

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

Case No. CGRF (NZ)/84 /2017

Applicant : Shri Omkar M. Deshmukh,
At - post Mangrul,
Taluka – Samudrapur,
Dist – Wardha.
Non–applicant : Nodal Officer,
The Executive Engineer,
O & M Division, MSEDCL,
Hinganghat- 442301

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 22.11.2017.

1. The applicant filed present grievance application before this Forum on 22.09.2017 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 submitted on dated 27.10.2017
3. Forum heard arguments of both the sides and perused record.

4. Shri.Omkar.M.Deshmukh Po.Maqngrul,Tq.Samudrapur, Dist.Wardha (hereinafter referred to as, the applicant) had applied to the Distribution Licensee MSEDCL (hereinafter referred to as, the Non-applicant) for new connection to his agricultural pump set. It is the contention of the applicant that inspite of the fact that he completed all the formalities the Non Applicant had not released the connection within the time limit prescribed under the MERC (standards of performance of distribution licensees, period for giving supply and determination of compensation) Regulations 2014. He approached the IGRC Wardha on dt.09.04.2015 & 08.06.2017.IGRC vide order 4083 dated 05-08-2017 rejected the claim. Aggrieved by the aforesaid order the applicant presented the instant application under the provisions contained in Regulation 6.4 of the MERC (CGRF & EO) Regulations 2006 on 22-09-2017.

5. A copy of the application was given to the Non-applicant. The Non-applicant was directed to submit parawise reply. The Non-applicant submitted reply letter no.EE/O&M/H'ghat/Tech/4241 dated 16-10-2017 vide email dt.27.10.2017.

6. It was contended on behalf of the applicant that, he submitted an application for the connection to his agricultural pump on 30-12-2014. He received demand note on 31-03-2015. He deposited required amount on 12-05-2015. He submitted test report on 25-05-2015. Inspite of the fact that the application was complete in all respect the respondent has not released the connection till today. So he is entitled for compensation as provided under the SOP Regulations.

7. The applicant's prayer was as under,

i) The Non-applicant failed to release the connection as provided under the Regulation. So the applicant may be awarded the SOP compensation.

ii) The action against the officers concerned for negligence for putting wrong date of submission of A-1 form in the Demand note issued to him.

8. Shri Pawade, Executive Engineer submitted the para-wise reply on dated 05-06-2017. There in it was stated that, the applicant submitted the application on 31-12-2014. A demand note was issued on 31-03-2015. He deposited the required amount on 12-05-2015. He submitted the test report on 25-05-2015. To provide the connection to the applicant erection of LT line admeasuring 0.3 km was necessary His name was entered in the paid pending list for the year 2015-16 of Samudrapur Sub Division. and as per Clause no.4.8 OF MERC SOP Regulation 2014 supply was to be released on 24.08.2015. The applicant has lodged complaint at IGRC on dt 08.06.2017, whereas applicant has incorrectly stated in grievance application to the CGRF for this case, dt. of complaint with IGRC as dt.09.04.2015,as this date is pertaining to IGRC Case no.2880 dt.15.04.2015, which was decided by CGRF vide case no.54/2015 for late demand note compensation only. He further contended that, applicant's first date of application for late supply SOP compensation is 08.06.2017. Applicant should have filed this application up to 23.10.2015 i.e. within 60 days as per clause 12.2 of MERC SOP regulation 2014. But he has filed late i.e. after 20 months hence prayed to reject the application.

9. The case was fixed for personal hearing on 24-10-2017 and finally on dt.03.11.2017. Shri B.V.Betal, authorized representative was present for the applicant. Shri H.P.Pawade, Executive Engineer, Hinganghat Division represented the Non-Applicant. Both the parties were heard.

10. At the time of hearing Shri Betal stated that AI was submitted on dt.30.12.14, Demand note was issues on dt 31.03.2015.For issue of late Demand note,CGRF Nagpur has already directed to pay compensation vide their order dt 03.08.2015. Demand note was paid on Dt.12.05.2015 and Test report was submitted on dt 25.05.2015. The motor pump is not getting electricity supply even today.

11. Non Applicant contended that, the connections to the agricultural pumps are released as per the seniority of the department and the availability of funds from various sources. However, the applicant has been given the connection on 06.03.2017. Secondly, the request for compensation by the applicant is barred by limitation. Hence, prayed to dismiss the application.

12. We confirmed that the connection was released on 06-03-2017.

13. 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:

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

15. It is admitted position that the applicant submitted an application in the prescribed form. He deposited the amount as per rules. He submitted the test report. His name was also entered in the paid pending list prepared by the Non-applicant. So it is clear that the application submitted by the applicant was complete in all respect till dt.25.05.2017.

16. As stated in the aforesaid paragraph to release connection to the applicant

augmentation to the existing network was necessary. So as per the provision contained in Regulation 4.8 the applicant was entitled for connection within a period of 3 months i.e. on or before 24-08-2015. Whereas it is released on 06.03.2017. So it is clear that the respondent failed to release the connection within the time limit prescribed under the MERC's SOP Regulation 2014.

17. Regulation 12 of the 2014 Regulation discuss about, the determination of compensation. Proviso to Regulation 12 reads as follows,

*Provided that any person who is affected by the failure of the Distribution Licensee to meet the standards of performance specified under these Regulation and who seeks to claim compensation shall file his claim with such a Distribution Licensee within a maximum period of sixty (60) days **from the time such a person is affected by such failure** of the Distribution Licensee to meet the standards of performance.*

The applicant claim that the Distribution Licensee failed to release connection within the stipulated time limit.

18. On perusal of the record it reveals that the application was complete on 25.05.2015, when the applicant submitted the test report. Augmentation to the existing network was necessary. So as per the provisions of Regulation 4.8 he was entitle for connection on or before 24-08-2015. Furthermore as discussed in the forgoing para as per the provisions contained in proviso of Regulation 12.2 he should have claimed compensation within a period of 60 days from 24-08-2015. In other words he should have claimed compensation for late release of the connection on or before 24-10-2015.

He claimed compensation with IGRC on dt.09.04.2015 for late demand note only, the applicant has not claimed the compensation for late supply as he has completed all formalities on dt.25.05.2015.Hence 09.04.2015 cannot be treated as his first date of approaching IGRC for compensation of late supply. It is clear to forum that, for late supply compensation, applicant approached IGRC for second time on dt.08.06.2017. He has not complied with the provisions of proviso to Regulation 12.2 as he approached the IGRC Wardha on 08-06-2017. We are of the considered opinion that the applicant utterly failed to comply the provision of Regulation 12.2.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. We refer this judgment and hold that as the grievance is not filed within 60 days from the cause of action i.e. on or before 24.10.2015. Hence claim for late release of supply is time barred as per Clause 12.2 of SOP Regulations, 2014 of MERC.As such he is not entitled for any compensation.

Dissent Note by Member (CPO) Mr. Naresh Bansod dated 17-11-2017 in Case No. 84/2017.

- (1) Arguments heard on 30-10-2017 and case file given on 17-11-2017 for writing Note without concurrence of Reg. 8.4 of above Reg. on point or points of Difference.
- (2) It is an admitted fact that applicant submitted 'A' form for Electric connection to 3

HP Agriculture Pump on 30-12-2014 and demand note given by Non Applicant on 31-3-2015 and applicant paid amount of demand note on 12-5-2015 & submitted Test Report on 25-5-2015. Applicant mentioned that after late receipt of demand, As per order of CGRF in Case No.54/2015 the amount of SOP compensation for late demand note was Received by cheque.

(1) The grivence for my consideration is for SOP compensation for late Electricity connection on 6-3-2017 i.e. after the prescribed period in SOP Regulation 2014 and compensation for physical and mental harassment alongwith cost of legal& travelling expenses.

(2) The Deputy Executive Engineer of Non Applicant vide reply before IGRC on 22-6-2017 admitted the above facts and stated that for supply to consumer 0.30 KM. L.T. Line was necessary to erect and on 6-3-2017 supply was given after installing meter but denied SOP compensation. Non Applicant also stated that IGRC denied SOP compensation for not filing the grivence within prescribed line.

Non applicant said that Applicant should have filed the complaint before 23-10-2015 due to not availability of supply within 60 days from 20-8-2015 and prayed for dismissal of the complaint.

(3) On perusal of facts above applicant paid demand on 12-5-2015 & submitted Test Report on 25-5-2015. As per SOP Regulation 4.8. 3 months period is provided as a case of erection of 0.3 KM. L.T. Line and Non Applicant was duty bound to provide supply on or before 25-8-2015 but late supply was given on 6-3-2017

without assigning any cogent reason but wrongly quoted required date for connection 20-8-2015 & Appeal should have been filed to Non Applicant before 23-10-2015 and Applicant filed late complaint on 8-6-2017 after 20 months.

(4) IGRC vide order dated 5-8-2017 denied the grivence of the applicant for SOP compensation for late electricity connection as not filed within specified period.

(5) On the point of limitation as well as period of SOP compensation. Applicant relied on the

(A) Judgement of Bombay High Court in Writ Petition No. 9455 of 2011 M/s. Hindustan Petroleum Corporation Ltd. V/S MSEDCL, dated 19-1-2012.

(B) Judgement of Nagpur Bench of Bombay High Court in Writ Petition No. 3997 of 2016 dated 18-7-2017 – MSEDCL V/S M/s. Shilpa Steel & Power Ltd.

In both the Writ Petitions, Hon'ble High Court held that "Cause of Action arises on the date of rejection of grievance by IGRC i.e. 5-8-2017 and hence cause of Action has arisen from date of rejection of grievance regarding non grant of SOP compensation for late Electricity supply to applicant.

(C) I perused the order the Electricity Ombudsman Nagpur in Rep. No. 41/2016 dated 30-9-2016. Namdeo Shrawan Chavan V/S The Executive Engineer, Hinganghat, the honourable Electricity Ombudsman in an identical case, held that the complaint is within limitation and Applicants are entitle for SOP compensation for late supply of electricity.

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.

In view of the above observations, Application is well within limitation as well as Applicant is entitle for SOP compensation @ 100/- per week as part thereof of delay from 25-8-2015 (3 months from competed application on 25-5-2015) till date of connection 6-3-2017 as per SOP Regulation 2014” Appendix ‘A’ (iii).

It can very well be realized that the Applicant suffered physical & mental harassment from 30-12-2014 to 31-3-2015 then from 25-5-2015 to 6-3-2017 as well as has to bear travelling expenses etc. and in the interest of justice, it will be justified to grant consolidated compensation of Rs.8000/- to the applicant and I.G.R.C. order desres to be quash & set aside as without application of latest legal position and application of mind and application deserves to be allowed.

Hence the following order.

(1)Application is allowed (2) Order of IGRC dated 5-8-2017 is quash & set aside (3) Non Applicant is directed to pay SOP Compensation for late electricity supply from 25-8-2015 to 6-3-2017 @ Rs.100/- per week or part thereof of delay (4) Non Applicant is directed to pay compensation of Rs.8000/- under Reg. 8.2 of MERC (CGRF & EO) Regulations 2006 for physical & mental harassment etc. (5) Compliance of this order be done within 30 days.

As per 4.1 (C) proviso of above said regulation. Secondly on perusal of

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 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.

In entire MERC (CGRF & EO) regulation 2006 post of only Technical Member is notified but not 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. 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 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 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.

**Naresh Bansod
Member (CPO)**

19. In view of the position discussed above we pass the following order by majority. 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

- i. Application no.84 /2017 is hereby dismissed.
- ii. No order as to cost.

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

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