

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

Case No. CGRF(NZ)/52/2017

Applicant : M/s Quality Poultry Farm
User Shri Hussain Gulab Sheikh
Plot no.2, Ladgaon, Post Gumgaon,
Tah-Hingna, Dist.Nagpur.

Non-applicant : Nodal Officer,
The Executive Engineer,
Nagpur MIDC Urban Division, MSEDCL,
Butibori.

Applicant :- In person.

Respondent by 1) Shri Dilip Uttamrao Ghatol,
EE, Butibori Division

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

2) Shri N.V.Bansod,
Member

ORDER PASSED ON 17.06.2017.

1. The applicant filed present grievance application before this Forum on 13.04.2017 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 09.05.2017.
3. Forum heard arguments of both the sides on dt.30.05.2017 and perused record.

4. Applicant filed his grievance application for refund of expenditure of Rs.3,99,427/- carried out by him by paying 1.3% DDF Supervision charges for releasing the connection to M/s Quality Poultry Farm with interest by converting the estimate sanctioned under 1.3% DDF scheme to Non DDF, or refund the entire cost of infrastructure incurred by him along with interest for releasing supply to his poultry Farm, as he did not give consent for the same. Applicant also claim compensation for, physical & mental harassment of Rs.25, 000/-, travelling expenses Rs.5000/- , Court Expenditure Rs.3000/-as well as SOP compensation for delay in issuing demand note. as well as to give direction to Non-applicant to issue the Demand note .

5. Non-applicant In his reply dated 29-04-2017 and 09.05.2017 stated and denied the contention of the applicant and stated that Applicant submitted A-1 form for his poultry form for 3 phase supply with 45 HP connected load. Along with the application he submitted consent on 100/- Rs. stamp paper for carrying out the required infrastructure development work by paying 1.3% DDF supervision charges for releasing supply to his poultry Farm. Accordingly Non-applicant sanctioned estimate on dt.26.08.2016.But applicant submitted his revised application for 106 HP along with the consent on 100/- Rs. stamp paper for carrying out the required infrastructure development work by paying 1.3% DDF supervision charges. Both the stamp papers were duly signed by Shri. Shaikh Hussain. Accordingly estimate on dt.06.10.2016 was sanctioned for his Poultry Farm.

6. Non-applicant further submitted that demand note for 1.3%supervision charges was issued to Applicant and same was paid vide M.R. no. 1167578 dt.17.10.2016.After ward Applicant got erection of line and allied work done from registered contractor of

MSEDL at his own cost. After completion of work Hingna Sub-division sent work completion report for load sanction along with Tri-party Agreement on stamp paper of Rs.100/- duly signed by contractor as well as Applicant Shri. Shaikh Hussain giving consent that he is ready to avail supply as per DDF scheme. The said stamp paper is in the name of M/s. Quality Poultry Farm, Ladgaon. On the basis of these documents load was sanctioned on dt.23.11.16. Applicant paid security Deposit and other charges as Rs.1,27,820/- on dt.16.12.2016. On the basis of completion of requisite formalities, supply was released on dt.01.01.2017.

7. Non-applicant in his reply further stated that, all the documents submitted during the whole process, along with Rs.100/-stamp papers submitted thrice duly signed, has the same signature as per A-1 form. Applicant has also paid the charges. Now after one month of release of supply, denying the consent given on 100/- Rs. Stamp paper for estimated charges under the 1.3%DDF scheme is baseless. Moreover the contention of the consumer that, he does not agree with the signature on the stamp-paper amounts to deliberate attempt to harass the Non-applicant and to mislead the forum. On completion of formalities & according to legitimate consent given by Applicant Shri.Hussain Gulab Sheikh, from time to time on various occasions, supply is released to him. Hence there is no question of refund of the amount paid by him under 1.3%DDF scheme. Therefore, prayed to forum to dismiss the grievance application. Non-applicant also filed the copy of A-1 form and Stamp papers duly signed by Applicant, as evidence before the forum.

8. Applicant filed his grievance with IGRC on dt.27.01.2017. Accordingly matter was heard and IGRC rejected his application & passed the order on dt.31.03.2017. Hence Aggrieved Applicant filed his grievance application with this forum for necessary relief.

9. 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:

10. During the arguments before the forum, the applicant contended that, the signature put on stamp papers is not his own signature. To substantiate his claim, he

has produced the certificate issued by Branch Manager ,Union bank of India ,Hingna Branch ,Main Road Nagpur wherein his actual specimen signature is certified. Therefore He denied having admitted to pay the amount under 1.3% DDF scheme, as he did not give any consent for the payment under said category.

11. During the argument and discussion, it was observed by the forum that, Applicant got his entire work done right from submission of A-1 form and various documents through third party who had actually signed on his behalf. The applicant confessed before the forum that, he was given understanding by the signatory of all documents who has actually signed on his behalf, that whatever the amount he is depositing shall be refunded to him through his Energy bill. When he did not see any refund, he has lodged the complaint.

12. It is therefore clear to the forum that, Applicant has been misled by the signatory of all documents who has completed all the formalities on his behalf i.e Third person. The signatory of all documents neither is Non-applicant's Employee nor appointed by them. It was Applicant who trusted blindly the third person whom he gave authority to sign on his behalf. Even the middleman did not care to obtain legitimate signatures on A-1 form as well as Stamp papers submitted from time to time.

13. Needless to say that, mistake is attributed to the Applicant only for believing blindly middleman/Third party. It seems that, Applicant never care to get involved in the process and tried to understand correct procedure of the company.

14. On perusal of the documents and argument put up by both the parties, It is therefore observed by the forum, the applicant has been misled by his middleman who was completing the formalities on his behalf, not the Non-applicant. The Non-applicant

has simply followed the routine procedure which was misinterpreted by his middleman to the applicant.

15. Hence, forum is of the opinion, if all papers related with connection does not have real signature of the applicant then assigning the middle person to sign all valid documents & availing connection by putting wrong signatures amounts to fraud committed by Applicant himself. Applicant has committed offence of cheating as he has fraudulently obtained connection by putting false signature. In fact it is applicant's responsibility to explain as to why his legitimate signature does not appear on the papers such as A-1 form etc., related with his connection. Nevertheless he is coming with the false story that signatures on the stamp papers are not of him and hence he is entitled for refund of the amount. Instead of realizing his own mistake, he is again fraudulently claiming refund of the non-refundable amount for which his middle person has given consent by way of signing the legitimate stamp papers not once but on three occasions. Hence order of IGRC is justified.

16. For getting connection, it is applicant's responsibility to submit relevant & correct application to the distribution Licensee required as per clause 5.8 of MERC (Electricity supply code and other conditions of supply) regulation 2005 which reads as under:-

“Notwithstanding anything contained in these Regulations, an application shall be deemed to be received on the date of receipt of the duly completed application containing all the necessary information/ documents in accordance with Regulation 4 above, payment of all approved charges of the Distribution Licensee in accordance with Regulation 3 above, availability of suitable piece of land or room in accordance with

Regulation 5.5 and Regulation 5.6 above and all consents/ permissions as may be required by the applicant and the Distribution Licensee under any law for the time being in force”

And section 43(1) of Electricity act 2003. In this case, applicant failed to do so hence he is not entitled for any refund, and his grievance application deserves to be dismissed.

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

1) The Grievance of the Applicant is that he applied for electric supply to his poultry farm i.e 106 HP without 1.3% SC+ D.D.F. i.e. non DDF & non execution Agreement of work on Rs. 100/- stamp paper which were filed by Non Applicant before forum as are bogus and false and prayed for Departmental Action against responsible person as well as refund of amount spent on infrastructure with interest :

2) Applicants 'A1' form is dated 15.9.2016 for poultry farm on bank loan and deposited Rs. 127820/- of demand note i.e on 16.12.2016 as security deposit and was disagree with 1.3% SC+D.D.F. charges Rs. 399427/- and prayed that same be converted to Non DDF & amount be refunded with interest or amount paid should be adjusted in the future bills. Applicant further denied that he has not given affidavit in writing that he will execute the work under 1.3 % SC+D.D.F. and Non Applicant has executed the bogus agreement as well as taken 'A1' form in collusion with the contractor on which his signature does not appear.

3) Non Applicant in reply dated 9.5.2017 stated as under,

Applicant initially applied for 3 phase 45 HP supply for Poultry Farm on 'A1' form with consent letter of Rs.100/- stamp paper in 1.3 % SC+D.D.F. which is signed by

Applicant. Accordingly estimate- EE/O&M/Hingna S/Dn/16-17/1.3%D.D.F./60 dated 26.8.2016 was sanctioned, later on secondly applied for 106 HP supply as complied required paper & documents. He also submitted stamp paper of Rs. 100/- in the name of Shaikh Hussam duly signed. Accordingly estimate (EE/O&M/Hingna S/Dn/16/17/1.3% DDF/80 dt 6.10.2016 was sanctioned.

4) Applicant twice submitted applications in his signature along with stamp paper, for demand Note for supply. After official procedure, Applicant is given demand note of 1.3 % sup. charge and applicant paid & executed the work as per estimate through MSEDCL's registered contractor and completion report submitted to Non Applicant. Hingna sub division's who reported completion report for load sanction along with triparty Agreement (signature of contractor & Applicant) on stamp paper by which Applicant agreed for D.D.F. supply. Said stamp paper is in the name of "Kwality Poultry Farm" Ladgaon and there is signature of Applicant. Non Applicant gave load release order vide letter EE/BTBR/DN/T/LS/16-17/585 dated 23.11.2016 and deposited security deposit of Rs. 127820/- Receipt No 1645437 dated 16.12.2016(16-12-2017) and signature of Applicant on page 1&2 is in English & signed after understanding its contents and denied allegation of Applicant.

5) Supervision charges 1.3% is paid by Applicant on 17-10-2016 & Denied contention that Triparty Agreement signed is not signed by Applicant & prayed for dismissal of Application and applicant as per estimate executed the work through Registered Contractor of non-applicant.

We heard the argument of both the parties and perused all the papers, documents, stamp papers on record of the file.

6) The disputed point for my consideration is whether the Application 'A1' form and

consent letter, agreement dated 12.9.2016 are signed by Applicant or not?

A] Consent letter is dated 12.9.2016 at page No.51&53 & page No.170 &172 & page No. 208 & 210, claimed by non-applicant to have signed by Applicant. It is worth to note and it appears that stamp paper is purchased from Vendor on 14.9.2016 and consent letter is dated 12-09-2016 (denied by Applicant) and signature appears as "Hussain Sheikh" in English. Hence it is clear that the undertaking is ante-dated which is fraud & criminal offence in the eyes of Law and hence null & wide. Secondly the Applicant's signature on Pan Card & on record of Bank at Sr. Page 308 & Page 1 is same in short and totally different than on undertaking and on 'A1' form can be very well compared visually. Secondly undertaking is for power supply to Domestic purpose when he was in need of power connection for Poultry Farm and hence for domestic purpose of individual to bear the cost of infrastructure required as per MSEDCL Circular No CE (Dist)/111/22/97 dated 20/5/08 and under 1.3% supervision charges as D.D.F. scheme is further fraud played by Non Applicant with the Applicant as totally irrelevant.

B] In the same so called undertaking it is mentioned as under,

"I am ready to provide the land for accommodation of Distribution Transformer/HT/LT Lines on non chargeable basis" (at page 51,53,170 &172,208,210).

Non Applicant in the above Para made reference to the circular dated 20.5.2008.

Sr.No 1.2 – All LT. Agriculture consumers –

b) If the consumer/group of consumers wants early connections and opts to execute the work and bear the cost of Infrastructure then the refund of the cost of infrastructure will be given by way of adjustment through energy bill.

Sr.No.2 – LT. Non Domestic, LT residential consumers, Consumers group of LT Consumers of non domestic & Residential complex where the load is less than 500 K.VA & falling in Area” C”,--

The consumer will have option to

a] get connection as Dedicated Distribution Facility (D.D.F.) and bear all the expenditure. The line will remain dedicated to the consumers in future.

or

b] get the connection on non Dedicated Distribution Facility (D.D.F.) basis and bear the expenditure on creation of (Except the cost of land) which will be refunded to the consumer/s through the energy bills. In this case the infrastructure will not remain dedicated.

7) On perusal of above said circular of 20.5.2008 (Para 4) Applicant is falling in 'Area C' as classified and hence even unwillingly under duress created the infrastructure proposed by Non Applicant through 1.3% SC+D.D.F. through Registered Electrical Contractor of non-applicant, bearing the amount of infrastructural cost of Rs. 399427/- deserves to refunded with interest as per section 62 (5) of the electricity Act 2003 or refund amount with a interest be adjusted in future energy bills as he did not opt for D.D.F.

8) Hence in the absence of request or option of the Applicant for 1.3% D.D.F. & the imposing D.D.F. by putting the additional burden on applicant is unwarranted.

9) Non Applicant filed copy of 'A1' form which is for Non domestic/ Non industrial (commercial) without date & without giving Acknowledgement which is statutory

obligation to give acknowledgement to Applicant & without mention of request or option for D.D.F. (sr. page 182, 184). The document dated 24.8.2016 at Sr. page 186, 188 is the same as page 51 ,53, 170, 172, & 208, 210 but purpose shown as poultry farm. Document at Sr. Page 202. 204 i.e. 'A1' form (Industrial) which is without date reveals that no acknowledge is provided, further there is no demand of D.D.F. or option of D.D.F. exercised by the applicant.

10) Thirdly Non Applicant has filed copy of undertaking (III) (D.D.F. Scheme) Infrastructure to be carried out by prospective consumer is without date but it appears to be signed by Executive Engineer Butibori (Page 232,238) and signature of Applicant appears on all applications & aforesaid document is as "Hussain Sheikh" which does not match with signature on Pan Card as well as in bank record which is 1st allegation of the Applicant. In the same way applicant denied his signature on sr page 53,168,172,176,182,188,204,206,210,238,250,256,272,274,278,304 which proves the extent of misrepresentation by non-applicant.

11) The signature of Applicant is taken by forum (page 308) during Argument on "Pan Card" on 30.5.2017 which is same as that signature on Bank's record as noted in Para1 above and hence the authorities of non-applicant having hand in gloves with their own electrical contractor have played mischief and provided supply under DDF than his entitlement for non DDF.

12) It is worthwhile to note that signature of purchase of stamp on page 53 (document dated 12-09-2016) page 172, 210, 234, 256, 278, 300 is of the person other than the applicant which proves that non-applicant having hand in gloves with contractor have prepared applications, document with false signature of applicant by keeping him

in dark & have imposed the DDF without his request or option for the same and therefore entire submission of the non-applicant is false, baseless & deserves to be discarded and is violation of Regulation 6.1 & 6.3 of MERC (Electricity supply code & other condition of supply) Regulations 2005 as copy of agreement not provided to applicant duly acknowledged.

13) Applicant filed on record at page 119 to page 156 pertains to other poultry form consumer (Mr.Pranay Bhoge) contains details alongwith “agreement acceptance letter” which are not part of documents of the applicant.

14) In view of the above observations, it is thus clear beyond doubt that non-applicant having hand in gloves with ulterior motive and under duress put applicant in scheme DDF which is bad in the eyes of law.

15) On perusal of commercial circular no.275 dated 18-11-2016 & earlier tariff also the category of the applicant is LT iv(C) : LT – Agriculture – others – applicability – (b) poultries.

16) Hence it was obligatory on part of non-applicant to procure ‘A1’ application form from applicant as agriculture category but non-applicant obtained for industrial and commercial and document for residential which shows the working of non-applicant is not as per rule or procedure but dealt in most cursory manner.

17) During arguments I asked concerned Executive Engineer Mr.Ghatod about the tariff category of applicant’s as poultry farm, in reply he said, he has to study the tariff which is very unfortunate & Chief Engineer shall take note of it.

18) MERC in case no.56/2007 order dated 16-02-2008 in an identical case as observed as under,

Page(6) DDF – Such facilities can not be imposed on a consumer. If the

consumer does not seek dedicated distribution facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in section 43 of the E.A. 2003 read with the MERC (standard of performance of distribution licensees, period of giving supply and determination of compensation) Regulations 2005. In fact the licensee should taken advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfill universal service obligation as per the spirit envisaged in the E.A. 2003 and the Regulations made their under.

1) The section 42(1) of the electricity Act 2003 is as under,

It shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

2) It is worth to note the directions/observations in order of MERC in petition no.56 of 2007 (Para 9) dated 16-09-2008 i.e.

The commission observed that consumer should not be burden with infrastructural cost which are the liability of MSEDCL. It was further observed that if paucity of funds is the actual reason behind burdening consumers from distribution infrastructure, MSEDCL may seek the recovery of the same as an annual revenue requirement.

“Also dedicated distribution facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer. If the consumer does not seek dedicated Distribution facility, the licensee has to develop its own infrastructure to give electric supply within the period stipulated in section 43 of the E.A. 2003 read with the MERC (standard of performance of distribution licensees, period of giving

supply and determination of compensation) Regulations 2005. In fact the licensee should taken advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfill “universal service obligation” as per the spirit envisaged in the E.A. 2003 and the Regulations made their under.

3) MERC in order dated 08-09-2006 in case no.70 of 2005 on page 16 – 6.4 commission’s Ruling.

The commission totally rejects MSEDCL’s proposal to recover service line charges from the progressive consumers excepts in cases of consumer requiring dedicated distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of licensee. The commission therefore directs that the cost towards infrastructure from delivery point transmission system to distributing mains should be borne by MSEDCL.

4) The MSEDCL vide circular no.CE(Dist)/D-III/Rep.of land/28792 dated 17-07-2015.

Sub:- Revised guidelines for requirement of adequate land for distribution transformer centre and substations while releasing connection to residential/commercial/industrial etc., complexes/township/establishments having multiple numbers of connections.

Page 4 para-2 – As per the provisions in MERC(Electricity supply code and other conditions of supply) Regulations 2005 and various standardized development control and promotion Regulations of urban development department, government of Maharashtra, it is the responsibility of the developer/builder/owner/applicant to provide the adequate developed land required for establishment of distribution transformer centre/s and substation.

Applicant may be requested to make available the required suitable piece of land for the establishment of distribution network for providing the power supply to the establishment by way of lease agreement of annually for the period of 99 years.

Page 5 para-4 – The developer/builder/owner/applicant can option under DDF to develop, erect and commission substation and necessary allied infrastructure for getting power supply for his establishment either by paying 1.3% supervision charges towards estimated cost to MSEDCL or 100% payment to MSEDCL for establishing the said work mentioned.

Para-5 – If developer/builder/owner/applicant provides the required land to MSEDCL and MSEDCL develops, erects and commissions substation and necessary allied infrastructure, then it shall be treated as non-DDF.

I wish to reproduce the text of 5.5 of MERC (Electricity supply code and other conditions of supply) Regulations, 2005,

Where in the opinion of the distribution licensee, the provision of supply requires installation of a distribution transformer within the applicant's premises, the applicant shall make available to the distribution licensee by way of lease, for the period for which supply is given to the premises, a suitable piece of land or a suitable room within such premises for the distribution transformer.

Provided that the terms and conditions for such lease of land or room shall be mutually agreed between the distribution licensee and the applicant having regard to prevailing market rates.

19) In an identical case of DDF & Non DDF, where Applicant spent for creating infrastructure in DDF but supply was also given to other consumer and Kalyan CGRF ordered refund with interest @ 9% PA was before-- In the High Court of Judicature at

Bombay, Civil Appellate Jurisdiction, (writ petition No 2798 of 2015) MSEDCL (petitioners) V/s M/s M.R.Scion Agro processors pvt ltd (Respondents) decided on 18/1/2017 laid the following ratio-

“In the circumstances, in my clear opinion, as the agreement itself being contrary to the requirement of law, the submission of estopped or for that matter of waiver of a legal right by Respondent No.1, as urged on behalf of the petitioners cannot be accepted. It would be an argument contrary to the doctrine of public policy as envisaged under section 23 of the Indian contract Act and writ petition is accordingly rejected.”

It is not the contention of the non-applicant that inspite of requirement of space for infrastructure and request to applicant for space/land, it is not provide to non-applicant on the contrary the land/space is provided & infrastructure is erected at the cost of applicant.

Hence further in view of the above observations, applicant deserves to categorized as non DDF and amount of Rs.399427/- spent on infrastructure deserves to refunded with interest or adjusted with interest as per section 62(6) in future bills in the interest of justice.

20) Hence the application is deserves to be allowed.

The non-applicant is directed to refund amount of Rs.399427/- with interest as per Section 62(6) of the electricity Act 2003 or adjust the amount Rs.399427/- with interest in future bills as misguided by non-applicant as well as their own electrical contractor.

21) I feel the Chief Engineer (Nagpur Zone) shall take serious cognizance of the misdeeds of their own officials.

22) 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 as per 5.2 of above MERC Regulation 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 only.

Naresh Bansod
Member (CPO)

18. Before reaching to the final order, it is necessary to decide the matter within two months from the date of filing of the application. Applicant filed application on 13-04-2017. Therefore it was necessary to dispose of the application on or before 13-6-2017. Chairperson of the Forum resigned the office on 16 May 2017. Forum heard argument on 30-05-2017. The separate dissenting note of Hon’ble Member (CPO) is given on dt.17.06.2017 due to this there is delay in deciding the matter.

19. In view of the majority we hold that the applicant is not entitled for any refund and therefore Grievance application deserves to be dismissed.

Therefore we proceed to pass the following order.

ORDER

- 1) Grievance application is dismissed.

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

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