

CONSUMER GRIEVANCES REDRESSAL FORUM;
MSEDCL NAGPUR (RURAL) ZONE NAGPUR
COMPLAINT NO. 04/2013

Shri Purushottam Motiramji Kubade
AT.Dasoda
Po.Mangrul
Taluka- Samudrapur
District - Wardha.

Complainant

,,VS.,

1. Executive Engineer,
MSEDCL, O&M Division,
Hinganghat.
2. Executive Engineer/Nodal Officer,
I. G. R. C., Circle Office,
MSEDCL, Wardha.

Respondents

Applicant represented by Shri V.B.Betal

Respondents represented by 1) Shri S.M.Vaidya, Executive Engineer, Hinganghat.
2) Shri P.R.Parankar Junior Engineer, Girad

CORAM:

Shri Vishnu S. Bute, Chairman.
Adv. Gauri D. Chandrayan, Member
Ms. S. B. Chiwande, Member-Secretary.

JUDGEMENT

(Delivered on 26th day of February, 2013)

1) Shri Purushottam Motiramji Kubade R/o Dasoda post Mangrul Tq. Samudrapur, (the applicant) is an agricultural consumer no.398140100149. It is alleged that the electricity supply to his agricultural pump was interrupted from 20-06-2012. In spite of written complaint the respondent failed to attend his fuse off call. He approached IGRC Wardha on 04-07-2012. The IGRC dismissed his application by an order dated 01-09-2012. Feeling aggrieved by this order the applicant approached this Forum

on 14-01-2013. His representation is registered at S.No.04 of 2013. The respondent submitted reply to the representation under no.EE/O&M/H"ghat/Tech/630 dated 02-02-2013. The case was fixed for personal hearing on 22-02-2013.

2) Shri B.V.Betal, a representative was present for applicant. Shri M.S.Vaidya, Executive Engineer, O&M Division, Hinganghat and Shri P.R.Parankar, Junior Engineer, represented the respondents. Both the parties were heard.

3) Brief details of the grievance as stated by the applicant are as under,

The supply of electricity to the agricultural pump of the applicant got interrupted from 20-06-2012. The poles and the wires were broken. The applicant requested the local officers of the respondent orally. However no action was taken to restore the supply. There was no rain in the month of June 2012. The rain started from 15-07-2012. There was no storm on 15-06-2012 in the vicinity of the land of the applicant. The Sarpanch of the village is not a proper authority to issue a certificate about natural calamity. Finally the power supply resumed on 20-11-2012. The applicant gave intimation as provided under Regulation 12.2 on 09-01-2013. As there was no power supply during the period from 20-06-2012 to 20-11-2012, the applicant had to suffer huge loss to his agricultural produce. The applicant claimed compensation of Rs.2,00,000/- towards the loss to his agricultural produce. Rs.30,000/- and Rs.20,000/- towards physical and mental harassment, Rs.3,000/- for travel expenses and Rs.2,000/- towards the cost of the instant proceeding.

4) Shri Vaidya, Executive Engineer, Hinganghat reiterated to the reply dated 02-02-2013. It was further stated that the complaint from the consumer received

on 27-06-2012 for the first time. The Junior Engineer of the area was directed to take corrective measures. It was noticed that six poles of L.T. line were collapsed. The Assistant Engineer also prepared the estimate of the repairs under no.993/9-7-12. However it was a rainy season. The soil was wet and loose. It caused delay in transportation of material and the repair of the L.T.line. So also there were standing crops in the fields and the irrigation was not necessary. The farmers themselves requested to delay the repairs to the line to avoid damage to the standing crops. Finally the power supply was restored on 20-11-2012. The Sarpanch, Girad issued the certificate that there was a storm on 15-06-2012 in the vicinity of the village. The Tahsildar, Samudrapur, issued the certificate that there was heavy rainfall on 05-09-2012 in the taluka. The situation was beyond the control due to natural calamity causing delay in restoration of supply. Delay can not be attributed to negligence of any employee. With this submission, the respondent has prayed not to entertain any claim of compensation.

5) Ld. Member of the Forum gave her opinion as under,

In this case, it is very important to consider the load shedding criteria. Hon'ble Commission issued order in case No. 5/2005 on the principles and protocol to be adopted for load shedding by MSEDCL, in view of the prevailing shortage of electricity in the State of Maharashtra on 16th June,2005.

The few key feature of the Commission's order are given below :

(a)The EA, 2003 casts certain obligations on Distribution Licensees with regard to supply of electricity to their consumers, except in certain circumstances outside their

control. However, it is inevitable that, when there is a shortage of available power vis-à-vis the requirement of consumers, load shedding would have to be undertaken in order to maintain the system frequency and to ensure its security. The present Order deals with the basis on which such shortage should be apportioned among different consumers and areas through load shedding, rather than the actual extent of shortage that may prevail at any point of time. Thus, it should not be construed as the Commission having validated or accepted the figures presented by MSEB with regard to the shortfall or its reasons. Moreover, the load shedding requirement is dynamic, and would vary from time to time depending on the system demand-supply gap, system frequency, season, time of day, etc.

(b) The thrust of the EA, 2003 is on efficiency and economy of operations. Moreover, the immediate issue of concern in these proceedings is the equitable management and Regulation of the load in a situation of shortage. In order to do so in a fair and equitable manner, the Commission believes that it is necessary to distinguish between areas with better performance, and undertake lesser load shedding in areas with lower Distribution losses and higher collection efficiency, all else being equal. This would be in keeping with the principle that, at a time of scarcity, areas where energy is not being efficiently utilized or paid for should rank lower in the rationing order.

h(i) Applying the above principles, the Divisions have been ranked in four Groups as follows, such that all Divisions within a Group would be subject to the same level of load

shedding (except for Divisions comprising a major city, which would be clubbed):

	Group	Weighted average loss and collection efficiency level	
		Urban	Rural
1	Group A	0% to 25%	0% to 28%
2	Group B	> 25% to 35%	> 28% to 38%
3	Group C	> 35% to 50%	> 38% to 53%
4	Group D	Above 50%	Above 53%

The above features clearly specify that Hon'ble Commission has approved load shedding as per average loss & collection efficiency of divisions of the MSEB Area of supply. The maximum hrs. of planned load shedding was initially for 8 hrs. which was increased from time to time for 13 to 16 hrs. This load shedding protocol requires to be modified as and when the situation demands. The load shedding protocol is implemented in consultation with MERC Hon'ble Commission issued various orders regarding load shedding vide order dt.10.01.2006 in Case No.35/05, Case No. 78/06, date. 20.02.2007, based on that MSEDCL issued various circulars from time to time regarding revised load shedding programme. MSEDCL give vide publicity in news papers & also display the same at prominent places.

In this case, being the agricultural dominated region & as per recent load shedding programme, the applicant is liable to get supply maximum for 8 to 10 hrs. depending on the DCL groups in which it falls. Hence the applicant's request for compensation considering the period of failure for continuous 24 hrs. is improper & illegal. As per the various order of Hon'ble Commission & based on that various circulars issued by MSEDCL, the applicant is not approved for getting supply for 24 hrs.

in a day, hence he can not claim compensation for the same. Therefore, in my opinion, the applicant's claim of compensation considering 24 hrs. supply period is unjust & improper. He is entitled to get compensation excluding the period of load shedding.

6) The Technical member of the Forum recorded her opinion as follows,

In present grievance application dtd.14-01-2013, the applicant has demanded compensation for the period from 20-06-2012 to 20-11-2012 @ Rs.50 per hour as specified in standards of performance (SOP) Regulation, 2005. According to the applicant his agricultural pump set supply was failed from 20-06-2012 due to broken of electric wires & falling of poles. The respondent stated that the supply was failed due to broken of 6 Nos. poles of L.T.line. The delay in restoration of supply is caused due to rain & muddy situation in the field that prevented transportation of poles & further carrying out of work.

After perusal of the documents on record I have observed that applicant had submitted the complaint about supply disruption from dtd.20-06-2012 to the respondent's office on 27-06-2012. He then filed complaint in IGRC on .04-07-2012 with prayer of restoration of supply & compensation thereof. After hearing the matter IGRC held that applicant's agricultural pump set supply was failed due natural calamity & directed the respondent for immediate restoration of supply by erecting L.T.line. The respondent has submitted the letter from Sarpanch Grampanchayat Dasoda which shows that there was storm on date.15-06-2012 causing falling of poles & broken of electric wires. The above fact corroborated the contention of the respondent which resulted into supply disruption of applicant's Ag.pump. During the hearing on

date.22-02-2013 the applicant's representative has produced written statement in which it is mentioned that he had informed the respondent to carry out the work by transporting the material but the respondent did not heed to his complaint.. He further mentioned that from 17-07-2012 rain started & not before as contended by the respondent. The letter of Tahsildar Samudrapur dtd.01-02-2013 about heavy rainfall on 05-09-2012 is on record. The respondent stated in their reply that there was standing crops in the field. Therefore the supply was restored on 20-11-2012 by carrying out the work of the applicant's Ag.pump line.

In view of above in my opinion the applicant's Ag.pump supply failed due to falling of poles & broken of electric wires which was caused due to storm. The letter of Sarpanch, Grampanchayat, Dasoda confirms the above situation. There is a certificate from Tahsildar Samudrapur about heavy rainfall which is also on record. Record further shows that rainy season started in the month of June moreover the applicant himself accepted that during rainy period it is not possible to transport of poles & other materials due to mud & non approachable way in the field. .

In above circumstances it can be concluded that the respondent could not carry out the work of erection of lines in the stipulated time because the situation was beyond their control.

The SOP Regulation 11.1 specifies that the occurrences which was beyond the control of distribution licensee are exempted from payment of compensation. In view of this, in my opinion the Regulation 11.1 is applied .

In this case, it is very important to consider the load shedding criteria. Hon'ble Commission issued order in case No. 5/2005 on the principles and protocol to be adopted for load shedding by MSEDCL, in view of the prevailing shortage of electricity in the State of Maharashtra on 16th June,2005.

The few key feature of the Commission's order are given below :

a)The EA, 2003 casts certain obligations on Distribution Licensees with regard to supply of electricity to their consumers, except in certain circumstances outside their control. However, it is inevitable that, when there is a shortage of available power vis-à-vis the requirement of consumers, load shedding would have to be undertaken in order to maintain the system frequency and to ensure its security. The present Order deals with the basis on which such shortage should be apportioned among different consumers and areas through load shedding, rather than the actual extent of shortage that may prevail at any point of time. Thus, it should not be construed as the Commission having validated or accepted the figures presented by MSEB with regard to the shortfall or its reasons. Moreover, the load shedding requirement is dynamic, and would vary from time to time depending on the system demand-supply gap, system frequency, season, time of day, etc.

(b) The thrust of the EA, 2003 is on efficiency and economy of operations. Moreover, the immediate issue of concern in these proceedings is the equitable management and Regulation of the load in a situation of shortage. In order to do so in a fair and equitable manner, the Commission believes that it is necessary to distinguish between areas with better performance, and undertake lesser load shedding in areas with lower Distribution

losses and higher collection efficiency, all else being equal. This would be in keeping with the principle that, at a time of scarcity, areas where energy is not being efficiently utilized or paid for should rank lower in the rationing order.

h(i) Applying the above principles, the Divisions have been ranked in four Groups as follows, such that all Divisions within a Group would be subject to the same level of load shedding (except for Divisions comprising a major city, which would be clubbed):

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regarding revised load shedding programme. MSEDCL give wide publicity in news papers & also display the same at prominent places.

In this case, being the agricultural dominated region & as per recent load shedding programme, the applicant is liable to get supply maximum for 8 to 10 hrs. depending on the DCL groups in which it falls. Hence the applicant's request for compensation considering the period of failure for continuous 24 hrs. is improper & illegal. As per the various order of Hon'ble Commission & based on that various circulars issued by MSEDCL, the applicant is not approved for getting supply for 24 hrs. in a day, hence he can not claim compensation for the same. Therefore, in my opinion, the applicant's claim of compensation considering 24 hrs. supply period is unjust & improper.

From all the facts & circumstances mentioned above, the respondent can not be held responsible for delay in restoring the supply but the condition was beyond the control of distribution licensee & is not liable for paying compensation to the applicant as per SOP Regulation. Hence the applicant demand for compensation is unjust & untenable at law.

Therefore in my opinion, the applicant's grievance application should be dismissed.

7) Having heard the parties and upon careful perusal of documents on record it reveal that the applicant allege that the power supply interrupted from 20-06-2012 to 20-11-2012. As per the respondent they got the knowledge of the break down on 27-06-2012 for the first time. The record also show that the complaint application

dated 27-06-2012 was received in the office of the respondent. So it will just and proper to hold that the respondent got the information about interruption of supply on 27-06-2012 for the first time. So it is undisputed fact that the power supply was interrupted during 27-06-2012 to 20-11-2012. The respondent attributes the delay in restoration to collapsing of L.T.line poles of 6 nos. The respondent argued that this was a natural calamity. The task of restoration of supply was beyond its control. The applicant's case is that the certificate of the Sarpanch is not a valid document. There was no rain in June-2012. The certificate of the Tahsildar show that there was heavy rainfall in Sept-2012. However the supply was interrupted from June-2012. So the excuse of natural calamity has no force. Therefore he is entitled to compensation for failure of the respondent to meet standards of performance.

The applicant stated that he may be awarded compensation @ Rs.50/- per hour for the total period. In addition to this he may be awarded compensation of Rs.2.00 lakhs towards loss to his agricultural produce. Rs.30,000/- and Rs.20,000/- may be awarded for physical and mental harassment. In addition Rs.3,000/- and Rs.2,000/- may be awarded towards travel expenses and the cost of instant proceeding respectively.

8) In such a situation the issue arises whether the applicant is entitled for award of compensation in terms of the MERC (standards of performance of distribution licensees, period for giving supply and determination of compensation) Regulation 2005.

9) The MERC in terms of Regulation 6 has fixed standards of performance to be achieved by the distribution licensee as regards restoration of supply. Appendix A to the said Regulation stipulated that the supply in the rural areas is required to be restored within 24 hours in case of overhead line breakdown. Therefore the respondent was required to restore supply within 24 hours.

10) Regulation 11 of the above Regulations provides for exemption. It reads,

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 obligations under these Regulation by cyclone, floods, storms 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 on failure to take reasonable precaution on the port of the distribution licensee.

11.2 The commission may by general or special order, exempt the Distribution licensee from any or all of the standards specified in these Regulations for such period as may be specified in the said order.

11) Regulation 11.1 makes it clear that the stipulation of time limit for restoration of supply would not apply where, in the opinion of the commission, the distribution licensee

is prevented from meeting its obligation under these Regulations by cyclone, floods, storms or other occurrence beyond the control of the distribution licensee. Proviso to the said sub Regulation speaks of the negligence or lack of preventive maintenance by the distribution licensee.

12) In view of the above, the issue is whether the distribution licensee was prevented from meeting his obligations due to cyclones, floods, storms and/or other occurrences beyond its control. Provision in the said sub Regulations states that such situation has to be assessed by the commission and decide whether or not the situation was beyond the control of the distribution licensee. Then only exemption from meeting standards of performance under Regulation 11 would come into play. It is not open for this Forum to step into evaluation of the situation and decide whether or not it was beyond the respondent's control. The respondent has not explained as to whether it has obtained any such exemption from the commission. In absence of any such exemption in this behalf, it has to be concluded that the distribution licensee was required to meet the standards of performance and the time limit for restoration of supply. So also the certificates issued by the Sarpanch Grampanchayat, Dasoda and the Tahasildar, Samudrapur are not useful anyway.

13) The IGRC Wardha has passed order under No.4816 on 01-09-2012. The IGRC observed that the poles were broken due to natural calamity. Due to rainy season the respondent could not erect the line. There was no intentional delay. While making this observation the IGRC has not referred to any provision of the Regulation or the exemption clause. So also the IGRC did not indicate whether or not the respondent

has been exempted by the commission from meeting the standards of performance as laid down in the Regulations. As such the IGRC erred in concluding itself that it was a natural calamity so the applicant is not entitled for compensation. As such the order is liable to be set aside.

14) As discussed in para 7 above, it is admitted fact that there was no power supply to the pump set of the applicant during 27-06-2012 to 20-11-2012. It revealed from the record that there was overhead line breakdown. So as per the provisions of Regulation 6.2 of the S.O.P. Regulation, the supply should have been restored within 24 hours. If not as per the provisions of Regulation 6.2 and item 2(ii) of Appendix A, the applicant is entitled for compensation from 28-06-2012 to 20-11-2012. In absence of any cogent evidence, we are not inclined to accept other claims of the applicant.

15) The technical member submitted that as the situation was beyond the control of the respondent the provision of exemption clause will apply. However as discussed in para 12 above in absence of any notification/order from the commission the exemption provision will not come into play. Secondly, the member also submitted that the commission has approved the load shedding programme. So the applicant's claim of compensation for every 24 hours is unjust. In absence of any provision about the load shedding programme in the MERC (standards of performance of Distribution licensee, period of giving supply and determination of compensation) Regulation 2005, the point *has no force*. Furthermore the respondent has not taken any such defence during the proceeding.

16) As per the provisions of Regulation 8.1 of the MERC (CGRF &ED) Regulation 2006, the order is to be passed by majority. In the case in hand, the chairman, is of the opinion that the applicant is entitle for compensation @ Rs.50/- per hour for the period from 28-06-2012 to 20-11-2012. As per the technical member the applicant is not entitled for any compensation. As per the another member the applicant may be awarded compensation for the above period excluding the period of load shedding.

So we pass the following order by majority.

ORDER

- 1) The grievance application No.04/2013 is partly allowed.
- 2) The respondent should pay the compensation @ Rs.50/- per hour for the period from 28-06-2012 to 20-11-2012, excluding the period of load shedding as provided under Regulation 6.2 and item 2(ii) in appendix A attached to the S.O.P. Regulations 2005,
- 3) The compliance of this order should be reported within 90 days from the receipt of this order..
- 4) The parties to bear their own cost.

Sd/-	Sd/-	Sd/-
<u>MEMBER</u>	<u>MEMBER SECRETARY</u>	<u>CHAIRMAN</u>
<u>CONSUMER GRIEVANCES REDRESSAL FORUM; NAGPUR ZONE NAGPUR</u>		
<u>(Nagpur Dtd.26th day of February, 2013)</u>		

CONSUMER GRIEVANCE REDRESSAL FORUM
NAGPUR ZONE (RURAL) M. S. E. D. C. L.
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,
NAGPUR – 440 013
(O) 0712- 2022198

NO. CGRF/NZ/

Date :

Certified copy of order dtd 26th February,2013 in Case No.04/2013 is enclosed herewith.

Member-Secy/ Exe.Engineer,
C.G.R.F.(NZ)MSEDCL
N A G P U R

To,
Shri Purushottam Motiramji Kubade, At.Dasoda, Po.Mangrul, Tq.Samudrapur,
Dist.Wardha

Copy S.W.R.to :-

1. The Chief Engineer(N. Z.), MSEDCL, Vidyut Bhavan,Katol Road, Nagpur.

Copy F.W.Cs.to:

1. The Executive Engineer/Nodal Officer., O&M Circle Office, MSEDCL.Wardha
2. The Executive Engineer,C.C.O&M Dn., MSEDCL, Hinganghat
for information and necessary action.

Address of the Electricity Ombudsman is given as below.

Office of - The Electricity Ombudsman,
12, Srikrupa, Vijay Nagar,
Chhaoni, Nagpur-440 013
0712-2596670