

BEFORE CONSUMER GRIEVANCE REDRESSAL FORUM, MSEDCL
(GONDIA ZONE) OFFICE OF THE CHIEF ENGINEER, RAMNAGAR,
GONDIA.

Case No. CGRF (Gondia) (GZ 2) 16/2018

Filed on 14/06/2018

Decided on 30/07/2018

Shri. Gulab Narayan Daduriya,
At Kharra/Dongargaon Tah. Gondia
Distt. Gondia.

Applicant

-VERUS -

Nodal Officer,
The Executive Engineer,
O & M Division, Gondia.

Non Applicant

Applicant :- Present with Shri A. S. Parihar, authorised representative

Non Applicant :- Represented by Shri. S. G. Mahurle, Dy. Executive
Engineer

Tiroda Sub Division.

Quorum Present :-

Chairman : Shri. M. L. Chouhan

Members (CPO) : Shri. M. R. Kedar

JUDGEMENT

(Passed on 30/07/2018)

The applicant Shri. Gulab Narayan Daduriya, Shri Ramkrishna Rice Mill, Resident of Kharra (Dongargaon) Tah. & Distt. Gondia file the present Grievance Application before this forum on 14/6/2018 under the Regulation Para 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006, (Herein after referred to as the "Regulation" for brevity).

1) It is the case of applicant that at village Dongargaon he was having 5 HP Industrial connection. The Applicant gave an application for new service connection to supply 55 HP Industrial Connection for the purpose of Rice Mill in the year 2008. As per the application, for new service connection the concern Engineer prepared the estimate and send to Executive Engineer O & M Division Gondia for sanction and for estimate for 55 HP load. As per the procedure, the estimate was sanctioned by Executive Engineer, Gondia vide sanction No. EEG/T/08-09/REC:PIE/15 on 1/7/2008. The total cost of estimate was Rs. 2,91,195.00. While sanctioning the estimate the remark on estimate letter were as follows :-

13. **Remarks** :-
- 1) No Arrears on above said Premises
 - 2) If the consumer execute the erection of work at his own choice or volition, then the amount to be adjusted in the forthcoming energy bill will be material cost & labour charge for erection of material = 222973/-
 - 3) The existing connection of 5 HP, IP should be disconnected permanently before releasing new 55 HP connection to Shri. Gulab Narayan Daduriya, at Dongargaon & all other formalities should be observed as per prevailing norms.

2) It is the case of applicant that as mentioned in sanction letter, the applicant/consumer carried out the work and install all materials and transformer as per norms with his own cost. The Electrical Inspector given the permission of changing of line and transformer. For erection of HT Line & Transformer the survey was taken by the Non-applicant, and for changing of HT Line Shut-down was done by the Non-applicant. The work was carried out by Electrical Licensee Contractor. The Non-applicant release the connection of 55 HP Load on 17/9/2008. For this connection consumer No. is given as 43167000029, from that time consumer is getting regular

bill on this consumer no. and even consumer is paying the energy bill regularly.

3) It is the case of the applicant that as mentioned in the sanctioned letter the cost was not adjusted in the bill received from October 2008 onwards. So in the year 2011, he gave application to the Non-applicant for refund of charges as mentioned in the sanctioned letter. But this letter of the year 2011 is misplace and therefore he is not in position to file that letter here. Thereafter on 29/1/2016 applicant again given the application to the Non-applicant for refund of charges. Non applicant replied to letter on 21/06/2016 and inform to the applicant that the above estimate was sanctioned under REC – P:IE and not under the scheme of Non-DDF CC R&F. Hence refund can not be given and the charges were not refunded.

4) After receipt of this reply as per the provision para 6.2 of the Regulation 2006, the applicant first approached to Internal Grievance Redressal Cell Gondia (hereinafter this will be referred as IGR Cell for brevity) on 19/3/2018. After hearing both the parties the IGR Cell rejected the application on 7/5/2018 mainly on the ground that application is not filed within the period of limitation as per para 6.6 of the. Regulation 2006. So the applicant filed this grievance before this forum for refund of the amount and other reliefs.

5) The Non-applicant filed its reply and admitted the fact that applicant took connection at his own cost. But submitted that, the applicant never inform that as per the terms in Para 13 of sanctioned letter that he would carried out the work at his own cost. So as per condition in estimate, the applicant has not given consent letter regarding execution of line and transformer work at his own cost. So the non-applicant submitted that estimat was sanctioned by Executive Engineer under scheme REC-P:IE, under this scheme there is no provision for refund of the amount against the estimate. It further submitted that the consumer for the first

time given the letter for refund of an amount to its office on 29/1/2016, whereas the connection was release on 17/09/2008 i.e. before 8 years. Therefore as per para 6.6 of The Regulation 2006, the grievance is barred by limitation. So it prayed for dismissal of grievance application of the consumer.

6) Heard learned Representative Shri. A. S. Parihar, for the consumer and Shri. S. J. Mohurle, Dy. Executive Engineer, of Tiroda Sub Division who was authorised by Executive Engineer, O & M Division MSEDCL Gondia, to attained the Forum by its letter dated 28/6/2018. This application was heard by chairperson and both the members. But technical member Shri. S. K. Wankhede was suddenly transfer and he joined his new posting on 12/07/2018. Therefore now the application is being decided by chairperson & member CPO Shri. M. R. Kedar,

7) Following points are arises for our determination and Forum recorded the finding on the issues as under :-

Sr.No.	Points	Findings
1	Is the consumer is entitle for refund ?	In affirmative
2	i) Is the grievance is barred by Limitation as per para 6.6 of MERC (CGRF & EO) Regulation 2006. ? ii) If yes, it effects on the relief claim b the applicant.?	In negative Does not Survive
3	What order and reliefs	As per finan order

REASONS

8) In respect of objection taken by the non- applicant that the applicant never inform that he will executive the erection of work at his own cost as well as the contention that the sanctioned was granted under scheme REC-P:IE. Where there is no provision of refund, though admittedly

The applicant carried out all the work at his own cost, I have to say that there is no force in this contention. The reason is that if refund could not have been given under this scheme REC-P:IE., then there was no necessity to mention such things in remark column No.13 (2) which runs as under :-

13. Remarks :-

- 2) If the consumer executes the erection of work at his own choice or volition, then the amount to be adjusted in the forthcoming energy bill will be material cost & labour charge for erection of material = 222973/-

Secondly it is not specially mentioned in that sanctioned letter that if applicant wants to carry out work at his own cost then it is essential for him to inform in advance to the non-applicant and take his permission. Third important aspect is that the complete work carried out as per instruction given by the non-applicant's Electrical Inspector, the survey was taken by the non-applicant's officer, the work was carried out as per instruction of non-applicant officer and under their supervision. Even for changing of HT Line shutdown was done by the non-applicant for some period. Most important fact is that the connection was released after taking inspection by the non-applicant officer. The emphasis is on the point that the complete work was done as per instruction and under the supervision of NA's Officer. It means they were aware that the applicant was carrying out the work at his own cost. But NA's Officer did not raise any objection, nor inform the applicant that it is necessary to take first permission and if he would not have taken permission then he would be not entitled for refund under this scheme. So Forum holds that there is no force in the contention raised by the N.A. and the applicant is entitled for refund under this scheme subject to condition that this application before this forum must be within the period of limitation. So Forum answers **Point No.1.** in affirmative.

9) As to Point No.2. (i & ii)

Now the moot question is whether the Grievance file before this C.G.R.F. is barred by limitation as held by the IGRC Gondia. The IGRC Gondia held that the grievance is bar by limitation as per para 6.6 of the regulation. For understanding properly we are herewith quoting para 6.6 from the Regulation

“ 6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”

On behalf of the applicant it is submitted that on 29/1/2016 the applicant issued letter to the non applicant and he receive the reply from the non applicant on 21/6/2016 in which that the non applicant refused to refund amount by showing various technicalities, and therefore he followed the procedure and approach to IGRC Gondia on 19/03/2018, and after rejection of his application by the IGRC, the applicant filed Grievance before this forum. In other words he submitted that though the connection was given on 17/09/2008 then also till 21/6/2016 the non applicant never inform that for some reasons the applicant is not entitled for refund. Therefore there is no question of arising of cause of action before 21/06/2016. So the representative submitted that Grievance is within the period of limitation, as same is filed within two years from the date of 21/6/2016 on which date the applicant came to know that non applicant is not ready to refund the amount.

10) On behalf of the non applicant it is submitted that the work was completed in the month of September 2008, and thereafter regular bills were issued to the applicant and he was and is also regularly paying the bill. So it is the contention of the non applicant that, the applicant was very well came to know from the month of October/November 2008 onwards that non applicant was not ready to refund amount and therefore cause of action arose in the month of November 2008. So it is the contention of the non applicant that the grievance filed in the year 2018 is barred by limitation. It is

further contention of the non applicant that issue of letter in the year 2016 and demanding refund does not give any cause of action when the Grievance is already barred by limitation in the year 2008 itself. It submitted that the issue of letter in the year 2016 is nothing but just to show artificial cause of action to show that grievance is within the period of limitation.

11) For appreciating the argument advanced by both the parties it is necessary to refer here some of the provisions from the Regulation. As per para 6.2 a consumer is required to intimate grievance if any to IGR Cell in the form and manner and within the time frame as stipulated by the Distribution Licensee in its rules and procedures for redressal of grievances. Then as per para 6.4 unless a shorter period is provided in the Act, in the event that a consumer is not satisfied with the remedy provided by the IGR Cell to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the consumer may submit the Grievance to the Forum. So here waiting time is two months is given and thereafter the consumer can file his Grievance before the forum as per para 6.4 of the Regulation.

12) It is also useful to refer relevant provisions from para no. 6.7 of The Regulation. The para 6.7 (a & b) runs as under.

“6.7. The Forum shall not entertain a Grievance :-

- a) unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his Grievance in the specified form, to the Forum:
- b) unless the consumer is aggrieved on account of his Grievance being not redressed by the IGR Cell within the period set out in these Regulations,”

13) The combined reading of Para 6.2, 6.4, 6.7 (a & b) show that the consumer can not directly approach the CGRF but as to first he has to

approach the Internal Grievance Redressal Cell (IGR Cell) to record and redress Grievance in timely manner. In para no. 6.6 the word is used “**Forum**” shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen. So this para regarding limitation is only applicable to the Forum and not to IGR Cell and therefore IGR Cell can not held that as the Grievance is not filed within 2 years from the date of arising of the cause of action and therefore as per para 6.6 of the regulation the Grievance is barred by limitation.

14) I have already pointed out that unless the consumer perform the formalities for first approaching to IGR Cell to redress his Grievance and in the event the consumer is not satisfied with the remedy provided by the IGR Cell to his Grievance within the period of two months from the date of intimation or wherever no remedy has been provided within such period the consumer can not submit the Grievance to the forum. So the date of decision by the IGR Cell is the date on which the cause of action arose and the Grievance can be filed in a Forum within two years from the date . In this case the IGR Cell dismissed the Grievance on 7/5/2018 and therefore the date 7/5/2018 is the date on which cause of action arises to file Grievance before this Forum. My above view is also supported by two decision of the Bombay High Court.

15) In the case of **M/s Hindustan Petroleum Corporation Limited - VS – Maharashtra State Electricity Distribution Co. Ltd. & Ors. (2012 (3) ALL MR 839 S.B.** In this case The Hon’ble Lordship consider all these provisions of the regulation and held in para 13 to 17 as under :-

13. It is thus clear that the Consumer cannot directly approach CGRF but as to first approach the Internal Grievance Redressal Cell to record and redress grievance in timely manner.
14. Regulation No. 6.4 makes it clear that unless a shorter period has been provide in the Act, in the event that the consumer is not satisfied with the remedy provided by the IGR Cell to his

Grievance within a period of two months from the date of limitation or wherever no remedy has been provided within such period, the consumer may submit his grievance to the forum. Thus, cause of action for submitting a Grievance to the CGRF arises when the IGR Cell does not redress the grievances.

15. A perusal of the impugned order shows that the CGRF and the Ombudsman have proceeded on an erroneous assumption that cause of action has arisen on 1st July, 2008 and, hence, the grievance filed before the Forum at Sangli on 14th October, 2010 is beyond two years. Thus reasoning clearly overlooks the definition of the word "Grievance" as provided under Regulation 2(c) of the 2006 Regulations. Though time spent by the Petitioner before the Consumer Court cannot be excluded, one cannot lose sight of the fact that the Petitioner approached the Internal Consumer Grievances Cell for the first time on 14th October 2010 and that grievance was rejected by the Internal Consumer Grievances Cell on 27th October, 2010. This, according to me is the date on which the cause of action for filing a complaint or Grievance before the Forum as defined under Regulation 2 (c) really arose. It is necessary to quote subsections 5 and 6 of Section 42 of the Electricity Act, 2003 which reads thus :-

"Sub – Section 5 :- Every distribution licensee shall, within Six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

"Sub – Section 6 :- Any consumer, who is aggrieved by non redressal of his grievances under sub-section (5), may make a representation for the redressal of his Grievances to an authority to be known as Ombudsman to be appointed or designated by the State Government".

16. Internal Consumer Grievances Cell is not the Forum for Redressal of the Grievances of the Consumer as contemplated by Section 42 (5) of the Act but the CGRF is the said Forum established under Sub Section 5 of Section 42. The Regulation 6.6 uses the word "Forum" which obviously means CGRF and not the IGR Cell of the Distribution Licensee.
17. In view of the aforesaid discussion, I hold that the Grievance made by the Petitioner was within limitation and could not have been dismissed on that ground.

15-(A) Recently same view is also taken by **Bombay High Court in a case of Maharashtra State Distribution Co. Ltd. – Versus – Shilpa Steel & Power Ltd. and others (W.P. No. 3997 of 2006 decided by Justice Ku. Indira Jain on 18/6/2017.)** In this case also the principal question was whether cause of action had arisen in January 2010 or on rejection of the Grievance by IGRC . In this case the Hon'ble Lordship also made reference of the case cited above **M/s Hindustan Petroleum Corporation Limited - VS - Maharashtra State Electricity Distribution Co. Ltd. & Ors. (2012 (3) ALL MR 839 S.B.** and held at para no. 8 as under :-

"08. On careful perusal of Clause 6.6 of the Regulations and in view of the judgement of the Division Bench of this Court, submission made on behalf of petitioner that cause of action arose in January 2010 is unsustainable. Respondent No.1 filed complaint before IGRC on 24/04/2015,. By its order dated 29/04/2015, IGRC rejected the Grievance of respondent No.1. The order of IGRC was challenged before forum on 08/05/2015. It means from the date of rejection of complaint by IGRC, grievance was

filed before the forum within a month i.e. on 08/05/2015. In this background, respondent No.2 has rightly held that grievance of respondent no.1 was well within limitation, as cause of action has arisen from the date of rejection of grievance by IGRC.

So considering the provisions of the regulation and Law laid down by the Bombay High Court I hold that cause of action to file the Grievance to the applicant before this Forum arises on 7/5/2018 the date on which IGR Cell Gondia rejected the Grievance of the applicant/consumer. So the Grievance file before this forum on 14/6/2018 is within the period of limitation. So I hold that Grievance is within the period of limitation as per para 6.6 of MERC (CGRF & EO) Regulation 2006. And answer point no. 2 (i) in affirmative and point no. 2 (ii) as does not survive

16) As to Point No. 3 :- Coming to the question as to what relief the applicant is entitled. I have already hold that applicant entitled for refund of the amount. The applicant also claim other relief that is grant of past interest from the date of giving connection to the applicant, as no action was taken by the non applicant fine be imposed and compensation of 20000/- and cost. But I am not inclined to grant these other relief. The reason is that the applicant was not deligent in prosecuting his cause at the earliest, he slept over his right for a long period of 8 years. It is said that he who seek equity must be deligent in prosecuting his cause.

17) Now next question is while refunding the amount to the applicant whether N.A. can be directed to pay in lump sum or refund amount through next up coming energy bills. Before IGR Cell and this Forum the applicant prayed for adjustment of this amount from next upcoming bills. In my opinion the forum can mould the relief though same is not prayed specifically, keeping in mind basic principal as laid down in para 3 of the regulation that it shall protect interest of the consumer. So the Forum is of the opinion that in the interest of justice the proper order which meet the ends of justice is that N.A. be directed to pay the amount in lump sum within

some time limit without any interest. In case N.A. fails to refund the amount within the time prescribed by this forum then N.A. can be also directed to pay future interest on this amount, till realisation of the amount. The reason for granting such relief is that the N. A. has declined to give legitimate claim of the applicant for a long period of 10 years, and in such circumstances if forum direct the N.A. to refund the amount by adjusting in next upcoming energy bills then it will take again number of month's or year's. So lastly Forum hold that the order passed by the IGR Cell Gondia dated 7/5/2018 is liable to be set aside and this application is to be allowed partly. Hence forum proceed to pass following final order.

ORDER

The order passed by IGR Cell Gondia in application No. 22/2018 Dt. 7/5/2018 is hereby set aside.

The application is allowed partly.

The non applicant is directed to refund the amount of Rs. 2,22,973/- in lump sum to the applicant within the period of 45 days from the date of passing of this order. In default the applicant will also be liable to pay interest @ Rs. 7% per annum on the above amount from the date of filling of this application i.e. 14/6/2018, till realization of the whole amount

In case the applicant is unsatisfied with this order he can made re-presentation to The Electricity Ombudsman, Plot No. 12, "SHRIKRUPA", Vijay Nagar, Chhaoni, Nagpur – 440 013, as per para 17.2 of the Regulation within the period of 60 days from the date of this order.

Copy of this order be supplied to parties forthwith

No order is to cost

- sd-

(M. R. Kedar)
Member (CPO)

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(M. L. Chouhan)
Chairperson