

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redresses Forum
Nagpur Zone, Nagpur**

Case No. CGRF (NZ)/96 /2017

Applicant : Shri Damodhar G. Kolte,
Kolte Lay- Out, At. Godhani (Rly)
Dist. Nagpur.

Non-applicant : Nodal Officer,
The Executive Engineer,
O& M Dn. No. 1, Ganesh peth
MSEDCL, Nagpur

Applicant: - Shri Shuddodhan D. Kolte,

Non- applicant: - Shri R.S.Parahadkar,Dy.E.E O&M,Nagpur Rural Division,

Quorum Present: - 1) Mrs. V.N.Parihar,
Member,Secretary & I/C.Chairman.
2) Shri N.V.Bansod,
Member

ORDER PASSED ON 29.12.2017

1. The applicant filed present grievance application before this Forum on 31.10.2017 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressed Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).
2. Non applicant, denied applicant's case by filing reply dated 17.11.2017
3. Forum heard arguments of both the sides and perused record

4. Shri Shri Damodhar G. Kolte, Kolte Lay- Out, At. Godhani (Rly) Dist. Nagpur. (Hereinafter referred to as, the applicant) is a residential consumer of MSEDCL having consumer No. 410010622755. The applicant has received the energy bill in month July-2017 of Rs 502740/-, for his residential connection. The applicant did not agree with the bill, since in his opinion it was excessive and enormous. Hence, he applied to the distribution licensee MSEDCL (hereinafter referred to as, the Non-applicant) for revision of the said energy bill issued to him in the month of July 2017 & also asked for slab benefit.

5. in their written submission. Non-applicant replied that, during verification of the CPL, it was observed that Bills for Aug-2014 to June-2017 were issued with "inaccessible and faulty statu" to the applicant., Hence spot inspection was done on dt.16.01.2017. During inspection meter reading was found to be 28652. The Meter was replaced with new meter and old meter was sent for Testing. As per Testing report dt.13.02.2017, the meter was working satisfactorily. Hence on the basis of actual reading, all the bills during Aug-2014 to June-2017 were revised and energy Bill with arrears of Rs 502736/- was issued to the applicant in the month of July-2017 & credit of slab benefit of Rs 155817.54 was passed to the consumer in the month of Sept-2017. Meanwhile provisional bill was issued to the consumer for Rs 70000/- (paid on 19.08.2017), Rs. 10700/- (paid on 19.09.2017), & Rs 10220/- (paid on 05.10.2017). Hence the balance bill is to be paid by the consumer.

6. They further contended that applicant's claim that since 2001, he is receiving wrong bills cannot be accepted. For that they rely on clause 6.6 of the MERC (CGRF &

EO) Regulations 2006 which is as under:-

6.6 The forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. Now cause of action arose in 2001, therefore it was necessary for the applicant to approach this forum within two years from the date of cause of action. But present grievance application is filed on 31.10.2017; therefore it is barred by limitation. Also as per 12.2 of MERC SOP regulation 2014 case should be barred by time limitation.

7. They further contended that, as per section 7.5 of MERC SOP regulation 2014 “The Distribution Licensee shall resolve consumer complaints with regard to non receipt of a bill for payment or inadequate time being made available for payment there of or otherwise, within 24 hours of the receipt. In other cases, the complaint shall be resolved during subsequent billing cycle”. In this case as per grievance for slab benefit of applicant dt.24.08.2017, due effect of slab benefit is given in Sept-17.

8. Therefore as electrical energy consumed by applicant is correctly recorded by the meter therefore there is no further scope for revision of the bill. In all the above events, Non Applicant has acted as per procedure laid down in MERC electricity supply code and consumer has been billed with actual, accurate units consumed by the consumer. Hence Applicant’s request for compensation may be rejected. For these reasons they prayed to the forum to dismiss the applicant’s Grievance application.

9. Not satisfied with these arrears, Applicant approached the IGRC, Nagpur Rural Circle on 19.06.2017 vide case no. 44/2017, asking for revision of the said bill and slab

benefit.

10. The IGRC by its order dated 17.10.2017 dismissed the Grievance application of applicant and stated in the order that "*Bill revision for slab benefits are already passed. Consumption found normal in comparison to connected load. Hence balance bill is payable by consumer.*" Aggrieved by this order, the applicant approached this Forum on 31.10.2017 with requests that the energy Bills issued for their residential connection since 2001 are incorrect and excessive .Therefore the same is to be revised and slab benefit is to be given.

10. The case was fixed for personal hearing on 24.11.2017. Shri Shuddodhan D. Kolte, was present during the hearing. Shri R.S.Parahadkar, Dy.E.E O&M, Nagpur Rural Division, Nagpur Represented the Non-applicant.

11. During hearing, Non-applicant stated that, applicant's meter was not at proper height causing inconvenience to record the reading. The applicant had been given oral request many times for installing it at proper height. But He did not concede to the request. In absence of reading, energy bills from August 14 to June17 are issued with "RNA and in-accessible status". Hence on dt.16.01.2017, spot inspection was carried out to verify the load of the applicant & meter was sent for Testing to verify the accuracy. On dt.13.02.17 testing is carried out in Meter Testing Lab., during testing meter found working satisfactorily. During spot inspection substantial load was found with two families residing on first and second floor. In the month of Aug-2014 initial reading was 3444and in the month of June-17; actual final reading was 28652.Hence on

the basis of these actual readings energy bill for for 35 months from Aug-14 to June17 was raised in the month of July-2017 of Rs 502736/-with Slab benefit amounting Rs. 1, 55,817. As the slab benefit amount of the applicant was more than 1.5 lakhs, it was necessary to get approval from competent authority. The bill was issued in the month of July 2017and slab benefit amount has been credited in the applicant's bill for the month of Sep-2017.

12. Due to the expiry of term of Chairperson of the Forum on dt 30.06.2017, consequent to which the matter was heard by the two remaining Members. At the time of hearing Quorum present was 1) Member Secretary & I/C. Chairman. 2) Member (CPO). As per in clause 4.1(c) of MERC (CGRF & EO) Regulation 2006 which reads as under, *4.1(c) "Provided also that where the Chairperson is absent from a sitting of the Forum, the technical member, who fulfills the eligibility criteria of sub-clause (b) above, shall be the Chairperson for such sitting.* Needless to say that, in absence of Hon'ble Chairman, Member Secretary is In-Charge Chairman. There is difference of opinion amongst the two. Since I/Charge Chairman has one additional casting vote, therefore as per provision given in clause 8.4 of MERC (CGRF & EO) Regulation 2006 which reads as under,

8.4 "Provided that where the members differ on any point or points the opinion of the majority shall be the order of the Forum. The opinion of the minority shall however be recorded and shall form part of the order".

Hence, the Judgment is based on majority view of I/C chairman and Member Secretary.

However the separate dissenting note of Hon'ble Member (CPO) is noted in the judgment and it is part and parcel of the judgment. But the judgment is based on majority view and reasoning thereof is as under:

12. We have perused the record. We have heard the arguments of both the parties.

13. During verification of the CPL it was observed that from Jan-12 to Feb-14, very less consumption is seen in the CPL below 30 units. Sometimes zero units. In the month of April-14 and May-14 consumption recorded is 166 units, 241 units, again in June-14 "inacce" Status is shown and hence average bill for 86 unit is issued. Again in July-14 bill for 279 units is issued. Bills from Aug-2014 to Feb-16 were issued with average 127 units, 0 units and 50 units from March-16 to May-17 with "inaccessible and faulty" status. From this it is clear that there was no consistency in consumption of applicant, hence it can be concluded that supply was intermittently used by applicant but regular payment of the bill was done by him. A very pertinent fact is noticed by the forum that applicant neither lodged complaint regarding status given as "inaccessible and faulty" on the energy bills issued to him during Aug-2014 to June-2017 nor about reading not taken by Non-applicant. Applicant was happily paying bills. But the moment he received bill on the basis of actual meter readings, he lodged complaint. From aforesaid facts we hold non-applicant's contention that proper access for reading was deliberately not made available due to which actual reading could not be taken. Hence with correct meter reading, the bills for the period issued with "inaccessible and faulty" status were revised after verifying meter accuracy as per Testing report dt 13.02.2017 which is filed on record by Non-applicant is quite in order.

14. In the instant case, considering the fact that, 1) Meter accuracy is within limit. 2) Arrears issued for the Energy bill for the period from month of Aug-14 to June-17 are as per meter reading only, hence are not excessive. It is confirmed that, Applicant's has actually used electrical supply and same is responsible for the said metered consumption. Since the disputed meter is found to be normal and the arrears in the bill issued are as per metered consumption, there is no reason to revise the bill. The claim of the applicant, to revise energy bill since 2001, the same being excessive and enormous cannot be accepted as it is barred by time limitation as per section 6.6 of MERC(CGRF&EO)Regulation2006. As the consumption of electricity certainly creates a liability to pay, therefore applicant has to make payment of arrears as per his energy bill of July17 of Rs.492880/-along with current bills. The observations & findings as well as order of IGRC are justified, we find no reason to interfere in the IGRC order and Grievance application is rejected and liable to dismissed.

Dissent Note by Member (CPO) Mr. Naresh Bansod dated 26-12-2017 in Case No. 96/2017.

(1) The case was registered on 31-10-2017. Arguments heard on 24-11-2017. Case file is sent to me on 26-12-2017 at 12.05 for Note without following the spirit of Reg. 8.4 of MERC (CGRF & EO) Regulations 2006 i.e. discussion on any point or points of difference.

(2) Applicant is the Residential consumer of Non applicant having consumer No. 410010622755 since 8-6-2001 with meter No. 45632. Applicant is residing since

(3) 2001, as per Non applicant the meter Reading is $25208 + 3444 = 28652$ units

which is not acceptable as wrong and as per slab benefit etc. proper bills shall be given. Since Dec 2016 my two sons are residing with me and Electricity consumption has increased. Hence wrong billing since 2001 be reduced and justice shall be given and denied the order of IGRC.

(4) Non Applicant in their reply stated that average billing was done since August 2014 to June 2017 as inaccess, faulty and R.N.A. Meter was replaced with FR 28652 and bill for Rs.502740/- was issued. CPL was generated & bill reised for 35 months & credit of Rs.155817=54 Ps. was passed to the consumer. Provisional bills for Rs.70000/- Rs.10700/-Rs.10220/- were paid on 19-8-17, 19-9-2017 & 5-10-2017 and old meter was tested in Kamptee meter testing lab & found OK and balance bill is to be paid by consumer.

(5) Non Applicant said spot inspection was done on 16-1-2017 and reading was 28652. Old meter was replaced with new meter No. 13771047 Non Applicant admitted that during Aug-2014 to June 2017 bills were issued with In accessible, faulty & R.N.A. status and issued bill in July 2017 Rs.502740/- as per electricity supply code clause 15.3.1 and bill revised & credit given for amounting Rs.155817/- in Sept-2017 and grievance does not survive.

(6) Non applicant further said applicant claimed since 2001 & he is receiving wrong bills and as per clause 6.6. "The forum shall not admit any grievance unless, it is filed within 2 years from the date on which cause of Action has arisen." Cause of action arose is 2001 and present application is filed on 31-10-2017 & is barred by limitation and as per clause 12.2 of MERC SOP Regulation 2014, Application is

bar by limitation. Non Applicant also said that as section 7.5 SOP Regulation slab benefit is given in Sept-2017 on application dated 24-8-2017.

(7) We heard the arguments & perused all the papers on record. The points for my consideration are.

(A) Whether the present application is barred by limitation as per clause 6.6 of MERC (CGRF& EO) 2006 and clause 12.2 of MERC SOP Regulation 2014 ?

NO.

The clarify the misperception about cause of Action, clause 6.6 of MERC (CGRF & EO) 2006 & 12.2 of SOP regulation.

I refer (1) the order of Electricity Ombudsman, Nagpur dated 4-8-2017 in Representation NO. 17/201 Smt. Varsha Lalwani v/s The Execution Engineer O&M Division MSEDCL, Gondia (2) Rep. No. 34/2016 order dated 19-8-2016 Mr. Sunil Chambhare v/s The Ex.Engineer O&M Hinganghat.

Cause of Action → Para 7 of Rep. 17/2017 reads as under.

“I rely on the Judgement dated 18-7-2017 of the Bombay High Court in Writ Petition No. 3997/2016 where in the Hon’ble court has upheld the view that” grievance of Respondent No.1 was well within limitation as cause of action has arisen from the date of rejection of the grievance by IGRC. Also the Division Bench of the principal Bench of the Bombay High Court in M/s. Hindustan Petroleum Corp. Ltd. v/s MSEDCL and others in writ petition No. 9455/2011 had accepted that “cause of action for submitting the grievance should arise when IGRC rejects a grievance of a complainant.

SOP Reg. 12.2 – Para 7 of Rep. No. 34/2006 reads as under

“It may be noted that clause 12.2 of SOP Regulations is applicable only when the consumer files his claim with the Distributin license. The said limitation of 60 days does not apply when the consumer files his claim for compensatin with the forum.

The IGRC order is dated 16-10-2017 and the cause of action arisen on 16-10-2017 on date of dismissal of complaint. Secondly for the 1st time bill for arrears was issued in July 2017 and bill revision report is dated 11-9-2017. Hence entire submission and arguments of Non applicant are deserves to be baseless and against the ratio laid by Bombay High Court, deserves to be dismiss. Secondly clause 12 of SOP Regulation is regarding ‘Determination of compensation” and in the absence of prayer of Applicant for compensation, reference to clause 12.2 is baseless and without application of mind & updation of law, deserves to be discarded.

(8) Non applicant in reply admitted that bills of August 2014 to June 2017 were issued within inaccessible, faulty & RNA status but on perusal of CPL in

(8) the month of June 2014 also bills was issued with inaccessible and Aug 2016 onwards till April 2017 it was shown as faulty and May 2017 – RNA and June 2017 onwards normal.

Non applicant stated that bill for July 2017 is issued as per electricity supply code clause 15.3.1

15.3 – Billing in the absence of Meter Reading.

15.3.1 – In case for any reason the meter is not accessible, hence is not read during any billing period, the distribution licensee shall send an estimated bill to

the consumer.

Provided that the amount paid will be adjusted after reading are taken in during the subsequent billing period.

15.3.2 – If the meter remains inaccessible after two consecutive efforts to effect a meter reading, then in addition to any remedy available to the Distribution Licensee under section 163 of the Act, the consumer shall be served not less than seven working day's Notice to keep open the premises for taking meter reading on the days stated in the notice.

Provided that the notice shall also indicate the times at which the Authorised Representative shall remain present to read meter.

15.3.5 – For the purpose of this Regulation 15.3, the estimated bill shall be computed based on the recorded, consumption at the last billing cycle for which the meter has been read by the distribution licensee.

During arguments, Applicant argued that his meter is not inside the Residence but it is outside and easily accessible and many times, he visited & inform to send bills as per meter reading but None of the employee of Non applicant turn to record actual meter reading and hence contention of non applicant as per CPL is totally false and baseless. Non applicant said action will be taken against erring employee but till date no departmental action is taken, placed documental before us & hence statement of Non applicant before forum is baseless.

The bill for June 2014 is issued as “Inaccessible for 86 units when as per reg. 15.3.5 – consumption of last billing cycle i.e. May 2014 was 214 Units, issuance of bill for June 2014 i.e. 86 units, which is violation of Electricity Supply Code 2005.

It was mandatory for the Non Applicant to send Notice to applicant to keep open premises for reading as per 15.3.2 above, but inaccessible bills were sent from June 2014 to July 2016 without adopting 15.3.5 and without sending notice to keep premises open, on the contrary, Meter is outside & easily accessible. Hence entire submission of Non Applicant is false & violation of Electricity Supply Code putting false blame on applicant.

It is further surprising that from August 2016 to April 2017 meter is faulty as per CPL and then how a faulty meter can be normal in the month of June 2017 & in May 2017 again Reading Not available which shows the fictious way of working of the Non applicant & their employees.

On perusal of CPL of Jan 2017, Meter status is faulty and current reading & previous reading is same as 3444, then on spot inspection dated 16-1-2017, how the meter reading is shown as 28652 which appears to be totally fictious.

Assuming that on 16-1-2017 reading was 28652 then why Non applicant has taken 6 months to issue bill of arrears in the month of July 2017 which creates further suspision about the reading 28652 and working of Non applicant.

(10) Non applicant in reply stated that old meter No. 45652 was replaced & New meter Sr. No. 13771047 was installed but neither date of change of meter is mentioned nor meter installation report is filed for our perusal and no noting of meter changed in CPL, Which creates suspision & working of Non applicant is totally fictious deserves to be condemned. **As per IGRC order, meter was replaced in May 2015 with FR 28652 as reported by Mr. Kshirsagar, A.A. O&M Sub.division, Nagpur in para 3 of IGRC and then how as per spot inspection report dated 16-1-2017 FR is 28652**

(11) Non applicant in reply stated that old meter No. 45632 tested in Kamptee meter testing lab and found OK but no detailed & visible testing report is available for our perusal and one page report for 8 consumers appears on black paper & not readable or visible and consumers reading appears 8552 and not 28652 and remarks appears “Not found satisfactory when seen through magnifying glass.” The report is not in test report format of MSEDCL and hence inference of Non applicant that meter becomes OK is baseless.

Non applicant stated that credit was given amounting to Rs.155817/- in the month of September 2017 but no calculations of credit are available for our perusal.

(12) In view of the above observations, the meter was faulty from Aug 2016 to April 2017 and faulty meter cannot be normal subsequently and hence clause 15.4.1 of MERC (ESC & other conditions of supply) Regulations 2005 get attracted.

Hence Non applicant is liable to issue bill as per clause 15.4.1 & its proviso i.e.

“Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, upto a maximum period of three months based on the average metered consumption for 12 months immediately preceding the 3 months prior to the month in which the billing is contemplated”.

Therefore IGRC order is deserves to be set aside as passed without appreciation of facts & verification of documents properly, the disputed bill Rs.492880/- deserves to be quash & set aside.

As per 4.1 (C) proviso of above said regulation. Secondly on perusal case No.

CGRF (NUZ) 031/2009, order dated 26-6-2009 where so called member secretary i.e. present technical member was representative of non applicant and is well aware that Mrs. Langewar acted as member secretary and Smt. Gouri Chandrayan as member as above said regulation and same practice was observed to have followed earlier whenever the post of chairperson was vacant.

This means that when chairperson is appointed in the CGRF & Joined and he is absent from sitting of the forum, then technical member, shall be the chairperson not chairman for such sitting (during leave, sick leave etc) but presently the Chairperson's post is vacant in the forum on date of sitting, so the technical member and member (CPO) can continue to run sitting and decides the cases as per regulation 8.1 of said regulation but technical member does not get position of Chairperson and second & casting vote, which is done in earlier cases after 16/5/2017. In entire MERC (CGRF & EO) regulations 2006 post of only Technical Member is notified but no post of Member Secretary is notified and hence self designating as Member Secretary is against provisions of above regulation. Hence order of the Technical person or so called member secretary cannot be a Majority order

Hence the application deserves to be allowed.

ORDER

- (1) Non applicant is directed to withdraw the fictitious bill of Rs.492880/- issued in July-2017.
- (2) Non applicant is directed to act. as per clause 15.4.1 of MERC (ESC & other conditions of supply) Regulation 2005 and revise bill without interest

& DPC with slab benefit and give necessary credit to his Account towards amounts deposited by applicant on 19-8-2017, 19-9-2017, 5-10-2017.

(3) IGRC order is quash & set aside.

(4) The compliance of this order shall be done within 30 days from the date of this order.

Sd/-
Naresh Bansod
Member (CPO)

In view of the above facts and figures, we proceed to pass the following order.

ORDER

- 1) Grievance application is dismissed.
- 2) IGRC order is correct, hence needs no interference

Sd/-
(Shri.N.V.Bansod)
MEMBER

Sd/-
(Mrs.V.N.Parihar),
MEMBER SECRETARY & I/C. CHAIRMA

