

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

Case No. CGRF(NZ)/53/2017

Applicant : Shri Vitthal N.Zhamare
Mouza Veda At.Veda
Tq.Hinganghat,
Dist.Wardha.

Non-applicant : Nodal Officer,
The Executive Engineer,
O&M Division,MSEDCL,
Hinganghat.

Applicant's Representative :- Shri Betal,

Respondent by:- 1) Shri Pawade,E.E., Hinganghat Dn.
2) Shri Awachat, Dy.E.E., Hinganghat (R) S/Dn.

Quorum Present

- :
- 1) Mrs.V.N.Parihar
MEMBER/SECRETARY
& I/C. CHAIRMAN
 - 2) Shri N.V.Bansod,
Member
-

ORDER PASSED ON 07.06.2017.

1. The applicant filed present grievance application before this Forum on 17.04.2016 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).
2. Non applicant, denied applicant's case by filing reply dated 12.05.2017.
3. Forum heard arguments of both the sides and perused record.

4. Applicant filed an application for electricity supply for his agricultural pump on dated 11-01-2012. Non-applicant issued him demand note on dt.28.05.2012, but did not receive the same. Applicant claim compensation for, physical & mental harassment of Rs.25,000/-, travelling expenses Rs.5000/- as well as SOP compensation for delay in issuing demand note. as well as to give direction to Non-applicant issue the Demand note .

5. Applicant filed the grievance application with IGRC on dt.18.01.2017for delay in issuing demand note as well as to give direction to Non-applicant to issue the Demand note. IGRC passed an order dt.29.04.207to re-issue the demand note and rejected his claim for compensation. As Applicant did not get relief from the IGRC, he filed grievance with the Forum.

6. Non-applicant in their written reply confirmed date of receipt of A-1 forms 11.01.2012 stated by the applicant. Non applicant stated that Demand note was issued on dt 28.05.2012.The said demand note is sent through post and postal evidence is available with them. For non-receipt of the same, applicant did not contact Non-applicant till 18.01.2017.However Demand note is reissued them on dt 23.05.2017.

7. Non-applicant further stated that when spot inspection of their ag. land was carried out on dt.12.05.2017,in presence of his son Shri.Kheman Vitthal Zamare,it was observed that well in the farm is under construction with zero water level. However, on enquiry, Applicant's son confirmed that the A-1 form was submitted for the said well and further contended that the work of construction will be completed within two months.

8. At the time of hearing on 30 May, 2017, the Parties were informed of the Chairperson of the Forum having resigned the office on 16 May 2017, consequent to which the matter would now be 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:

9. After hearing both parties, it was necessary to issue demand note within 30 days i.e.in this case on or before dt.11-02-2012. But the non-applicant issued him demand note of on 28-05-2012.The cause of action has arisen for issuing demand note on dt. 28-05-2012.According to MERC(CGRF & EO) Regulation,2006 which states that:-

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.”

In the instant case cause of action has arisen on dt. 28-05-2012 It was necessary to file application on or before 28-05-2014 for compensation for late demand. As the applicant filed his grievance with forum on dt 17-04-2017, grievance is not filed within 2 years of cause of action. Hence claim for late demand note is time barred

10. According to No-applicant, when spot inspection of Applicant's AG land was carried out on dt.12.05.2017,in presence of his son Shri.Kheman Vitthal Zamare,it was observed that well in the farm is under construction with zero water level. For which documentary evidence such as Spot inspection report and photographs of well under construction is produced before the forum.

11. Applicant's son confirmed that the A-1 form was submitted for the said well on dt.11.01.2012 i.e. before almost 6 years and further contended that the work of construction is still incomplete but will be completed within two months. This fact seems to be the reason for not filing the grievance on or before 28-05-2014.When their work was going on since 2012 and not completed even in 2017,it is clear that applicant was not in urgent need of connection. Hence it seems the only reason for

approaching IGRC and Forum is to grab the compensation. This fact deserves to be condemned. Hence the contention of the non-applicant is baseless & cannot be accepted therefore same is rejected by the forum. Grievance application is deserved to be dismissed.

12. **Separate dissenting note of Hon'ble Member (CPO) is given as under.**

1) The undisputed fact is, applicant submitted 'A1' form on 11-01-2012 for new electric connection for his 3 HP Agriculture pump. As per Applicant he visited non-applicant frequently for demand note but demand note was not provided on pretext of demand note will be sent by post which was not received and prayed to direct non-applicant to give demand note & SOP compensation for late demand & necessary action against responsible person.

2) Applicant said IGRC did not pass order even after hearing on Feb-2017 and IGRC order not received till filing of case and is received by post.

3) The disputed fact is that applicant did not received demand note & as per non-applicant, after survey by Assistant Engineer demand note dated 25-05-2012 was sent by post on 28-05-2012 & there is noting in dispatch register of sub division also indicates use of postal stamps. Non-applicant further said that after application on 11-01-2012, applicant did not contact non-applicant but contacted on 18-01-2017 for 1st time after 5 years & did not make any complaint. The complaint is bar by limitation as per MERC Regulation 6.6. Non-applicant further said that on 12-05-2017 Dy.Executive Engineer & Junior Engineer Alipur D.C. inspected the applicant's field and applicant's son was present. On enquiry well was incomplete & there was no water and work will be completed within 2 months. Non-applicant after panchnama &

photographs presumed that applicant is not in need of electric supply but case is for only compensation.

4) The disputed point for my consideration is whether after submission of 'A1' form on 11-01-2012, & whether the survey was conducted & when demand note dated 25-05-2012 was sent to applicant? (As per non-applicant it was dispatched on 28-05-2012 by post).

As per SOP Regulation 2005 & same is SOP Regulation 2014, Appendix 'A', (A) Time period for completion of inspection of applicant's premises from date of receipt of application (i.e.11-01-2012) is 10 days in Rural area (B) Time period for intimation of charges to be borne by applicant from date of receipt of application (i) in case of connection is to be from existing network in Rural area is 20 days and where extension of distribution main or commissioning of substation is required is 30 days.

5) It is thus clear as per submission of non-applicant that demand note was sent by post on 28-05-2012 violating SOP norms of survey with 10 days & demand note within 20 days after 11-01-2012. Non-applicant also failed to place on record the inspection/survey report after the application dated 11-01-2012. Non-applicant also failed to mention the name of Assistant Engineer of concern D.C. & date of survey which creates suspicion about the acts of non-applicant when applicant already paid processing fee of Rs.50/- on 11-01-2012.

Assuming that contention of non-applicant is correct as below that demand note is sent by post on 28-05-2012.

Reply of non-applicant –

Para 2 – त्यानुसार संबंधीत वितरण केंद्राचा सहायक अभियंता हयांनी केलेल्या सर्वेनुसार दि.२८.०९.२०१२ येजी अर्जदायस डिमांड नोट पोस्टाने पाठविण्यात आली. (copy not filed for perusal)

Para 3 – डिमांड नोट पोस्टाने पाठविल्याची नोंद उपविभागीय कार्यालयामध्ये जावक रजिस्टरमध्ये आहे. तसेच रजिस्टर पोस्ट तिकिट वापर रजिस्टरमध्ये नोंद आहे.

6) During hearing applicants representative objected and requested for submission original records for his perusal as well as perusal of the forum to reach the conclusion of fact in the matter but on perusal of papers in case file, it is revealed that non-applicant failed to file original dispatch register & documents besides say & commitment shown by the Executive Engineer Mr.Pawade. Hence contention of non-applicant is false & baseless deserves to be discarded.

7) As per Electricity Act 2003 – Section 171 Services of notices, orders or documents:-

(1) Every notice, order or document by or under this Act required or authorized to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefor or by registered post or such means delivery as may be prescribed.

d) Where any other person is the addresses, at the usual or last known place of abode or business of the person –

(2) Every notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it,

or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

8) Hence in the absence of any proof of acknowledgement of service of demand note on applicant, the submission of non-applicant is false and baseless and misguiding the authorities of the forum & blatant violation of above Section 171 of the Electricity Act 2003.

9) In replay non-applicant mentioned about inspection on 12-05-2017 & applicant's son was present & well was incomplete and no water in the well & 2 months time will requires for completion and submitted "panchnama & photographs (Xerox). On perusal as " मौका पाहणी अहवाल " dated 12-05-2017 appears to signed by J.E. Alipur & Dy.E.E. and mentioned on left side " सही देण्यास नाकारले " Firstly it cannot be called as "Panchnama" and Xerox of photographs" because no panch or other than Engineers were present or signed the so called panchnama or " मौका पाहणी अहवाल" and rightly applicants son refused to sign the same as incorrect.

10) On perusal of copy of 7/12 extract of applicant filed by non-applicant, in Remark column it is mentioned as " विहिर पक्की " on 27-06-2011. Secondly due to temperature at 47 – 48 celcius in May 2017, wells in the areas were dried. Hence entire submission of non-applicant is further false & baseless. It is necessary to note that after so called survey or inspection of applicant's field and non-applicant was satisfied and demand note might have prepared. Secondly so called non availability of water in well is not precondition for new electric supply as per supply code & SOP Regulations.

11) Non-applicant stated that applicant did not contact but applicants written complaint dated 03-01-2017 & 29-04-2017 & 16-05-2017 acknowledged by non applicant, further confirmed that Applicant contacted the non-applicant because as per 7/12 extract applicant has availed loan from “ विशेष कार्यकारी सेवा सह संस्था लोन रु. ७००००/- “ which further confirm the eagerness of the applicant to get new electric supply on his well. Hence all contentions of non-applicant are false & baseless attempted by non-applicant with ulterior notice to get escape from SOP compensation.

12) Applicant objected on 'A1' which is signed in English and non-applicant filed the bogus 'A1 form', on perusal of signatures of applicant. It is revealed that he signs as “ विठ्ठल नामाजी झामरे “ in Marathi and his demand was for 3 HP agriculture pump but the A1 submitted by non-applicant for 5 HP supply & requested load 5.0 HP Hence entire modus operandy is false & bogus.

13) Non-applicant prayed for dismissal of complaint as per MERC Regulation 6.6 as complaint is not filed within 2 years from date on which the cause of action has arisen

Applicant submitted 'A1' form on 11/5/2012, as per section 43- Duty to supply on request and SOP Regulation 4 period of giving supply on “entire responsibility is on Non Applicant because section 43 & 4.1 Categoricaly used the word “The distribution licenses shall”. Hence Non Applicant totally failed to discharge their own responsibility & cannot get shatter under Regulation 6.6 on technical issue, than contesting case on merit.

14) In case of Shilpa Steel & Power Ltd. V/s. S.E. N.U.Circle MSEDCL & S.N.D.L,

E.O.Nagpur in order on 22/ 1/2016, has Categorically referred & Relied the Judgment of High Court of Bombay dated 19/1/2012 in writ petition No 9455/2011 M/s Hindustan Petroleum Crop.ltd v/s MSEDCL & others.

The High Court observed that the term Cause of Action has not been defined in the MERC (CGRF&EO) Reg. 2006. The High Court concluded that it is thus clear that consumer cannot directly approach the forum in timely manner. The High Court further concluded that the Cause of Action for submitting Grievance arises when the IGRC does not redress the Grievance & in Para 13 mentioned as not time bar.

15) Hence in view of the above observations, the Complaint is not bar by Limitation and entire submission of Non Applicant is proved to be false deserves to be discarded. It is revealed that applicant's representative has received duplicate demand Note for Rs 6000/- on 23/5/2017 and reported to have paid on 08-06-2017.

16) On perusal of acknowledgement of 'A1' Application No. is 427 dated 11/1/2012 (Filed by Applicant) and Demand note dated 25/5/2012 (filed by Non Applicant not delivered to Applicant). Application No. 427 dated 11/1/2012 but Application No. 10190569 dated 11/1/2012 mention on Demand note (Duplicates copy) received by applicant which is totally different. Hence I am of opinion that Non Applicant has made every attempt to tamper the original record in their possession so as to suit to their contention.

17) Therefore applicant is entitle for SOP compensation for late demand note i.e. from 10/2/2012 (i.e. 30 days from 11/1/2012) till 22/5/2017 @ Rs 100/- per week as per Appendix 'A' of Sop Regulation.

18) It is necessary to mention that the technical member (so called Secretary as no mention in Regulation) claims to be Chairperson as the then Chairperson has resigned and left the job on 16/5/2017. The provision of chapter II 4.1 of MERC (CGRF & EO) Reg. 2006 is as under “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”.

This means that when chairperson is appointed in the CGRF and he is absent from sitting of the forum, than technical member, shall be the chairperson 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 but technical member does not get position of Chairperson and second & casting vote, which is done in earlier cases after 16/5/2017. Which is illegal as per me because in case of vacant post of Chairman of MERC, Hon'ble Shri Ajj Khan & Mr. Deepak Lad Saheb sign as member and Mr.Ajj Khan does not claims to be Chairman (senior most member).

19) Hence contention of technical member & so called majority order as Chairman & Member Secretary is totally ill-logical and against clear provision of Regulations.

20) Therefore Application is deserves to be allowed and Non Applicant is directed to pay SOP compensation for late demand to the applicant from 10/2/2012 to 22/5/2017 as per Appendix 'A' @ Rs. 100/- per week within 30 days.

Naresh Bansod
Member (CPO)

13. In view of the majority we hold that, as grievance is not filed within 2 years of cause of action. Hence claim for late demand note is time barred. Also only reason for approaching the Forum is to grab the compensation which deserves to be condemned. Hence applicant is not entitled for compensation from Non-applicant for issuing late demand note, and hence application deserved to be dismissed.

14. Therefore we proceed to pass the following order.

ORDER

- 1) Grievance application is dismissed.
- 2) Other claim of the applicant is rejected.

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

sd/-
(Mrs.V.N.Parihar),
MEMBER/SECRETARY
& I/C. CHAIRMAN