



BEFORE THE ELECTRICITY OMBUDSMAN, HARYANA
Haryana Electricity Regulatory Commission
Bays No. 33 - 36, Sector - 4, Panchkula-134109
Telephone No. 0172-2572299; Website: - herc.nic.in
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(Email)

Appeal No. : 55/2023
Registered on : 09.06.2023
Date of order : 14.08.2023

In the matter of: -

Representation under Section 42 (6) of the Electricity Act, 2003 read with Regulation 3.16 of Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020.

Shri Gopal, Authorised Signatory, M/s ChimiQ (India) Limited, Siwani through counsel
Shri Sunil Kumar Nehra

Appellant

Versus

Dakshin Haryana Bijli Vitran Nigam Limited

Respondent

Before:

Shri Virendra Singh, Electricity Ombudsman

Present on behalf of Appellant:

Shri Sunil Nehra, Advocate
Shri Akshay Gupta, Advocate

Present on behalf of Respondents:

Ms. Sonia Madan, Advocate
Shri Bhup Singh, SDO 'Op' Sub Division, Siwani

ORDER

A. Shri Gopal, Authorised Signatory, M/s ChimiQ (India) Limited, Siwani has filed an appeal through Advocate Shri Sunil Kumar Nehra under Section 42 (6) of the Electricity Act, 2003 read with Regulation 3.16 of Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020. The appellant request for following relief as under: -

1. That Sh. Gopal, M/s ChimiQ (Ind) Ltd. Siwani, a consumer of DHBVN bearing account no. 4163351000 in Sub Division 'OP' Siwani, filed a complaint for redressal of grievance which was registered vide case number DH/CGRF/ 4060/2022 and the same has been dismissed by the

Ld. Forum for Redressal of Consumer Grievances, Gurugram (hereinafter referred to as CGRF) vide impugned order dated 31.01.2023. Impugned order dated 31.01.2023 is illegal, perverse and beyond jurisdiction and is liable to be set aside. Representation is within the prescribed period of limitation. Certified copy of the impugned order has not been received so far by the appellant-complainant from CGRF.

2. That the brief facts of the case are that the complaint was filed before the Ld. CGRF stating therein that appellant-complainant is having a connection with connected load of 903 KW and he had applied for the said connection on 25.07.2014 through independent feeder i.e. Jai Bharat Feeder. He had deposited a sum of Rs. 7,53,000/- on dated 06.08.2014 vide receipt No. B21-23866 dated 06.08.2014 as Service Connection Charge. But later on, he was told that required material is not available with the Nigam at that point of time and the complainant was asked to get his work done through authorized contractor. Therefore, appellant-complainant executed the work under Self Execution Scheme through the authorized contractor and paid the total expenditure to the contractor. Therefore, by filing the complaint before the Ld. CGRF sought for refund of Service Connection Charge along with interest from the date of deposit of service connection charge i.e. 06.08.2014.
3. That the Ld. CGRF vide its order dated 31.01.2023 vide direction no. 1 has directed the appellant-complainant that – “as per Sales Circular No. D-12/2020 clause no. 4.8.1 the Service Connection Charge/cost of the distribution system to be carried out by the DHBVN for release of new connection/extension of load calculated in accordance with these regulations shall be payable by the applicant. The S/Divn is at liberty to take action as per latest instructions of the DHBVN, if any, in this regard.” As can be seen from the direction that Ld. CGRF has not applied its judicial mind while passing the impugned order and the directions are without any legal sanctity. Perusal of Sales Circular No. D-12/2020 reveals that it pertains the 1st amendment of HERC Regulations No. HERC/34/2016 dated 11.07.2016 i.e. HERC Duty to Supply Electricity on Request and Power to Recover Expenditure and Power to Recover Security Regulations, 2016. Sales Circular D-12/2020 contains the 1st amendment to the abovesaid regulation which is applicable w.e.f. the date of publication in official Gazette of Haryana i.e. March 19,2020. Therefore,

Ld. CGRF cannot apply these regulations retrospectively as has been held by the CGRF acting in contravention of these regulations. Further, it is also relevant to mention here that 1st Amendment to above said regulation a proviso to Regulation 4.8.1 has been added which reads as “3) The following additional provision is inserted after Regulation 4.8.1. Provided further, that in case of supply through independent feeder existing or new for release of new load as well extension of load/contract demand, the service connection charges shall be payable”. Service Connection Charge has been recovered from the appellant-complainant on 06.08.2014 and not subsequent to amendment dated 19.03.2020. It shows that Ld. CGRF has not paid any heed to HERC Regulation 1st amendment dated 19.03.2020 and Sales Circular D-12.2020 dated 25.06.2020 while passing the impugned order. Thus Ld. CGRF has not only applied its judicial mind but has exceeded its jurisdiction while passing such directions in the impugned order, which are uncalled for.

4. That it is also pertinent to mention here that work was not executed by DHBVN as material was not available with them and appellant-complainant was asked to carry out the work through licensed contractor and thus work was executive under Self Execution Scheme and Supervision Charge @ 1.5% of estimated cost was only required to be charged from the appellant-complainant. Estimated Cost for the work is Rs. 7,71,000/- and therefore Supervision charge @ 1.5 of the estimated cost would be Rs. 11,565/-. But Service Connection Charge recovered from the appellant-complainant vide Receipt No. B21-23866 dated 06.08.2014 is in violation of HERC Regulations. Thus, licensee in terms of Regulation 3.10 of cannot charge Service Connection Charge in case of self-execution and thus licensee is required to refund the Service Connection Charge i.e. Rs. 7,53,000/- along with 18% interest. Regulation 3.10 is reproduced here for ready reference – “3.10 Self Execution of work by the applicant - The applicant can get the work of extension of distribution system carried out on his own. In that case he shall get the same carried out through a Licensed Electrical Contractor and pay supervision charges to the licensee. In such case the consumer himself shall procure the material and equipment. The material and equipment procured shall conform to relevant BIS specifications or its international equivalent and should bear the ISI mark or its successor mark as provided

by BIS, wherever applicable. The material procured and the design of the installation shall also conform to the standards and specifications of the distribution/transmission licensee.

Provided that if the applicant chooses to get the work done on his own, the licensee shall charge supervision charges at the rate of 1.5% of the estimated cost of such works as are to be finally handed over to the distribution/transmission licensee or as approved by the Commission.

Provided further that if the applicant chooses to get the work done on his own and in case the service connection charges are more than the actual cost of such works which are to be finally handed over to the licensee, the difference of the service connection charges and the actual cost would also be paid by the applicant.”. Here in this case Service Connection Charge i.e. Rs. 7,53,000/- is less than the estimated cost i.e. Rs. 7,71,000/-, therefore entire amount of the Service Connection Charge is liable to be refunded. Copy of the sales circular D-12/2020.

5. That Regulation 2.47 of Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 requires the Ld. CGRF to pass a reasoned order in complaint. But Ld. CGRF has failed to adhere to the rule of law while passing the impugned order dated 31.01.2023 and has acted in violation of Regulation 2.47 mentioned above. Ld. CGRF while issuing the direction no.1 has and direction no.2, Ld. has acted in contravention of the HERC Regulation 2.47. CGRF has directed that – Advocate Akshay Gupta is also directed to present only those cases before the CGRF whose date of cause of action is made within 2 years. It is pertinent to mention here that the Ld. CGRF while passing these directions has not applied its judicial mind and has erred in law. Hon'ble HERC vide its notification dated 11.07.2016 has notified the regulations namely "The Haryana Electricity Regulatory Commission (Duty to supply electricity on request, Power to recover expenditure incurred in providing supply and Power to require security) Regulations, 2016 which are applicable from the date of publication in the Official Gazette of Haryana i.e. 11.07.2016" DHBVN Sales Circular No. D-12/2020 dated 25.06.2020 provides that 1st amendment to 2016 Regulations shall be applicable w.e.f. 19.03.2020 i.e. date of publication in the official gazette of Haryana. Thus Ld. CGRF has failed to appreciate the applicability of the regulation

in right perspective and failed to exercised its jurisdiction in accordance with law.

6. That it is pertinent to mention here that cause of action is to be reckoned from the date of knowledge. It is also pertinent to mention here that Electricity Act, 2003 is a complete code in itself and proceedings before the Ld. CGRF is not governed by Limitation Act, 1963. Section 56(2) of Electricity Act 2003 prescribe a period of limitation of two years with regard to recovery to be made from consumer. A conjoint reading of 56(2) and 62(6) of the Electricity Act, 2003 does not leave even an iota of doubt with regard to limitation. There is no limitation period for recovery of excess amount along with interest by consumer as any amount retained/collected by the licensee in excess of what is recoverable under law would fall in the category of misappropriation or criminal breach of trust. Therefore, Parliament in its wisdom has not prescribed any period of limitation with regard to refund of excess amount collected by licensee. Thus, there is no period of limitation with regard to refund of price or charge exceeding the tariff determined under Section 62 of the Electricity Act, 2003 and the excess amount collected by the licensee is recoverable by the person who has paid such price or charge along with interest equivalent to bank rate without prejudice to any other liability incurred by the licensee. Thus, in view of Section 62(6) of the Electricity Act, 2003, liability of the licensee is not merely restricted to the refund of excess amount along with interest but is also liable to other liability under laws. For instance, licensee is liable to be prosecuted under Section 142 and 146 of Electricity Act, 2003 as well as under Section 166 of Indian Penal Code, having acted in violation of law i.e. Section 62(6) of the Electricity Act, 2003.

7. That the issue with regard to limitation is no more res-integra and limitation act is not applicable to the proceeding under Electricity Act, 2003 except for the adjudicatory function of the State Electricity Commission under Section 86(1)(f). This issue has been settled by Hon'ble Apex Court in AP Power Coordination Committee Vs Lanco Kondapalli Power Limited & Ors (2016) 3 SCC 468 and it has been reiterated by APTEL in Appeal No. 329 of 2019 decided on 14.07.2021 in Para 89 which is reproduced here for ready reference. – “Para 89. Pertaining to the second issue of the claim being barred by limitation, the impugned order at Para

4.10 & 4.11 says as under: “4.10. With regard to the second issue raised by UPCL regarding the Petition being time barred under the Limitation Act, the Petitioner has relied upon the judgment of the Hon’ble Supreme Court (Supra) [i.e. AP Power Coordination Committee v. Lanco Kondapalli Power Limited & Ors. (2016) 3 SCC 468] stating that limitation is not applicable to the proceedings under the Electricity Act, 2003 except for the adjudicatory functions of the Commission under section 86(1)(f) and that the present proceedings are not under section 86(1)(f). In this regard it is relevant to quote the said judgment of the Hon’ble Court, “(i) A plain reading of this section leads to a conclusion that unless the provisions of the Electricity Act are in conflict with any other law when this Act will have overriding effect as per Section 174, the provisions of the Electricity Act will be additional provisions without adversely affecting or subtracting anything from any other law which may be in force (ii) In our considered view a statutory authority like the Commission is also required to determine or decide a claim or dispute either by itself or by referring it to arbitration only in accordance with law and thus Section 174 and 175 of the Electricity Act assume relevance. Since no separate limitation has been prescribed for exercise of power under Section 86(1)(f) nor this adjudicatory power of the Commission has been enlarged to entertain even the time barred claims, there is no conflict between the provisions of the Electricity Act and the Limitation Act to attract the provisions of Section 174 of the Electricity Act. In such a situation, on account of the provisions in Section 175 of the Electricity Act or even otherwise, the power of adjudication and determination or even the power of deciding whether a case requires reference to arbitration must be exercised in a fair manner and in accordance with law. In the absence of any provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law of limitation, or taking away a right of the other side to take a lawful defense or limitation, we are persuaded to hold that in the light nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation. (iii) In this context, it would be fair to infer that the special adjudicatory role envisaged under Section 86 (1)(f) also appears to be for speedy resolution so that a vital developmental factor – electricity and its supply is not adversely affected by delay in

adjudication of even ordinary civil disputes by the civil court. Evidently, in the absence of any reason or justification the legislature did not contemplate to enable a creditor who has allowed the period of limitation to set in, to recover such delayed claims through the Commission. Hence, we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court. But in an appropriate case, a specified period may be excluded on account of the principle underlying the salutary provisions like Section 5 or Section 14 of the Limitation Act. We must hasten to add here that such limitation upon the Commission on account of this decision would be only in respect of its judicial power under clause (f) of sub-section (1) of Section 86 of the Electricity Act, 2003 and not in respect of its other powers or functions which may be administrative or regulatory.”

“4.11. From the above judgment of the Hon’ble Court it is clear that the limitation bar only applies to the proceedings initiated under section 86(1)(f) of the Act invoking only judicial powers of the Commission. Since, the instant matter propels to invoke the regulatory powers of the Commission and is not an adjudication matter under section 86(1)(f), therefore, the question of applicability of Limitation Act does not arise.”

8. That no person including the licensee under law can collect even a single paisa in excess of what it is entitled to recover under Section 62(6) of the Electricity Act, 2003. Every officer while calculating the Service Connection Charge for extension of load is required to make proper calculation and recover only that amount which is recoverable under law and not anything beyond that. Every officer/official while discharging his duty is required to discharge his duty with due diligence and is expected to exercise proper care and caution. Legal maxim “Ignorantia Juris Non Excusat” provides that ignorance of law is not an excuse, this maxim has been given statutory recognition under Section 76 and 79 of Indian Penal Code, 1860. Besides this, if officer responsible fails to abide by Section 62(6) of the Electricity Act, 2003 also render him liable to rigor of disciplinary action and it amounts to grave misconduct on the part of the respondent SDO. Therefore, necessary action ought to have been taken against the SDO rather than passing the impugned order in above terms.

9. That under Regulation 2.27 Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 even those grievances which are frivolous, vexatious, malafide or without any sufficient cause are also to be rejected by a speaking order. Ld. CGRF in direction no.2 directing the Advocate Akshay Gupta to present only those cases before the CGRF whose date of cause of action is made within 2 is years beyond its jurisdiction. By doing so, Ld. CGRF has infringed the fundamental right under Part-3 of the Constitution of India as well as statutory rights as an Advocate under Advocates Act, 1961. Therefore, direction no.2 is wholly uncalled for, patently illegal and beyond the jurisdiction of CGRF. Ld. CGRF while exercising its power under Section 42 of the Electricity Act, 2003 cannot usurp the power of Constitutional Courts and Bar Council of India. Therefore, Ld. CGRF may be directed to act in accordance with law while discharging its duty.
10. That it is also pertinent to mention here that CGRF Gurugram vide its order dated 14.10.2022 in the case no. DH/CGRF-4312/2022 titled as M/s Frigoglass India Pvt. Ltd Vs XEN (OP) Manesar Division, Gurugram and Another has already directed for refund of Service Connection Charge recovered in the Year 2002 and 2007. Similarly, in case of M/s Sheoran Stone Crusher vide order dated 27.06.2016 and M/s Bhagwati Stone Crusher vide order dated 26.08.2016 has also refunded the Service Connection Charge but acted differently in discriminately and arbitrary manner in the present case. It is strange that Ld. CGRF on one hand is directing the refund of SCC pertaining to year 2002/2007 and on the other hand by virtue of the impugned order, Ld. CGRF is issuing the direction restraining the Advocate Akshay Gupta for instituting the case in the CGRF. Ld. CGRF is required to pass reasoned order while discharging its duty. Perusal of the impugned order and order dated 14.10.2022 raise a question in the mind of a prudent person as to why such direction was passed against Advocate Akshay Gupta.
11. That the Hon'ble Supreme Court of India in Civil Appeal No. 4555 of 2021 titled as Neeraj Garg Vs Sarita Rani decided on 02.08.2021 after referring to catena of judgments with regard to expunging the adverse remarks in para 17 and 18 observed as - "17. The tenor of the remarks recorded against the appellant will not only demean him amongst his professional colleagues but may also adversely impact his professional career. If the

comments remain unexpunged in the court judgments, it will be a cross that the Appellant will have to bear, all his life. To allow him to suffer thus, would in our view be prejudicial and unjust. 18. In view of the forgoing, we are of the considered opinion that the offending remarks recorded by the learned judge against the appellant should not have been recorded in the manner it was done. The appellant whose professional conduct was questioned, was not provided any opportunity to explain his conduct or defend himself. The comments were also unnecessary for the decision of the Court. It is accordingly held that the offending remarks should be recalled to avoid any future harm to the appellant's reputation or his work as a member of the Bar. We therefore order expunction of the extracted remarks in paragraphs 4,5,6, and 7 of this judgement. The appeals are accordingly disposed of with this order." Thus, in view of the law laid down by the Hon'ble Apex Court, direction no.2 passed by the Ld. CGRF is patently illegal, unjustified, without any reason and opportunity of hearing and is liable to be expunged from the order dated 31.01.2023.

12. That after direction no.2, Ld. CGRF has observed as "However, complainant is at liberty to file the appeal before any other court or with electricity OMBUDSMAN, HERC, Sector-4, Panchkula if he is not satisfied with the decision of the CGRF". This observation shows that the Ld. CGRF has passed this order being oblivious of the power of CGRF under Section 42(6) of the Electricity Act, 2003. Under Section 42 of the Electricity Act, 2003 no appeal is provided. Appeal is always a creature of statute. Section 42 only entitle the complainant to make representation to the Hon'ble Electricity Ombudsman and no such right is conferred upon licensee. In absence of right of appeal, no appeal can be preferred under Section 42. Further CGRF cannot confer right of appeal on complainant to approach any Court. It appears the Ld. CGRF is acting oblivious of statutory provisions and the law laid down by the Hon'ble Apex Court which is binding on the courts and authorities in India under Article 141 of the Constitution of India, the provision under Section 42 as well as Haryana Electricity Regulatory Commission (Forum and Ombudsman) Regulations, 2020 and in particular, regulation 2.27 of these Regulations.

Prayer

In view of the foregoing, it is most humbly prayed that:

- (i) The present representation may kindly be allowed and impugned order dated 31.01.2023 passed by the Ld. CGRF may be set aside and the complaint be accepted and directing the respondent to refund the Service Connection Charge i.e. Rs. 7,53,000/- along with 18% interest per annum w.e.f. 06.08.2014;
- (ii) it is further prayed that direction no.2 qua Advocate Akshay Gupta may be expunged from the impugned order dated 31.01.2023
- (iii) it is further prayed that the impugned order dated 31.01.2023 may be removed from the website as the remarks in direction no.2 are derogatory and prejudicial to the interest of Advocate Akshay Gupta and adversely affects him in discharge of his professional duty.
- (iv) it is further prayed that Ld. CGRF may be directed to act in accordance with law while discharging its duty in future.

B. The appeal was registered on 09.06.2023 as an appeal No. 55/2023 and accordingly, notice of motion to the Appellant and the Respondents was issued for hearing the matter on 04.07.2023.

C. Hearing was held on 04.07.2023, as scheduled. Both the parties were present during the hearing through video conferencing. At the outset, the counsel for the respondent sought time to file response in the matter. Acceding to her request, the matter was adjourned to 27.07.2023.

D. The respondent SDO vide email dated 21.07.2023 has submitted reply which is as under: -

1. The present reply is being filed through sub divisional officer (hereinafter referred to as 'DHBVN') (Respondent No. 2&3), who is competent to file the present reply as well as fully conversant with the facts and circumstances of the case on the basis of knowledge derived from the record. All submissions are made in the alternative and without prejudice to each other. Nothing submitted herein shall be deemed to be admitted unless the same has been admitted thereto specifically.
2. By way of present representation, the Petitioner/Complainant has sought to set aside the impugned order dated 31.01.2023 vide which Ld. CGRF had categorically observed and directed the Petitioner/Complainants under –

"Proceedings were held on 31.01.2023, Ld. Advocate Akshay Gupta was present on behalf of the complainant and the SDO was present on telephone. The SDO argued that since the complaint/representation is made within 2 years from the date of cause of action then only Corporate Level CGRF has the jurisdiction to hear the case. Advocate Akshay Gupta argued that the merit of the case is that his connection was released in 2013 and ACD as well as Service Connection Charges were deposited by the complainant.

After going through the records available on file and arguments of both the parties the Forum decided to dispose of the case with the following directions to the respondent:

- 1) As per Sales Circular No. D-12/2020 clause No. 4.8.1 the Service Connection Charges/cost of distribution system to be carried out by the DHBVN for release of new connection/extension of load calculated in accordance with these regulations shall be payable by the applicant. The S/Div. is at liberty to take action as per latest instructions of the DHBVN, if any, in this regard.
- 2) Advocate Akshay Gupta is also directed to present only those cases before the CGRF whose date of cause of action is made within 2 years. The case is closed. No cost on either side.

However, complainant is at liberty to file the appeal before any other court or with electricity OMBUDSMAN, HERC, Sector-4, Panchkula if he is not satisfied with the decision of the CGRF.

As required under Haryana State Electricity Regulatory Commission (Forum and Ombudsman) Regulations-2020, the implementation of this decision may be intimated to this office within 30 days from the date of its receipt.

3. The Petitioner/Complainant has also sought a refund of the Service Connection Charge amounting to Rs. 7,53,000/- along with 18% interest per annum w.e.f 06.08.2014. In addition to this, Petitioner/Complainant has also prayed that direction no.2 qua Advocate Akshay Gupta should be expunged from the impugned Order dated 31.01.2023. In this respect, it has been further prayed by the Petitioner/Complainant that the impugned Order dated 31.01.2023 should be removed from the website since the remarks in direction no.2 are derogatory and prejudicial to the interest of Advocate Akshay Gupta and adversely affects him in the

discharge of his professional duty. In this regard, the Petitioner/Complainant has raised the following contentions-

- i. Petitioner-Complainant was asked to carry out the work through a licensed contractor and thus, work was executed under Self Execution Scheme, and Supervision Charge @ 1.5 of the estimated cost was only required to be charged. The estimated cost for the works was Rs. 7,71,000/- and therefore, the Supervision charge @ 1.5 of the estimated cost amounted to Rs. 11,565/-. However, Service Connection Charge was recovered from the Petitioner-Complainant amounting to Rs. 7,53,000/-. The Licensee in terms of Regulation 3.10 cannot charge a Service Connection Charge in case of self-execution.
- ii. Sales Circular No. D-12/2020 dated 25.06.2020 contains the 1st amendment of HERC Regulations No. HERC/34/2016 dated 11.07.2016 i.e., HERC Duty to Supply Electricity on Request and Power to Recover Expenditure and Power to Recover Security Regulations, 2016. A proviso to Regulation 4.8.1 was added to the 1st amendment regulations surcharging of Service Charges and was made applicable w.e.f 19.03.2022. However, the Service Connection Charge was recovered from the Petitioner/Complainant on 06.08.2014. Therefore, Ld. CGRF should not have applied the aforesaid regulations retrospectively.
- iii. Limitation Act, 1963 is not applicable to the proceedings under Electricity Act, 2003 except for the adjudicatory function under Section 86(1)(f).
- iv. There is no limitation period for recovery of excess amount along with interest by the consumer as any amount retained/collected by the licensee in excess of what is recoverable under the law would fall in the category of misappropriation or criminal breach of trust. The cause of action is to be reckoned from the date of knowledge. CGRF is not governed by Limitation Act, 1963.
- v. In view of Section 62(6) of the Electricity Act, 2003 the liability of the licensee is not merely restricted to the refund of excess amount along with interest but is also liable to other liabilities under the laws.

- vi. Ld. CGRF Gurugram in the matters titled M/s Frigoglass India Pvt Ltd v XEN (OP) Manesar Division, Gurugram and Another vide its Order dated 14.10.2022; M/s Sheoran Stone Crusher vide order dated 27.06.2016 and M/s Bhagwati Stone Crusher vide order dated 26.08.2016 had refunded the Service Connection Charge.
4. Before adverting to the foregoing issues on merits, the Respondent sets out hereunder objection as regards the tenability of instant Representation which goes to the root of the matter –

Preliminary Objections: -

- a. The claim with respect to refund of recovery of Service Connection Charges is time-barred-
1. With respect to contentions of the Petitioner/Complainant qua non-applicability of Limitation Act, 1963 on the Electricity Act, 2003, it is humbly submitted that the recovery claim preferred by the Petitioner/Complainant is time-barred in view of the fact that the complaint could be filed before the CGRF only in those cases whose date of cause of action is made within 2 years as per the HERC Regulations in vogue.
 2. As per section 42(6) of the Electricity Act, 2003, a forum is established for the redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission, and accordingly, Forum and Ombudsman Regulations have been notified by HERC. As per Regulation No. 2.24 (c) of the said regulations, it is provided specifically that the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen or submitted to Corporate Forum after two months from the date of receipt of the orders of Zonal or Circle Forum.
 3. In the present matter, the claim of the Petitioner/Complainant qua refund of recovered service connection charges is with respect to the year 2014, and the complaint for redressal of grievance was filed before CGRF in the year 2022, which is after the lapse of about 8 years. It is pertinent here to place on record the demand notice

of the Respondent dated 25.07.2014 wherein the Respondent while categorically referring to the applicable instructions, demanded service connection charges as well as cost of work from the Petitioner. Thereafter, the Petitioner deposited the said amount without any protest and demur. What to talk of any protest or demur, in terms of the letter dated 25.07.2014, the Petitioner submitted a specific acceptance of the conditions mentioned in the letter vide separate forms. All this is sufficing to hold that the payment of service connection charges was never disputed within the limitation period.

4. The Petitioner/Complainant while relying upon the judgment of the Hon'ble Supreme Court titled '*AP Power Coordination Committee v LancoKondapalli Power Limited &Ors (2016) 3 SCC 468*' has contended that the limitation is not applicable to the proceedings under the Electricity Act, 2003 except for the adjudicatory functions of the Commission under Section 86(1)(f) and the present proceedings are not under section 86(1)(f). In this respect, it is submitted that the limitation act is squarely applicable to the proceedings before Ld. CGRF and Hon'ble Ombudsman. State Electricity Regulatory Commissions (SERCs) have notified regulations for the redressal of consumer grievances. The States have institutionalized the mechanisms of grievance redressal, such as the Consumer Grievance Redressal Forum (CGRF) and the Ombudsman. The proceedings before Ld. CGRF is meant to be the forum of the first instance for adjudication of all grievances in accordance with the guidelines specified by the State Commission. Reliance in this regard is placed upon the *Order of the Hon'ble Ombudsman bearing Appeal No. 39 of 2023* wherein it was held that the CGRF has the inherent power to hear the case wherein the cause of action is within 2 years of the date of filing. The relevant excerpts of the said Order are reproduced herein under for ready reference-

"G. In this regard, it is further observed that as per section 42(6) of the Electricity Act, 2003, corporate forum is established for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission, and

accordingly, Forum and Ombudsman Regulations has been notified by HERC. As per regulation no. 2.24 (c) of the said regulations, it is provided specifically that the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen or submitted to Corporate Forum after two months from the date of receipt of the orders of Zonal or Circle Forum. "

(Emphasis Supplied)

5. In view of the above, the reliance is also placed upon the judgment of the Hon'ble Bombay High Court in the matter of Maharashtra State Electricity Distribution (Company Limited – (MSEDCL) v M/s. RSR Mohota Spinning & Weaving Mills Limited CIVIL WRIT PETITION NO.7900 OF 2017 (decided on 08.06.2021) wherein the grievance was raised by the Respondent before IGR-Cell regarding its liability to pay the voltage surcharge. However, the said grievance of the Respondent was rejected by the IGR-Cell. Being aggrieved by the same, the Respondent approached the Consumer Grievance Redressal Forum under Section 42(5) of the Electricity Act, 2003. The Ld. CGRF dismissed the challenge on the ground of limitation as the Respondent had not approached before the expiry of 2 years, from the cause of action. The said order of the Ld. CGRF was challenged by the Respondent and approached the Hon'ble Electricity Ombudsman under Section 42(6) of the Electricity Act, 2003. The Hon'ble Electricity Ombudsman while setting aside the Order of the Ld. CGRF held that the application was well within the time. The Appellant filed the Writ Petition before the Hon'ble Bombay High Court challenging the decision of the Electricity Ombudsman. The Hon'ble Bombay High Court categorically held that the consumer would be liable to approach the Consumer Grievance Redressal Forum within two years from the date of cause of action, and not within the undefined period of time. The relevant excerpts of the said order are reproduced herein under for ready reference-

"16.11. In the Judgment in Appeal No.197/2009, Maharashtra State Electricity Distribution Company Ltd. Vs. Maharashtra State Electricity Regulatory Commission, relied upon by learned Counsel Mr. Shridhar Purohit, the finding that the Electricity Act is a complete Code in itself and the provisions of the Limitation Act, 1963 are not applicable to proceedings under it, cannot be disputed. It also holds that when the Regulations as framed under the Electricity Act, themselves provide for a limitation, then such a limitation would clearly be mandatory and will have to be adhered to. The finding in para 21 thereof that there is no bar with regard to limitation in the Electricity Act, clearly appears to have been rendered, in ignorance of the provisions of the Regulations, 2006 and specifically Regulation 6.6., whereby the limitation of 2 years has been prescribed, as can be seen from para 10 thereof and thus cannot be said to be a good law.

17. To sum up, our answers to the questions as framed and referred are as under: -

i. When is the limitation to approach the Consumer Grievance Redressal Forum (CGRF) triggered?

The limitation to approach the Consumer Grievance Redressal Forum (CGRF) shall be triggered on the inadequate action or inaction of the IGR-Cell, as to the grievance referred to it by the Consumer, under Regulation 6.1 of the Regulations, 2006.

ii. Whether in the absence of limitation to approach the Internal Grievance Redressal Cell (IGR Cell), whether a consumer would be justified in approaching the IGR Cell within a reasonable period?

Consumer would be liable to approach the IGR-Cell within two years from the date of the cause of action, and not within an undefined period of time."

(Emphasis Supplied)

6. It has been further contended by the Petitioner/Complainant that Section 56(2) of the Electricity Act, 2003 prescribes a period of limitation of 2 years with regard to recovery to be made from the consumer. A conjoint reading of 56(2) and 62(6) of the Electricity Act, 2003 does not leave even an iota of doubt with regard to

limitation. In this respect, it is a well-settled law that the Limitation Act, 1963 is squarely applicable to the proceedings under the Electricity Act, 2003. In this respect, it is pertinent to mention the judgment of the Hon'ble Delhi High Court titled North Delhi Power Ltd. vs. Indian Hydraulic Industries (P) Ltd. MANU/DE/3116/2012, wherein it was held as under: -

“12. It is also relevant to note that the cause of action for filing a claim of recovery against the petitioner/NDPL had accrued in favour of respondent No. 1/Consumer way back in the year 1993. Even if, the period of three years is reckoned from the year 1999, i.e., the year when the connection was apparently converted from LIP to SIP, it would have taken the respondent No. 1/Consumer up to the year 2002 and not beyond that. Respondent No. 1, however, approached the MRTP Commission after a period of six years therefrom, i.e., in the year 2008 and it approached the CGRF after a period of seven years therefrom, i.e., in the year 2009. While the complaint of the respondent No. 1/Consumer filed before the MRTP Commission was rejected with liberty granted to it to approach the appropriate forum under the Electricity Act, it is a matter of record that respondent No. 1 approached the CGRF only in the year 2009, after about six months after the order of the MRTP Commission was passed. Even in the complaint filed before the CGRF, respondent No. 1 had again claimed that the period of limitation stood extended in its favour by predicating its case on the letter dated 21.07.2005 addressed by the petitioner to it.

13. The fact remains that for the purpose of calculating limitation, only the complaint filed by the respondent No. 1/Consumer is required to be examined and a perusal of the application filed by it before the CGRF reveals that the respondent No. 1 had itself acknowledged in paras 27 and 30 thereof that the petitioner/NDPL had converted the connection from LIP to SIP in March, 1999 and it had installed a new meter on the basis of completion of commercial formalities, that had taken place long ago. In such circumstances, the complaint of respondent No. 1/Consumer was not maintainable before the CGRF, the same being hopelessly barred by limitation.” (Emphasis supplied)

In view of the foregoing submissions and decisions of the Authorities, Direction no. 2 passed by the Ld. CGRF to Advocate Akshay Gupta regarding presenting only those cases whose date of cause of action is within 2 years is absolutely valid and just. The said directions are in consonance with the prevailing legal position as settled by the various Courts and therefore, such directions are in no manner prejudicial to the interest of Advocate Akshay Gupta. Thus, it is not wrong to suggest that the Petitioner/Complainant cannot invoke the provisions of the Electricity Act, 2003 to raise a stale and time-barred money claim. Thus, the claim of the Petitioner is liable to be rejected on this short score alone.

b. The issues raised by the Petitioner are no longer res-integra and the demand for service connection charges is in accordance with the order and regulations of the Hon'ble Commission and the Sales Circular of the Respondent -

1. At the outset, it is submitted that the facts qua the release of the connection of the Petitioner have not been projected in entirety. Petitioner/Complainant is a consumer of DHBVN having Account no. 4163351000 in Sub Division 'OP' Siwani. The Petitioner Company i.e. M/s Chimique (India) Ltd. is a division of Jai Bharat Gum Chemicals Ltd. located in Siwani, District Bhiwani. Jai Bharat Gum Chemicals Ltd. was an industrial consumer of DHBVN who had been connected to an independent feeder. Jai Bharat Gum Chemicals Ltd. has other manufacturing units in Bhiwani including the Petitioner.

2. The Petitioner applied for a new electric connection from the independent feeder of M/s Jai Bharat Gum and Chemicals Ltd. in the year 2014. The connection was sought from a contract demand of 985 KVA. The length of the HT line required to give connection was 870 mtr. The Petitioner had a nearby Kikral feeder at about a distance of 200mtr. However, it was requested that the connection may be given from an independent feeder of its group company M/s Jai Bharat Gum and Chemicals Ltd. A chart of the independent feeder through which connection was given is appended. The Petitioner had demanded an industrial connection from an urban feeder. Accordingly, the connection was to be allowed from a farther urban feeder for which a long length of HT line had to be installed.

3. It is pertinent here to mention that the Sales Circular No. D-21/2005 dated 18.10.2005 duly clarified that if the connection is to be released from the urban feeder requiring the installation of line, the consumer shall bear both the deposit cost/ cost of work as well as Service Connection Charges. The relevant condition of sales circular no. D- 21/2005, reads as under

"The industrial connection are to be released from nearby feeder, it may be urban or rural feeder. However, in case the industrial consumer makes request to release his connection from the urban feeder instead of nearby rural feeder, then the applicant would be asked to deposit the full cost against deposit amounts as well as service connection charges as applicable."

4. It is further pertinent to mention that the said condition was duly upheld by the Hon'ble Haryana Electricity Regulatory Commission in Order dated 29.05.2019 in HERC/PRO-78 of 2017. In the said matter, the refund was sought for service connection charges contending that the Respondent can recover either Service connection Charges or the cost of the Deposit Estimate. The Hon'ble Commission after considering all facts held that the Respondent has levied the service connection charges rightly in line with provisions of sale circular No. D-21/2005.
5. In view of the foregoing, the service connection charges were rightly levied on the Petitioner. The fact of the matter is that valid levy of such charges was duly informed to the Petitioner and it is for this reason that no protest was made by the Petition with respect to the same.
6. It is also imperative to highlight the Order dated 06.06.2023 bearing Appeal No. 39/2023/E. O of the Hon'ble Electricity Ombudsman Haryana wherein similar issues as in the instant representation with respect to levy of Service Connection Charges were raised and adjudicated as under-

".....

H. On the basis of aforesaid facts and circumstances and as per regulations in vogue, CGRF has the inherent power to hear the case wherein cause of action is within 2 years of date of filling. However, the remarks that is "Advocate Akshay Gupta is also directed to

present only those cases before the CGRF whose date of cause of action is made within 2 years” is beyond jurisdiction of the CGRF and the same are hereby expunged. Even otherwise since the conductor of 11 KV Jai Bharat feeder was augmented for release of extension of load of M/s Tikku Ram Gum and Chemicals Pvt. Ltd., the service connection charges are rightly recoverable from the appellant. Accordingly, the request of the applicant being devoid of merit is hereby dismissed as above.

(Emphasis Supplied)

In the light of the foregoing submissions, the contentions of the Petitioner/Complainant with respect to the levy of Service Connection Charges should be rejected at the threshold and the Order dated 31.01.2023 of the Ld. CGRF should be upheld.

PARA WISE REPLY

1. That the contents of this para no. 1 insofar as the same refers to the details of Petitioner Company are a matter of record. It is however, denied that the impugned order is illegal, perverse, or beyond jurisdiction. The contentions of the Petitioner in this regard are baseless and bereft of any merit.
2. That the contents of this para no.2 insofar it relates to the complaint filed by the Petitioner before the Ld. CGRF are a matter of record. However, the remaining contents of this para as projected are wrong, incorrect, and denied. It is humbly submitted that facts qua the release of the connection of the Petitioner have not been projected in entirety. The Petitioner requested the connection from an independent feeder of its group company M/s Jai Bharat Gum and Chemicals, even though here was a nearby Kikral feeder at about a distance of 200mtr.However, at the request of the Petitioner, the connection was allowed from a farther urban feeder for which a long length of HT line had to be installed. Suffice to say, in terms of the provisions of the Sales Circular No. D-21/2005 dated 18.10.2005 which duly clarified that if the connection is to be released from the urban feeder requiring the installation of line, the consumer shall bear both the deposit cost/ cost of work as well as Service Connection Charges. The detailed submissions in this regard have already been elaborated hereinabove in the Preliminary Objections, the contents of

which may kindly be read as part and parcel to the reply to the instant para, and the same is not being repeated here for the sake of brevity.

3. That the contents of para no. 3 insofar it relates to the direction no.1 as directed by the Ld. CGRF are a matter of record. However, the remaining contents of this para as projected are wrong, incorrect, and denied. It is submitted that the Ld. Commission after considering all facts held that the Respondent has levied the service connection charges rightly in line with provisions of sale circular No. D-21/2005. The detailed submissions in this regard have already been elaborated hereinabove in the preliminary objections, the contents of which may kindly be read as part and parcel to the reply to the instant para, and the same is not being repeated here for the sake of brevity.

4-5 The contents of the paras no. 4 & 5 as projected are wrong, incorrect, and hence denied. It is submitted that the issues raised by the Petitioner are no longer res-integra and the demand for service connection charges is in accordance with the order and regulations of the Hon'ble Commission and the Sales Circular of the Respondent. In this respect, it is imperative to highlight the letter dated 25.07.2014 (Annexure R-1) vide which the Petitioner submitted a specific acceptance of the conditions mentioned in the letter vide separate forms. The valid levy of such charges was duly informed to the Petitioner to which no protest was ever made by the Petitioner at the contemporaneous point in time. The conduct of the Petitioner in this regard is suffice to establish that the present Petition is a consequence of an afterthought inflicted with malafides.

5-9 The contents of the paras no. 5-9 as projected are wrong, incorrect, and hence denied. It is submitted that the recovery claim preferred by the Petitioner is with respect to the year 2014, and the complaint for redressal of the grievance was filed before CGRF in the year 2022, which is after the lapse of about 8 years. The provisions of the Regulation No. 2.24 (c) of the Forum and Ombudsman Regulations specifically provides that the Forum shall reject the grievance (other than compensation claim) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen or submitted to Corporate Forum after two months from the date of receipt of the orders of Zonal or Circle Forum.

Furthermore, reliance placed upon the judgment titled '*AP Power Coordination Committee v LancoKondapalli Power Limited & Ors (2016) 3 SCC 468*' by the Petitioner is highly misplaced. In this respect, it is submitted that the limitation act is squarely applicable to the proceedings before Ld. CGRF and Hon'ble Ombudsman. It is a well-trite law that the Ld. CGRF has the inherent power to hear the case wherein the cause of action is within 2 years of the date of filing. Needless to say, direction no. 2 passed by the Ld. CGRF to Advocate Akshay Gupta regarding presenting only those cases whose date of cause of action is within 2 years is absolutely valid and just. The said directions are in consonance with the prevailing legal position as settled by the various Courts and therefore, such directions are in no manner prejudicial to the interest of Advocate Akshay Gupta. The detailed submissions in this regard have already been elaborated hereinabove in the preliminary objections, the contents of which may kindly be read as part and parcel to the reply to the instant paras, and the same is not being repeated here for the sake of brevity.

10-11 The contents of this paras no. 10 & 11 as projected are wrong, incorrect, and denied. It is submitted that the reliance placed by the Petitioner on Order dated 14.10.2022 and 02.08.2021 are highly misplaced. The issues involved in the instant matter is distinct from the matters relied upon. In this case, Petitioner had asked for release of connection from farther industrial feeder thereby making the Sales Circular No. D-21/2005 applicable to the instant case whereas in the matters relied upon by the Petitioner, Sales Circular No. D-21/2005 was not applicable. Further, the validity of the Sales Circular No. D-21/2005 dated 18.10.2005 has been duly upheld by the Hon'ble Haryana Electricity Regulatory Commission in Order dated 29.05.2019 in HERC/PRO-78 of 2017. Detailed submissions in this regard have been made above and the same are reiterated as part of instant reply.

12. That the contents of this para no. 12 as projected are wrong, incorrect, and denied. It is submitted that the Petitioner has erroneously averred that the Ld. CGRF has passed the Order dated 31.01.2023 being oblivious of the power of CGRF under Section 42(6) of the Electricity Act, 2003. Section 42 of the Electricity Act, 2003 does not provide the provisions of appeal. Section 42 only entitles the complainant to make representation to the Hon'ble Electricity Ombudsman and no such right is conferred upon licensee. In this respect, it is humbly submitted that the expression

"Representation" used in Section 42(6) of the Electricity Act is *simpliciter* a nomenclature of an "Appeal". The representation is with respect to challenge to the Order of the CGRF. In legal terminology, appeal is the resort to a higher court to review the decision of a lower court, or to a court to review the order of an administrative agency. In varying forms, all legal systems provide for some type of appeal. Further, whenever any representation is being filed before Section 42(6) the same is listed in the form of "Appeal" and an Appeal No. is assigned to such representation. Meaning thereby, if any consumer is aggrieved by non-redressal of their grievances by the Ld. CGRF then such person may make a representation with respect to their grievance before the Hon'ble Ombudsman which is in the nomenclature of an Appeal. It is highly uncalled for on the part of the Petitioner to level remarks on the CGRF merely because he has used the expression 'Appeal' instead of Representation.

13. That the contents of this para no. 13 refer to the authorised signatory of M/s Chimiq (Ind) Ltd. The same are denied for the want of knowledge being a subject matter of verification.

Prayer clause is denied.

E. Hearing was held on 27.07.2023, as scheduled. At the outset, the counsel for the appellant requested for short adjournment as reply received only 3 days back. Acceding to his request, the matter was adjourned to 10.08.2023.

F. The counsel for the appellant vides email dated 08.08.2023 has filed counter affidavit as under:

1. That the deponent is filing counter affidavit to reply dated 21.07.2023 submitted by the respondent.
2. That the contents of abovesaid appeal/representation are reiterated for sake of brevity and may be read as part of this counter-affidavit.
3. That in case of M/S Frigoglass India Private Ltd., Ld.CGRF Gurugram has already ordered refund of Service Connection Charge, as the same was not payable. DHBVN had recovered Rs. 7,50,000/- as the Service Connection Charge in the year 2007 and complaint was filed in the year 2022 regarding refund of illegally recovered Service Connection Charge and Ld. CGRF Gurugram vide its order dated 14.10.2022 directed the respondent DHBVN to refund the service connection charge. It is pertinent to mention here that Sh. Raj Kumar, Ld. Member CGRF was part of the Forum on 14.10.2022 when the order was passed in the case of M/S Frigoglass and the impugned order 31.01.2023 has been passed by the

Ld. CGRF consisting of Ld. Member Sushila Kumari and Sh. Raj Kumar. Complaint by the deponent was instituted on 21.06.2022 and the complaint in case of M/S Frigoglass was instituted on 15.07.2022. Contrary view taken in the impugned order appears to suffer from malafide intention. Ld. Member CGRF, Sh. Raj Kumar cannot deny the fact that he was part of the Forum while passing the order dated 14.10.2022 in the case of M/S Frigoglass and Ld. CGRF comprising Ld. Member, Sh. Raj Kumar cannot pass the impugned order rejecting the claim of the deponent based on identical issue as the same is against the judicial discipline. Illegally recovered Service Connection Charges were required to be refunded as in case of M/S Frigoglass and taking contrary view while passing the impugned order is beyond the comprehension of a prudent person. In the case of Frigoglass, SDO admitted ignorance of law as to applicability of the Circular as retrospectively or prospectively. "Ignorantia juris non excusat" which means ignorance of law is not an excuse. From the perusal of order dated 14.10.2022 it is evident that Ld. CGRF was very clear about application of circular as retrospectively or prospectively. Consequently Ld. CGRF consisting of Sh. Raj Kumar as Member and Sh. Sanjeev Chopra as Chairperson vide order dated 14.10.2022 directed for refund of Service Connection Charge recovered in 2007. Therefore, while passing the impugned order dated 31.01.2023 there cannot be any discrimination and arbitrariness and impugned order has been passed with malafide intention. Similarly, in Suresh Kumar C/o Sheoran Stone Crusher (Complaint No. DH/CGRF/1378 of 2016, Decided on 27.06.2016) service connection charge deposited by consumer on 08.01.2019 was adjusted in bill vide SC&AR 271/48 dated 24.06.2016 (Annexure P-4).

4. That sales circulars are the instructions issued by the DHBVN for its internal purpose and cannot be in contravention of statutory provisions. Power to recover expenditure is governed by Electricity Act, 2003 and HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to Require Security Regulations, 2005. Sales Circular No. D-21/2005 is in contravention of the above said Act & Regulations and Licensee cannot compel the consumer to bear both i.e. Service Connection Charge and Cost of Work under Self Execution Scheme and Sales Circular No. D-21/2005 has been issued by the Licensee without application of mind and has acted in

contravention of Section 46 of Electricity Act, 2003 and Regulation 4.3 of HERC Duty to Supply Electricity on Request, Power to Recover Expenditure incurred in providing Supply and Power to Require Security Regulations, 2005 which is as: 4.3 Subject to the provisions of the Act and these regulations and subject to such directions, orders or guidelines issued by the Commission, every Licensee is authorized to recover, from an applicant requiring supply of electricity any expenditure that the Licensee shall be required to reasonably incur in providing any electric line or electric plant in addition to those specified in sub regulations 4.1 & 4.2 for the purpose of giving such supply to the applicant. Such charges shall be calculated in accordance with these regulations and shall be termed as Service Connection Charges."

5. Law declared by the Supreme Court of India is binding on all the Courts, Tribunals and Authorities across the length and breadth of the country. Hon'ble Apex Court in AP Power Coordination Committee Vs Lanco Kondapalli Power Limited & Ors (2016) 3 SCC 468 while interpreting the applicability of Limitation Act and limitation period has laid down the authoritative law and anything contrary to this is liable to be ignored as has been held by the Hon'ble Apex Court in Bhartidasan University's case. Hon'ble Apex Court in Bharathidasan University and Anr Vs. All Indian Council for Technical Education & Ors (Civil Appeal No. 2056 of 1999). Relevant part of observation made by the Hon'ble Apex Court is reproduced here which read as - "The fact that the regulations may have the force of law or when made have to be laid down before the legislature concerned do not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations are confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arise and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack."
6. That no such or similar counter-affidavit to the reply of the respondent has been filed by the deponent.

- G.** The final hearing in the matter was held on 10.08.2023 through video conferencing. Both the parties argued the matter at length. There were two prime issues on which arguments were led by the parties (i) Whether the CGRF has rightly held the demand of the Appellant for refund of Service Charge as barred by the law of limitation? and (ii) Whether the Respondent-DHBVN has rightly charged Service Connection Charges in the instant case?

Counsel for the Appellant, Mr. Sunil Nehra, on the issue of limitation stated that the proceedings before the Ld. CGRF is not governed by the Limitation Act, 1963. He buttressed his arguments while referring to the judgment of Hon'ble Supreme Court in AP Power Coordination Committee v Lanco Kondapalli Power Limited and Ors (2016) 3 SCC 468 stating that the limitation is only applicable for adjudicatory functions of the Commission under Section 86(f) of the Electricity Act, 2003. He further referred to order of CGRF in the Frigoglass India Pvt. Ltd. and M/s Sheoran Stone Crusher and stated that the CGRF in the said matters had considered claims after the limitation period of 2 years.

Per contra Counsel for the Respondent, Ms. Sonia Madan, on the issue of limitation urged that Regulation No. 2.24 (c) of the HERC Forum and Ombudsman Regulations provides that the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen. It was submitted that the Limitation Act is squarely applicable to the proceedings before Ld. CGRF and Hon'ble Ombudsman in view of the well settled law. Reference was made to the judgment of Hon'ble Bombay High Court in the matter of Maharashtra State Electricity Distribution (Company Limited – (MSEDCL) v M/s. RSR Mohota Spinning & Weaving Mills Limited CIVIL WRIT PETITION NO.7900 OF 2017 (decided on 08.06.2021) wherein it was held that when the Regulations as framed under the Electricity Act, themselves provide for a limitation, then such a limitation would clearly be mandatory and will have to be adhered to. Reference was also made to judgment of Hon'ble Delhi High Court in North Delhi Power Ltd. vs. Indian Hydraulic Industries (P) Ltd. MANU/DE/3116/2012. Ms. Madan stated that the judgment referred by the Appellant is not applicable to the instant case as it only deals with the limitation being applicable to the functions of the Commission. It does not deal with the applicability of limitation provided for adjudicatory functions of CGRF/ Ombudsman by virtue of regulations of the Commission. It was stated that the judgment of Hon'ble Bombay High Court exactly deals with the issue in hand.

With respect to issue of limitation, it is observed that the Service Connection Charges were deposited by the Appellant in the year 2014 while the demand for the refund of same has been raised in 2022 i.e. after 8 years. As per section 42(6) of the Electricity Act, 2003, corporate forum is established for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission, and accordingly, Forum and Ombudsman Regulations has been notified by HERC. As per regulation no. 2.24 (c) of the said regulations, it is provided specifically that the Forum shall reject the grievance (other than claim for compensation) at any stage, through a speaking order, in cases where the grievance has been submitted to the Corporate or Zonal or Circle Forum, as per the monetary jurisdiction, two years after the date on which the cause of action has arisen or submitted to Corporate Forum after two months from the date of receipt of the orders of Zonal or Circle Forum. The judgment of the Hon'ble Bombay High Court categorically holds that when the Regulations as framed under the Electricity Act, themselves provide for a limitation, then such a limitation would clearly be mandatory and will have to be adhered to. The judgment relied upon by Appellant is not applicable to instant matter as the same talks about proceedings under section 86(1)(f) of the Electricity Act, 2003. Further, the demand of parity with reference to other orders of CGRF cannot be allowed if the same is against the prevailing law more so when the complete facts of those cases are not before me. In view thereof, it is observed that the CGRF rightly rejected the claim of the Appellant being beyond the period of limitation. The Appellant has prayed that the direction passed by the CGRF to Advocate Akshay Gupta regarding presenting only those cases whose date of cause of action is within 2 years be ordered to be removed as the same is prejudicial to the interest of Advocate. From the bare reading of the Order, the direction sought to be omitted does not seem derogatory or prejudicial, however, the same is irrelevant. Therefore, remarks vide impugned order dated 31.01.2023 that is "Advocate Akshay Gupta is also directed to present only those cases before the CGRF whose date of cause of action is made within 2 years." are hereby expunged.

Since the case of the Appellant is found untenable by virtue of law of limitation, discussion on merits of the deduction is not necessary. However, it is observed that the connection was released to the appellant from an independent feeder of its group company M/s Jai Bharat Gum and Chemicals Ltd rather than nearby rural feeder. The Respondent has stated that the deduction has been made as per instructions contained in Nigam Sales Circular no. D-21/2005. The validity

of the said circular has been upheld by the Commission in the case of HERC/ PRO- 78 of 2017 i.e. Sh. Balaji Cotton Industry v/s DHBVN. In view thereof, the claim of the Appellant for refund of service charges is found untenable. Therefore, the instant appeal is disposed of accordingly.

Both the parties to bear their own costs. File may be consigned to record.

Given under my hand on 14th August, 2023.

Dated: - 14th August, 2023

Sd/-
(Virendra Singh)
Electricity Ombudsman, Haryana

CC-

Memo. No. HERC/EO/Appeal No.55/2023/

Dated: -

1. Shri Gopal, Authorised Signatory, M/s Chimiq (India) Limited, Siwani (Email sunilkumarnehra@gmail.com).
2. The Managing Director, Dakshin Haryana Bijli Vitran Nigam Limited, Head Office: Vidyut Sadan, Vidyut Nagar, Hisar -125005 (Email md@dhbvn.org.in).
3. Legal Remembrancer, Haryana Power Utilities, Shakti Bhawan, Sector- 6, Panchkula – 134109 (Email lr@hvpn.org.in).
4. The Chief Engineer 'Op', Hisar (Email ceophisar@dhbvn.org.in).
5. The Superintending Engineer 'Op' Bhiwani (Email seopbhiwani@dhbvn.org.in).
6. The Executive Engineer 'Op.' Sub Urban Bhiwani (Email xenopsuburbanbhiwani@dhbvn.org.in).
7. The SDO 'Op' Sub Division, Siwani (Email sdoopsiwani@dhbvn.org.in).