

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

Case No. CGRF (NZ)/80 /2017

Applicant : Shri. Hiranman M. Naukarkar
At. Post. Wagholi
Tah - Hinganghat
Dist - Wardha

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

Applicant: - Shri. Betal Applicant's Representative,
Non- applicant: - 1) Shri H. P. Pawade, EE, Hinganghat

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

ORDER PASSED ON 08.11.2017.

1. The applicant filed present grievance application before this Forum on 08.09.2017 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 04.10.2017 3.
3. Forum heard arguments of both the sides and perused record.

4. The applicant is an agricultural consumer of the Non-applicant and his supply failed on 07.02.2016 due to breaking of poles and wires. It was restored very late i.e. on dt 08.06.2017. Thus there was a total disruption in the supply for 484 days from 07.02.2016 to 07.06.2017. The complaint for this interruption was lodged on dt.11.04.2016. But supply was not restored within 48 hrs. as per SOP Regulation 2014.

5. The applicant approached the Internal Grievance Redressal Cell (IGRC) on 20.06.2016. By its order dated 25.08.2016, the IGRC directed the non-applicant to restore the supply. However, being a natural calamity and thus cause beyond the jurisdiction of Non-applicant, the claim for SOP compensation was rejected as per clause 11.1(4) of SOP Regulation 2014. The IGRC also rejected the other claims of the applicant.

6. Not satisfied with the order passed by the IGRC, the applicant approached the CGRF demanding: (i) SOP Compensation for interruption in supply from 07.02.2016 to 07.06.2017 and (ii) action against the officers concerned for negligence.

7. By their reply dated 04.10.2017, the non-applicant denied the claims of the applicant stating that they received complaint regarding interruption in the supply from applicant on dt.11.04.2016. The applicant filed grievance for compensation on dt.20.06.2016, applicant should have approached IGRC within 60 days from the cause of action i.e. on or before 09.04.2016. therefore compensation claim of the applicant is barred by limitation as per Clause 12.2 of SOP Regulations, 2014 of MERC. Also, the

applicant's son shri Pramod Babulal Naukarkar has given written application on dt.07.07.2017 that due to presence of water in their field, the necessary work should not be taken up.

8. Forum has heard Shri Betal representative for the applicant, and Shri H. P.Pawade, Executive Engineer, Hinganghat for the Non-applicant.

9. Non-applicant reiterated the facts stated in the reply. According to Shri Pawade, due to heavy wind caused in the region there was huge loss caused to the HT as well as LT lines in the said area. The restoration of supply given through HT line by re-erecting HT lines was taken up on priority. Afterward supply given through LT line was restored. In the instant case 4 poles were to be straightened up .While carrying out the rectification work on dt.07.07.16, applicant's son for parallel case no.81/2017 Shri Pramod Babulal naukarkar has given in writing not to carry out the work.The copy of the statement is filed for the record. After carrying their work only, the rectification work of this applicant was possible. He further contended that It is difficult to attend timely AG fuse off complaint due to obstruction caused by agriculturist themselves to carry out the work due to sometimes rain, standing crops,etc. The supply was however restored on the suitable date as per convenience of the both the party Hence, they are not responsible for late restoration of supply, on the contrarily the supply was restored as per convenience of the applicant only while taking full care of standing crops. If they would have forcibly restored the supply, applicant would have suffered substantial loss, as standing crop would have damaged. On this count the

applicant's claim for compensation is not justified. Hence prayed to forum that applicant's claim for compensation may be rejected.

10. Applicant's representative took objection over the fact that the applicant son has given written statement for not carrying out the work. The applicant was summoned for the hearing by the forum. Shri.Pramod B..Naukarkar could not attend the hearing on dt.3.11.2011.This case is parallel to the Case no.81/2017filed by Shri Babulal M.Naukarkar. Shri. Hiranman M. Naukarkar was present during the hearing. He denied having given any such application or given any such authority to Shri P.B.Naukarkar on behalf of him. On this count however, the Applicant could not produce any proof in support of his claim.

11. 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) Regulation2006 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. After going through the arguments and the documents filed by the two parties, forum is convinced by the arguments and documents submitted by the Non-applicant that the supply was restored as per the convenience of the applicant only. Also interruption in the supply of applicant was on dt.11.04.2016. The applicant filed grievance for compensation on dt.20.06.2016, applicant should have made representation for compensation or should have approached IGRC within 60 days from the cause of action i.e. on or before 09.04.2016. In this case grievance application was filed with IGRC on dt. 20.06.2016. Hon'ble Electricity Ombudsman has clearly stated in representation no.34/2016 at para 7 as follows:

"It may be noted that Clause 12.2 of SOP Regulations is applicable only when the consumer files his claim with the Distribution Licensee. The said limitation of 60 days does not apply when the consumer files his claim for compensation with the forum".

Therefore compensation claim of the applicant is barred by limitation as per Clause 12.2 of SOP Regulations, 2014 of MERC. Hence Forum declined to compensate the applicant for the period from 07.02.2016 to 07.06.2017. i.e. for 484 days under the MERC's SOP Compensation Regulations, 2014 and therefore other demands also deserves to be rejected.

Separate dissenting Note by Member (CPO) Mr. Naresh Bansod dated 7.11.2017 in Case No. 80/2017 is given as under.

The grievance of the Applicant is as under.

- (1) The Applicant is having 3 HP Electricity supply to his Agriculture pump which was disrupted due to breaking of poles & wires since 7-2-2016 and without restoring supply within prescribed period, same was restored on 8-6-2017. Applicant initially informed to Asstt. Engineer orally on 10-2-2016 then by way of Joint complaint on 11-4-2016.
- (2) Applicant prayed for SOP compensation for late restoration of supply beyond prescribed period and departmental action against erring officials of Non Applicant.
- (3) Non Applicant in reply admitted that written complaint dated 11-4-2016 regarding disruption of electricity supply was received and grievance was raised before
- (4) IGRC on 20-7-2016 for SOP compensation for late restoration of supply.

- (5) Non applicant in para 2 of reply said that अनुसुची 'अ' Para 5, date of intimation to the Non applicant is 11-4-2016 which is false as per MERC SOP Regulation 12.2 and as per IGRC complaint 20-7-2016 is date of intimation to the Non Applicant.
- (6) Non Applicant in reply in para 5 stated that Applicant on disruption of supply on 7-2-2016. Within period on 60 days i.e. before 9-4-2016 should have appeal to Non Applicant for compensation & afterwards even complaint is filed after 3 months and the Applicants complaint should be dismissed under MERC Reg. 12.2 Non Applicant, further said that after 12 months of order of IGRC on 28-9-2016 Application filed before CGRF on 8-9-2017 & also further alleged that when employees of Non Applicant gone to do the Job, the son of another consumer named Mr. Pramob Babulal Naukarkar said that due to water in the field, work cannot be done and Non Applicant is not responsible for the same as per MERC Reg.2014 4.10 & 11.1(4) & Application be dismissed.
- (7) We heard the arguments of both the parties and perused all the papers on record including Judgement of Hon'ble High Court in Writ Petition No. 9455 of 2011 dated 19-1-2012 & Hon'ble High Court (Nagpur Bench) of Bombay High Court dated 18-7-2017 in Writ petition No. 3997 of 2016, order of The Electricity Ombudsman, Nagpur in Rep. No.41/2016 dated 30-9-2016, order of This forum dated 23-11-2016 in Case No. 168/2016.
- (8) It is very surprising that in para 1 of reply non applicant said as per applicant that supply was disrupted on 7-2-2016 due to breakage of wire and written

complaint

(9) for the same is received on 11-4-2016 but in para 5 of reply stated that Applicant should have appealed to the non applicant within 60 days that before 9-4-2016 & Application be dismissed and question to appeal is illegal to divert attention of Forum.

(10) Non Applicant in Para 7 of reply made reference to Mr. Pramod Babulal Naukarkar son of another consumer Mr. Babulal Mahadeo Naukarkar with reference to water in the field & work cannot be possible which is totally baseless as Mr. Pramod is third person and his written say not available on record and he was not available before the forum for its conformity. Hence deserves to be discarded at the 1st instance. Secondly to clear the doubt raised by Non Applicant that Applicant is not aware & Applicant as per order of forum was present before forum on 3-11-2017 who clearly stated that the Application is signed by him and he is no way concern with Mr. Pramod Babulal Naukarkar. Hence submission of Non Applicant process to be false & baseless to escape from the liability of SOP compensation.

(11) In para 7 in context to para 8 above, Non Applicant is not responsible as per 4.10 & 11.1 (4) of MERC Regulation on 2014

Reg. 4 - Period of giving supply (New Connection including Temporary Connection/Additional Load/Reduction of load). Reg.4.10 Reads as under.

"The Distribution licensee shall not be held responsible for the delay, if any, in giving supply on account of problems relating to statutory clearances, right of

way, acquisition land of the delay in consumer's obligation which is beyond the reasonable control of the Distribution Licensee".

Firstly above Reg.4.10 is regarding "New Connection Including Temporary Connection/Additional load/Reduction of Load. Hence Non Applicant placed the wrong reference deserves to be discarded as it does not pertain to New Connection and No situation like statutory clearances, right of way, acquisition of land etc. has warranted, Which further proves the poor knowledge & interpretation of the MERC Regulation.

Reg. 11.1(4) - Reads as under.

11. Exemptions.

11.1 - Nothing contained in these regulations shall apply where, in the opinion of the commission, the Distribution Licensee is prevented from meeting his obligation under these regulations by

(iv) or other occurrences beyond the control of the Distribution Licensee :

Provided that the Distribution Licensee shall not be excused from failure to maintain the standards of performance under these Regulations, where such failure can be attributed to negligence or deficiency or lack of preventive maintenance of the Distribution System or failure to take reasonable precaution on the part of the Distribution Licensee.

Firstly, for exemptions, Distribution Licensee has to apply to Commission

(MERC) and if commission is satisfied about the submission for exemption, then

only Distribution Licensees exemption can be worth to be considered. Hence reference of Reg.11.1(4) is out of contest and does not apply to the present

complaint, deserves to be discarded as baseless reference and poor & misinterpretation without application of mind of Distribution Licensee as well as without cogent evidence.

Secondly the act of failure of Distribution Licensee i.e. Non Applicant can be attributed to negligence or deficiency or lack of preventive maintenance of the Distribution System or failure to take reasonable precaution on the part of Non Applicant.

This proves the lapses on part of Non Applicant as then failed to resotre supply within 24 hours from 11-4-2016 as per SOP Norms and was restored on 8-6-2017 but again Non Applicant is silent on date of restoration even after the order of I.G.R.C. dated 28-9-2016, but IGRC denied the compensation as per Reg. 11. (4) of SOP Regulation 2014 (MERC) which is a serious matter of misinterpretation of Regulation & misplacement of Regulation deserves to be discarded and it does not support the contention of Non Applicant.

(12) The Deputy Ex.Engineer of Non Applicant in his reply before IGRC vide reply dated 24-8-2016 tried to creat the new story which does not match with

(13) reply of Non Applicant that in June 2016 due to storm poles & wires broken which is further false when applicants complaint dated 11-4-2016 was admitted by non applicant and New storm of storm is totally false in absence of cogent evidence.

(14) IGRC in his order dated 28-9-2016 order as under.

१) श्री. हिरामण महादेव नौकरकार यांचे शेतातील खांब उभारण्याचे काम शक्य तेवढ्या लवकर पूर्ण करून विजपुरवठा सुरु करण्यात यावा. and the supply was restored on 08-06-2017.

(15) The point for my consideration is whether the present complaint while claiming compensation is affected by MERC (SOP of Distribution Licensee and Determination of Compensation) Regulation 2014 Reg. 12.2. as well as Appendix 'A' – No

On perusal of order of Nagpur bench of Bombay High Court in Writ Petition No. 3997 of 2016 dated 18-7-2017 M.S.E.D.C.L. V/S M/s. Shilpa Steel & Power Limited, Hon'ble High Court considered the Judgement of Division Bench of Bombay High Court in Writ Petition No. 9455 of 2011 M/s. HPCL V/S MSEDCL and it was held that "Cause of action arises from the date of rejection of grievance by IGRC".

Hence the cause of action arise from date of rejection of grievance regarding non grant of SOP compensation

In this case applicant filed complaint on 11-4-2016 regarding disruption of supply, then to IGRC on 20-7-2016, ordered on 28-9-2016 and before the forum on 8-9-2017 due to non grant of claim of SOP compensation under Reg.12.2 of SOP Regulation.

Applicant relieved on order of The Electricity Ombudsman Nagpur and of this

forum as mentioned above which is identical to the present case and SOP compensation for late restoration of supply inspite of specific order of IGRC & MERC (SOP) Regulations 2014.

Hence Applicant is entitled to claim SOP compensation for late restoration of supply from 12-4-2016 to 7-6-2017 As "Fuse of Call" @ Rs.50/- per hour and complaint is within limitation as well as for SOP compensation.

(16) As observed by The E.O. Nagpur in above cited order of representation in para 10, I am of the firm opinion that "In the circumstances of the case, I feel it

(17) necessary that inquiry into negligence of the concerned officials should be made so as to fix liability on erring officials and impose appropriate punishment on those found guilty".

(18) It is serious case of harassment & mental agony & financial harassment caused to Applicant as was deprived from use of water to his field due to non restoration of supply for a long period from 11-4-2016 to 8-6-2017 violating all norms of SOP compensation by Non Applicant.

In view of the above observations, in result I pass the following order.

(A) The complaint is allowed (B) The order of IGRC dated 28-9-2016 on the point of Rejection of SOP Compensation is hereby set aside (C) Non Applicant is directed to pay compensation @ Rs.50/- per hour from 12-4-2016 to 7-6-2017 to the applicant (D) compliance be reported within one month.

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 Mr. Langewar acted as member secretary and Smt. Gouri Chandrayan as member as per regulation 5.2 of 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 and after joining he is absent from sitting of the forum, then technical member, shall be the chairperson for such sitting (during leave, sick leave etc) but presently the Chairperson's post is filled but did not join the forum and absent on date of sitting, so the technical member and member (CPO) can continue to run sitting and decides the cases as per regulation 5.2 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, Which is illegal as per me because in case of vacant post of Chairman of MERC, Hon'ble Shri Ajij Khan & Mr. Deepak Lad Saheb sign as member and not as chairman as per seniority, Hence order of the Technical person or so called member secretary cannot be order of Majority order because above said regulation notified the Technical Member only but not Member Secretary.

Naresh Bansod
Member (CPO)

13. In view of the majority, considering above facts and as compensation claim of the applicant is barred by limitation as per Clause 12.2 of SOP Regulations, 2014 of MERC. 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/CHAIRMAN

