

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

Case No. CGRF (NZ)/85 /2017

Applicant : Shri Yadaorao Z. Rade,
At Post - Wagholi,
Tah - Hinganghat,
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 dated 27.10.2017
3. Forum heard arguments of both the sides and perused record.

4. Shri Yadaorao Z. Rade, Po. Wagholi, Tq. Hinganghat, 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 in spite 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. 08.06.2017. The IGRC dismissed his application vide order no. SE/Wardha/Tech/IGRC/4081 dated 05-08-2017. 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 vide letter no. EE/O&M/H'ghat/Tech/4242 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 connection to his agricultural pump on 31-05-2016. He received demand note on 09-06-2016. He deposited required amount on 25-06-2016. He submitted test report on 26-12-2016. In spite of the fact that the application was complete in all respect the respondent has not been given the connection till today. So he may be given connection and for late release of connection compensation may be given as provided under the SOP Regulations.

7. The applicant's prayer was as under,

i) The respondent failed to issue the demand note within the prescribed time limit. So the applicant may be awarded the compensation.

ii) The respondent failed to release the connection as provided under the Regulation. So the applicant may be awarded the compensation.

ii) Compensation of Rs.8000/;for Mental and physical harassment and Travelling allowance of Rs.3000/-

8. Non applicant Shri Pawade, Executive Engineer submitted the Para-wise reply dated 16-10-2017. Therein, It was stated that the applicant submitted the application on 29-05-2016. A demand note was issued on 09-06-2016. He deposited the required amount on 19-06-2016. He submitted the test report on 26-12-2016. To provide the connection to the applicant erection of LT line admeasuring 0.3 km is necessary. The demand note was to be issued on or before 30.06.2016. The applicant has been issued demand note well within prescribed time limit of 30 days from the date of submission of A-1 form. Hence the request for compensation by the applicant is not vaild. Secondly, the connection was to be issued on or before 25.03.2017 as he has submitted T.R. on dt 26.12.2016. As per Clause no.12.2 OF MERC SOP Regulation 2014 Applicant should have filed the application for demand of compensation on or before 25.05.2017 i.e. within 60 days. The applicant has lodged complaint at IGRC on dt 08.06.2017, thus has filed late. Therefore the request for compensation by the applicant is barred by

limitation. So there is no force in the application. Hence prayed to dismiss & 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.31.05.2016, Demand note was issues on dt 09.06.2016. Demand note was paid on Dt.25.06.2016 and Test report was submitted on dt 26.12.2016. But the motor pump is not getting electricity supply even today.

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

13. 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 respondent. So it is clear that the application submitted by the applicant was complete in all respect.

14. The applicant claimed compensation on two counts, firstly it is stated that the respondent failed to issue the demand note within the prescribed time limit. It is admitted position that the applicant submitted the application on 29-05-2016. The demand note was given on 09-06-2016. To release the connection to the applicant erection of LT line admeasuring 0.12 km was necessary. So as per the provisions contained in Regulation 4.5 the applicant was entitled to receive the demand note within a period of 30 days i.e. on or before 30-06-2016, which he has received on 09-06-2016. It is clear that the demand note was given within the prescribed time limit.

15. 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 25-03-2017.

16. 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 is release connection within the stipulated time limit.

On perusal of the record it reveals that the application was complete on 26.12.2016, 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 25-03-2017. 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 25-03-2017. In other words he should have claimed compensation for late release of the connection on or before 25-07-2017.

The applicant has not claimed the compensation. He has not complied with the provisions of proviso to Regulation 12.2. He directly approached the IGRC Wardha on 08-06-2017. 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 25.07.2017. 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. We are of the considered opinion that the applicant utterly failed to comply the provision of Regulation 12.2. As such he is not entitled for any compensation.

17. As regards to provide the connection to the applicant, during hearing, non-applicant stated that erection of L.T. line measuring 0.3 Km., is necessary. His name is entered in the paid pending list of year 2016-17.The connections to the agricultural pumps are released as per the order from the higher authorities and availability of funds under Special Ag Package scheme. If the applicant wants the connection immediately, he may apply for connection under DDF scheme stated as per MSEDCL circular no 4900 dated 12-02-2014. MSEDCL can provide the connection to the complaint's Ag pump as per the seniority list, otherwise it will cause great injustice on the part of other applicants who have paid the demand prior to the applicant.As per MERC SOP regulation 2014 Sec 4.10 '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 of land or the delay in consumer's obligation which is beyond the reasonable control of the Distribution Licensee'.

As Per Electricity Act-2003 Section 44 it states 'Nothing contained in section 43 shall be taken as requiring a distribution licensee to give supply of electricity to any premises if he is prevented from so doing by cyclone, floods, storms or other occurrences beyond his control'.

Hon'ble High court has delivered judgement on 2nd March 2016 in petition no WP 2641-2014-MCGM-V-MERC Which includes following content.

- This is evident from the 31st Report on the Electricity Bill, 2001, submitted by the Standing Committee on Energy, Ministry of Power, to the Lok Sabha and Rajya Sabha. Paragraph 8.78 is revealing:

'After going through the Memoranda submitted by various 14 of 24 2641-2014-MCGM-V-MERC-F.DOC organizations and state Governments, the Committee finds that most of them agreed that the said provisions of the Clause 43 are unimplementable due to various reasons like unavailability of leave way, inability to provide proof of legal occupancy and gap in demand and supply as well as due to large pendency of applications and financial constraints. For example, in Rajasthan, there are about 2.3 lakh pending applicants for agricultural connection only and some of them are pending for the last 9-10 years'.

- Sections 43 and 44 must be read together. A distribution licensee is obliged to supply electricity to a consumer within one month from the date on which the complete application for supply of electricity made by a consumer/occupier of the premises. Where the supply requires an extension of distribution mains, or commissioning of new sub-stations, the distribution licensee is allowed some leeway: the supply is allowed to be made immediately after such extension or commissioning, or within the period specified in the Regulations. These periods do not apply where the distribution licensee. Section 44 opens with the words “nothing contained in Section 43”. This makes it clear that the distribution licensee’s obligations under Section 43 are subject to the exemptions under Section 44. The latter is a form of a statutory protection against unforeseen eventualities. Pendency of Ag pump connection is due to requirement of huge infrastructure and financial constraints for this. At present all funds allocated by state Government to provide Ag pump connections. At present for release of Ag pump connections are done as per seniority list; as soon as fund will be allocated by state government pending Ag connection work can be carried out. Hence it is justified to not to hold responsible Non-applicant for delay in supply electricity for no fault of its own considering provisions under section 4.10 of MERC SOP regulation – 2014 and section 44 of Electricity Act 2003. Circumstances beyond the control of Non-applicant in terms of availability of funds, the release of connection hence will be strictly according to seniority list of licensee.

Dissent Note by Member (CPO) Mr. Naresh Bansod in Case No. 85/2017

Mr. Yadaorao Rode dated 17-11-2017.

- (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 regulation on point or points of different
- (2) It is an admitted fact that applicant submitted 'A1' form for 3 HP Agriculture Pump electric supply on 31-5-2016 and demand Note given by Non Applicant on 9-6-2016 and paid by Applicant on 15-6-2016 and submitted Test Report on 26-12-2016. Hence Application is completed in all respect on 26-12-2016.
- (3) The grievance for my consideration is for SOP compensation for late electricity supply i.e. after specified period in SOP Regulation 2014. 'Appendix A' 1(iii).
- (4) As IGRC vide order dated 5-8-2017 directed the applicant to submit Test Report and as per seniority list. Electricity supply be given and denied SOP compensation.
- (5) Non applicant in addition to above admitted fact mentioned that 0.30 KM L.T. Line is necessary to be erected & Electricity connection is given to applicant on 29-9-2017. Non applicant further alleged that as per MERC Regulation 4.8. after Test Reprt within 3 months before 25-3-2017, supply was necessary to be give but applicant as per MERC SOP Regulation 12.2 it was necessary to file
- (6) grivence before 25-5-2017 but late filed on 8-6-2017 & complaint be dismissed. Applicant relied on Judgement of Bombay High Court in Writ Petition No. 9455 of

2011 dated 19-1-2012, Judgement of Nagpur Bench of Bombay High Court Nagpur Writ Petition No. 3997 of 2016 dated 18-7-2017 MSEDCL & M/s. Shilpa Steel & Power Ltd., and order of Electricity Ombudsman, Nagpur in Rep. No. 34/2016, dated 24-8-2016 in case Sunil Chambhare V/S The Executive Engineer, Hinganghat, as well as Rep. No. 110/2015 dated 3-3-2016, Mr. Praksh Deshmukh V/S The Executive Engineer Wardha and order of CGRF (Nagpur Rural) in complaint 51/2005 dated 27-7-2015.

(7) We heard the arguments of both the parties & perused all papers on record as well as (A) Copy of Judgements of Bombay High Court, Nagpur Bench in W.P. No.3997 of 2016 in case of M.S.E.D.C.L. Nagpur V/S Shilpa Steel & Power Ltd. (B) Judgement of Bombay High Court in W.P. No.9455 of 2011 in case of M/s. HPCL V/S M.S.E.D.C.L. (C) Order of C.G.R.F.(Nagpur Rural Zone) in complaint No.51/2015 dated 27-7-2015 (D) Order of Electricity Ombudsman, Nagpur in representation No. 34/2016 dated 19-8-2016 (E) Order of E.O. Nagpur dated 3-3-2016 Prakash Deshmukh V/S The Executive Engineer in Representation No. 110/2015.

The Points for my consideration are.

- (1) Whether the application is barred by limitation as not filed within time as per MERC Regulation 12.2 & MERC (CGRF & E.O.) Regulation 2006 of Chapter II point 6.6 ? - No -
- (2) Whether the applicant is entitled for SOP compensation for late issue of demand note ? - Yes -

(3) Point 1 & 2 On perusal of above mentioned Judgments of High Court of Nagpur bench as well as Bombay High Courts upholding order of The Electricity Ombudsman, Nagpur as under.

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.

“Respondent No. 2 (E.O.) has rightly held that grievance of Respondent No. 1 (Consumer) was well within limitation as cause of action has arisen from the date of rejection of grievance by IGRC”. In an identical case, The Electricity Ombudsman held that the complaint is within limitation and Applicants are entitle for SOP compensation for late supply of electricity.

In this case IGRC (Order dated 8-6-2017) is well aware that seniority list is not recognized by MERC still directed Non Applicant to give supply to applicant as per seniority. Secondly even though T.R. was submitted on 26-12-2016 and admitted by Non Applicant still he directed the applicant to submit Test Report. Hence the order of IGRC is deserves to be set aside as without application of mind & appreciation of fact.

In view of the above observations, the Applicant is well within limitation as well as for SOP compensation. Hence applicant is entitle for SOP compensation @ Rs.100/- per week or point thereof of delay from 26-3-2017 (3 months from 26-12-2016 as per 4.8 of SOP Regulation 2014) till 28-9-2017 as per “Appendix A1”(iii) and application is

deserves to be allowed.

Hence the following order.

(1) Application is allowed (2) IGRC order dated 5-8-2017 is quash & set aside (3) Non Applicant is directed to pay SOP compensation as per Appendix A1” (iii) of SOP Regulation 2014 from 26-3-2017 till 28-9-2017 @ Rs.100/- per week or part thereof of delay (4) The compliance of this order be done within 30 days.

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 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 & 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. 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.

**Naresh Bansod
Member (CPO)**

18. As per the provisions of Regulation 8.1 of the MERC (CGRF & E.O.) Regulations 2006 the Forum has to take a decision by majority of votes of the members of the Forum. In this case in hand we record our decision by majority of votes.

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

ORDER

- i. Application no.85/2017 is hereby dismissed.
- ii. No order as to cost.

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

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