

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

Case No. CGRF(NUZ)/142/2015

Applicant : M/s. Chanvim Engineering Pvt. Ltd.
137/2, 138/2, 21 Km. Stone,
Amravati Road, Village Gondkhairi,
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer,
Nagpur Rural Circle,
MSEDCL,
NAGPUR.

Applicant :- Shri S. Khandekar

Respondent by 1) Shri V.B. Setty, Dy. E.E. (HT), NRC,
MSEDCL, Nagpur.

Quorum Present : 1) Shri Shivajirao S. Patil,
Chairman.

2) Adv. Subhash Jichkar
Member.

ORDER PASSED ON 26.10.2015.

1. The applicant filed present grievance application before this Forum on 5.9.2015 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. Applicant's case in brief is that applicant applied for extension of load from existing load of 550 kVA to 650 kVA and asked for supply to be given through express feeder. Load was sanctioned as per sanction order No. 5336 Dt. 11.5.2010. As per sanction order applicant carried out entire work of installation of feeder Bay at Gondkhari S/s., laying cable from the Sub-station to the point of supply at its premises at the cost of the applicant. Subsequently applicant learnt that as per the rules of MERC, cost of infrastructure has to be borne by M.S.E.D.C.L. Further, in Commercial Circular No. 43 Dt. 27.9.2006 of M.S.E.D.C.L. it has been mentioned that cost of infrastructure is to be borne by M.S.E.D.C.L. Besides, there were anomalies in several other charges collected by M.S.E.D.C.L. as they are not in line with orders of M.E.R.C. Therefore various amounts were required to be refunded amounting to Rs. 31,92,408/- (Thirty One Lacs Ninety Two Thousand Four Hundred Eight only). Applicant applied to I.G.R.C. for refund of this amount on 10.9.2013 but hearing has not been held and till today no orders are passed. Therefore applicant approached to this Forum.

3. Non applicant denied applicant's case by filing reply dated 24.9.2015. It is submitted that cause of action to file grievance application arose on 11.5.2010, when applicant applied for load enhancement and load was sanctioned on the above date. It is mandatory on the part of the consumer to file his grievance within 2 years from the date on which cause of action arose as per the provisions of regulation 6.6 of the said regulations. But

the consumer filed his initial grievance application to Learned I.G.R.C. on 10.9.2013 and he filed grievance application before this Forum on 5.9.2015, i.e. after expiry of mandatory period of 2 years. Hence on this sole ground grievance application deserves to be dismissed.

4. Non applicant further submitted that applicant should have filed this application before this Forum within 2 months as provided under regulation 6.4 read with regulation 6.7 of the said regulations. But consumer has filed his grievance application before this Forum after a lapse of 2 years and it deserves to be dismissed.

5. Non applicant further submitted that applicant is H.T. Consumer of M.S.E.D.C.L. having contract demand of 650 kVA on 11 kV express feeder line vide load sanction order No. 5336 Dt. 11.5.2010. The consumer was given additional load of 100 kVA totaling to 650 kVA by proposing on 11 kV express feeder. Earlier consumer was connected on 11 kV industrial feeder. Consumer was facing number of tripping and interruptions on the said feeder. Hence while enhancement of load, the load was sanctioned on 11 kV express feeder. Point of supply was decided and estimate was prepared for extending the load on express feeder. The fact was very well known to the consumer. Copy of estimate and point of supply is annexed at Annexure '1'. Work of express feeder was carried as DDF through licensed electrical contractor by paying 1.3 % supervision charges to M.S.E.D.C.L. As per clause 3.3.3 of Electricity Supply

Code and other Conditions of Supply Regulations 2005 of Hon'ble MERC – *“Distribution Licensee shall be authorized to recover all expenses incurred of such work from the applicant”*. Hence claim for refund of amount is denied.

6. Non applicant further submitted that claim of refund of infrastructure charges amount by the consumer can not be termed as Grievance as contemplated in the term “Grievance” as defined in regulation 2.1 (c) of the said regulations. Term Grievance is defined in this regulation is as under :-

“Grievance means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of License, Contract, Agreement or under the Electricity Supply Code or in relations to standards of performance of Distribution Licensee as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievance in respect of non compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman as the case may be”.

7. Hon'ble Bombay High Court, Bench Aurangabad in Writ Petition No. 2032 of 2011, it is held the same thing and rejection the claim by the consumer. Therefore the claim filed by the consumer is also liable to be rejected on this ground.

8. Non applicant further submitted that Hon'ble Electricity Ombudsman Nagpur has rejected and dismissed in common order passed by Hon'ble Electricity Ombudsman Nagpur

in representation No. 68/12, 69/12, 70/12, 87/12, 88/12, 89/12 Dt. 23.11.2012 and the said order is at Annexure '2'.

9. Non applicant further submitted that M.S.E.D.C.L. denies the claim of the applicant towards cost of agreement and transformer testing fees of Rs. 3000/-. Testing of transformer is mandatory before sanctioning the estimate and load to the consumer. If there is any internal defect in transformer, it will hamper whole system and also cause damage to the system of consumer giving rise to the tripping / interruptions in the system of other consumers. It is also necessary to decide losses of transformer within permissible limit and also to check quality of transformer before and after transportation. Testing of transformer is beneficial to both the licensee and the consumer. Timely testing of transformer and its maintenance is integral process for maintaining safety of equipments and one can not avoid these safety measures. Also the question of consent of consumer does not arise in it as it is mandatory procedure.

10. Non applicant further submitted that Hon'ble Commission in its order dated 8.9.2006 in case No. 70/05 has specifically mentioned that charges for testing of equipment belonging to the consumer are non regulatory items generating other income for these licensee. Commission therefore does not include these items in schedule of charges. The ruling in the Commission's order is as follows :-

15.4 Commission's Ruling

Charges proposed for providing various types of equipments to the consumer are on hire basis and charges for testing of equipments belonging to consumer can not be considered under schedule of charges, as these are non regulatory items generating 'other income' for the licensee.

11. Non applicant further submitted that consumer has not submitted any sufficient and reasonable ground for huge delay in filing the grievance application within the statutory period of 2 years. Regulation does not provide express proviso for condonation of delay beyond mandatory period. The ruling submitted by the consumer in his additional submissions is irrelevant and not applicable as facts of the present grievance application are different.

12. Forum heard arguments of both the sides and perused record.

13. It is noteworthy that it an admitted fact that load was sanctioned as per sanction order No. 5336 Dt. 11.5.2010. Therefore cause of action arose to file this grievance application on 11.5.2010. According to regulation 6.6 of the said regulations, it is necessary for the applicant to file grievance application within 2 years from the date on which cause of action arose. Cause of action in this case arose on 11.5.2010. Therefore it was necessary for the applicant to file grievance application on or before 10.5.2012. But present grievance application is filed on

5.9.2015 i.e. after three (3) years of expiry of period of limitation and therefore it is hopelessly barred by limitation and deserves to be dismissed.

14. Applicant desired to mislead this Forum on the ground that he filed grievance application before I.G.R.C. on 10.9.2013 and since then present grievance is within limitation. However, we do not agree with this argument of the applicant because the date of filing application before I.G.R.C. is not relevant. It is immaterial when anybody files grievance application before I.G.R.C. The relevant date for calculation of limitation is the date of cause of action within the meaning of regulation 6.6. Cause of action arose on 11.5.2010. Therefore limitation starts from the date of cause of action i.e. 11.5.2010. Therefore we find no force in the contention of the applicant that merely because he filed grievance application on 10.9.2013 before I.G.R.C. any special concession can be given to him.

15. It is noteworthy that date of filing of application before I.G.R.C. specially in time barred cases is irrelevant because if the matter is time barred, according to regulation 6.6 with fraudulent intention, to bring time barred case within limitation any consumer may knock the door of I.G.R.C. at belated stage and may claim to calculate the period of limitation from the date of filing the application before I.G.R.C. but is not legal concept. It is misconception and misinterpretation of the relevant provisions laid down under regulation 6.6 of the said regulations. Therefore grievance application filed by the

applicant at belated stage before I.G.R.C. on 10.9.2013 will not held the applicant to bring the time barred case within limitation.

16. Therefore we hold that grievance application is barred by limitation according to regulation 6.6 of MERC (CGRF & E.O.) Regulations 2006.

17. So far as refund of cost of infrastructure is concerned we rely on the judgement dt. 1.7.2011 delivered by Hon'ble single bench of Bombay High Court, Aurangabad in Writ Petition No. 2032/11, M.S.E.D.C.L. Vs. M/s. Kaigaon Paper Mills Ltd. in which it was held by Hon'ble High Court that denial of the prayer for refund of the cost of infrastructure does not fall within the four corners of the definition of 'Grievance' given in R. 2.1(c) of MERC (CGRF & EO) Regulations 2006. Relying on the authority of our Hon'ble High Court we hold that grievance application deserves to be dismissed.

18. Furthermore, on both the points i.e. 1) Point of Limitation and 2) Definition of 'Grievance' we place our reliance on the judgement of Hon'ble Electricity Ombudsman Nagpur in representation No. 68/12, Lulla Metals Vs. SE, NUC, MSEDCL, Nagpur, Representation No. 69/12 M/s. Arihant Ispat Pvt. Ltd. Vs. S.E. NUC, MSEDCL, Nagpur, 70/12, M/s. Darpan Multi Poly Pack (India) Ltd. Vs. S.E. NUC, MSEDCL, Nagpur, Representation No. 87/12, M/s. Chandrika Boiled Rice Vs. S.E. NUC, MSEDCL, Nagpur, Representation No. 88/12 M/s.

Chaitanya Rice Mills Vs. S.E. NUC, MSEDCL, Nagpur, Representation No. 89/12 Jadhav Engineer Vs. S.E. NUC, MSEDCL, Nagpur (Common Judgement in all these cases decided by common order Dt. 23.11.2012). In this order, in para 4 & 5, Hon'ble Electricity Ombudsman held as under :-

“4. The Forum dismissed Grievance No. 65, 66 and 67 of 2012 by order dated 21.9.2012 by holding that those grievance are barred by limitation under R. 6.6 of the MERC (CGRF & EO) Regulations 2006 against which Representation Nos. 87, 88 and 89 of 2012 respectively have been filed.

5. All the grievances were dismissed by the Forum by relying on the judgment dated 1.7.2011 delivered by the Learned Single Judge of the Aurangabad Bench of the Bombay High Court in Writ Petition No. 2032/11 (MSEDCL Vs. Kaigaon Paper Mills Ltd.) in which it is held by the Learned Single Judge that the denial of the prayer for refund of the cost of infrastructure does not fall within the four corners within the definition of “Grievance” given in R. 2.1 (c) of MERC (CGRF & EO) Regulations 2006”.

19. In the same authority cited supra, common order dated 23.11.2012, Hon'ble Electricity Ombudsman Nagpur in para No. 7,8 & 9 of the Judgement held as under :-

“7. Shri Khandekar, authorized representative of the appellants, submitted that certain judgments of Delhi High Court, Kerala

High Court, Zarkhand High Court and Supreme Court of India were brought to the notice of Learned Single Judge and as such the decision of Learned single Judge is per-incurim and the Forum should have ignored the Judgment of the Learned Single Judge in M/s. Kaigaon Paper Mills Ltd. I am afraid if any such course was open to the Forum or even to this Tribunal. The decision of the Learned Single Judge of the High Court is binding on all the Courts and Tribunals subordinate to it.

8. Shri Khandekar the Authorized Representative of the appellants further submitted that M/s. Kaogaon Paper Mills Ltd. preferred L.P.A. against the Judgment of the Learned Single Judge dated 1.7.2011 in W.P. No. 2032/2011. However, this fact would not affect the decision of the Learned Single Judge as it is. It may be noted that the LPA against the order 1.7.2011 was filed on 18.11.2011 along with an application for condonation of delay of about 110 days and said application is yet to be decided. In fact, LPA is yet to be registered. In view of this position, mere fact of preferring LPA against the order of Learned Single Judge in M/s. Kaigaon Paper Mills Ltd. case will have no bearing on these Representations.

9. The Forum has properly considered the effect of the Judgment of the Learned Single Judge on the Grievances of the appellants. The Forum did not err in dismissing the Grievances of the appellants in view of the Judgment of Learned Single Judge of Aurangabad Bench in M/s. Kaigaon Paper Mills Ltd. Hence I see no reason to interfere with the orders of the Forum”.

20. Relying on the authorities cited supra, we hold that grievance application is barred by limitation within the meaning of regulation 6.6 of MERC (CGRF & EO) Regulations 2006. Furthermore, we hold that denial of the prayer for refund of cost of infrastructure does not fall within the four corners of definition 'Grievance' given in regulation 2.1 (c) of MERC (CGRF & EO) Regulations 2006.

21. Representative of the applicant Mr. Khandekar relied on the same ruling as mentioned in his rejoinder Dt. 5.10.2015. We have carefully perused all the rulings cited by the applicant. However, facts of the present case are totally different and distinguishable and therefore authorities relied on by the applicant are not applicable to the case in hand.

22. For these reasons, we hold that grievance application deserves to be dismissed. Hence we proceed to pass following order :-

ORDER

- 1) Grievance application dismissed.

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN