dated 29.08.2018 in respect of Respondent being the consumer pertaining to load reduction of Open access capacity and enhancement of Contract demand for the relevant period and refund of excess recovery amount. It states that the Respondent's bills are forwarded to its C.E. i.e. Chief Engineer (Commercial) for obtaining necessary approval. There is also an earlier letter dated 05.11.2018 placed on record by Respondent which has been addressed by Petitioner to Respondent. This letter is at page No. 110 of the Petition. By this letter, Petitioner has informed Respondent that with reference to processing of Hon. CGRF's order dated 29.08.2018, there are some technical issues in the billing system to process the bill for the month of October, 2018 and the same will be considered in the next issuing billing cycle of November 2018 bill.

13.2. The above correspondence by the Petitioner itself shows that Petitioner has not only accepted the CGRF's order impugned in the Petition but has also processed the Application and the bills of the Respondent.

14. In view of the above observations and findings, I see no reason to interfere with the observations and findings of the learned CGRF. It needs to be mentioned that Respondent had initially approached the IGRC with its grievance. IGRC passed order dated

28.06.2018 against which Respondent being the consumer filed Appeal before the CGRF wherein the impugned order dated 29.08.2018 came to be passed. In view of the specific provision of Regulation 32 and definition of "Grievance" as alluded to herein above, it cannot be held that in the matter of grievance for seeking refund of the excess amount recovered by the distribution licensee from the consumer, the consumer's grievance redressal will lie with the Commission i.e. MERC. No interference is called for with the impugned order passed by CGRF dated 29.08.2018. Order dated 29.08.2018 is sustained and upheld.

15. In view of the above, Writ Petition is dismissed.

[MILIND N. JADHAV, J.]

Ajay