

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
MSEDCL GONDAI ZONE, OFFICE OF THE CHIEF ENGINEER,
RAMNAGAR, GONDIYA

Case No. CGRF (Gondia) (GZ) 15/2018

File on 26/04/2018
Decided on 29/09/2018

Shri. Tukaram Antu Pandhare
At Gudama, Tah. Gondia,
District Gondia.

..... **Applicant.**

-// **VERSUS** //-

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

..... **Non-applicant.**

Applicant with Mr. T.B. Uike Authorized Representative,
Non-Applicant by Mr. A.B. Dakhane, Dy. Executive Engineer, O & M Sub-
Division, (R) Gondia

Quorum Present

Chairperson – Shri. M.L. Chouhan,
Member (CPO) – Shri M.R. Kedar,

JUDGEMENT

(Dated – 29.09.2018)

1] The applicant filed present Grievance before the Forum under para 6.4 of the MERC (CGRF & EO) Regulation 2006, (which will be hereinafter referred as said Regulation 2006, for brevity.)

2] The case of the consumer which is born out from the application

filed before this Forum and order passed by the IGRC and argument advanced is as under -

The applicant resident of Gudama, Post Datora, Tah & Distt. Gondiya is Consumer of agricultural pump having connection bearing consumer No. 432300001537, connected load of 3 H.P., but according to consumer he is actually using of 1 ½ H.P. It is his Grievance that, he was supplied this connection on 26/02/2016, but from the beginning he is receiving exorbitant average bill from the company. So, according to him billing is done on an average basis since 26/02/2016 i.e. from the date of connection. So, he prayed for cancellation of this average bill and issue of fresh bill as per reading and prayed for correction of bill. He also requested for compensation as per SOP and also claimed Rs. 1000/- as compensation for mental pain and agony etc.

3] It is the case of company that for the first time its office received such complaint from the consumer on 24/11/2017, that he is being received exorbitant average bills. It is the case of company that, the company issued bill to consumer in the month of June, 2016 for Rs. 1316 and Rs. 17,224/- is given as credit for claiming average bill. It is further contention of the company that since September 2016 to September 2017 average bill Rs. 20,750/- will be given because the meter was faulty, not showing reading. For that period action was taken under B-80 and accordingly average bill of Rs. 20,750/- will reduce to Rs. 10,750. According to company, as per amended B-80 the bill for correction was for more than two months and therefore, it cannot be done at his office level and

therefore, such proposal was sent to Superintendent of Engineer Gondiya as well as that meter was changed in the month of December 2017. Thereafter bill RNA bill Rs. 34,500/- was issue. But, submitted that after taking reading that will be reduced. The company submitted that, for the month of December 2017 and March 2017 there was no use and therefore only fixed charges leveled and bill for that period was issued.

4] The consumer filed his Grievance before IGRC on 03/01/2018 as per para 6.2 of said Regulation 2006 bearing Consumer Complaint No. 18/2018. That complaint was decided by IGRC on 26/02/2018 in which the order was passed and company was directed for the period September 2016 to September 2017 , the proposal be sent for issue of average bill as per B-80 and issue corrected bill as per rule to consumer. It also directed that in future bill be issued as per reading. The company submitted that it complied the order passed by the IGRC and now the consumer as to pay Rs.10.876/- only.

5] The consumer not being satisfied with the part relief given by the IGRC filed this case before this Forum on 26/04/2018.

6] Heard Shri T.B. Uikey authorized representative for the consumer and Shri A. B. Dakhane, Deputy Engineer, E.E. Division, Gondiya (R). This Grievance was heard on 21/06/2018 by Chairperson and technical member, while CPO members was not present. But, before deciding the Grievance, technical member Shri. S.K. Wankhede, was transferred and Shri S.B. Karande, Executive Engineer was given charge of the post of secretary/technical member.

In view of the transfer of technical member, Chairperson feel that it is not desirable to decide the Grievance by one member i.e. Chairman for want of quorum. So, case was fixed for fresh hearing and notices were issued to the parties on 30/07/2018. Parties were heard. Again before deciding this matter full time Secretary was posted by relieving Shri S.B. Karande, incharge technical member and Shri A.M.Nitnaware E.E. joined on 11/09/2018. So, now the application is being decided by the Quorum of Chairperson and CPO member.

7] Following points arises for our determination and Forum record the findings thereon as under -

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1	Is the part of the claim is barred by limitation as per para 6.6 of MARC (CGRF & EO) Regulation 2006?	In-Negative
2	Is the consumer entitled for correction of bill and issue of average bill from the period 26/02/2013 to September, 2017?	As per final order
3	Is the consumer entitled for relief claim and what order ?	As per final order

REASONS

AS TO POINT NO. 2 :-

8] First Forum will deal with the question of limitation. This question arises in the mind of Forum because as per para 6.6 of the said Regulation 2006, the Forum cannot admit any Grievance unless it is filed within the two years from the date on which the cause of action arisen. As per case of the consumer from the beginning he is being issued exorbitant average bill therefore cause of action arose to the consumer can be said to be arisen for quarter ending at the most June, 2013. In the application filed before the IGRC and before this Forum the consumer has not specifically pleaded as to from what date he is being issued exorbitant average bill, but in the complaint given to the non-applicant office by the consumer on 24/11/2017, it is specifically mentioned that from the date of supply of connection he is receiving exorbitant average bill. So, it appears that consumer is claiming relief from the date on which the connection was given to him. So, the legal question is on which date it can be said that cause of action arose to file Grievance before the Consumer and whether the part claim is barred by limitation?

9] This question has been decided by the Bombay High Court and it held that the word "Grievance" which is referred in this para 6.6 is applicable to Grievance filed before the Forum under para 6.4. The Hon'ble High Court also the referred para 6.7(a) and (b) of the said Regulation 2006 which provides that unless the consumer has complied with a procedure under Regulation 6.2 and has submitted his Grievance in the specified form to the Forum, the Forum will not entertain a Grievance. Further, para 6.7(b) provides that unless the consumer is aggrieved on account of his Grievance being not redress by the IGRC within

the period provided in this Regulation 2006, the Forum shall not entertain the Grievance. Therefore, for filing the Grievance before the Forum the consumer bound to follow para 6.2 that is he must intimate to IGRC of his Grievance and secondly, unless he is not satisfied with the relief granted by the IGRC within the period of two months he cannot file Grievance before the Forum. Therefore, cause of action to file Grievance before Forum would arise two year period from the date of giving intimation to IGRC or order passed by the IGRC which period is earlier. This has been held by the Hon'ble Bombay High Court in the case of **M/s Hindustan Petroleum Corporation Limited V/s. Maharashtra State Electricity Distribution Co. Ltd. & Ors. (2012 (3) All MR 839 S.B.** and in the case of **Maharashtra State Distribution Co. Ltd. V/s. Shilpa Steel & Power Ltd. and others (W.P. No. 3997/2006 decided by Justice Ku. Indira Jain on 18/06/2017.**

10] In our case, the intimation was given to IGRC on 03/01/2018, and IGRC decided the same on 26/02/2018 and the Grievance was filed before the Forum on 26/04/2018 within the period of two years from the date of cause of action which arose on 26/04/2018, the date on which IGRC passed the order, therefore I hold that claim is not barred by limitation and Forum can adjudicate whole claim and answer the point No.1 in the negative.

AS TO POINT NOS. 2 AND 3 :-

11] I have already pointed that the Grievance of the consumer is from the period February 2013 to September, 2017. For the reason recorded Forum

dividing this period in three division. First I will consider period 26/10/2013 to April, 2014. It is his Grievance that the bills are being issued average without taking reading from the beginning i.e. from February 2013, but, in support of his contention, the consumer has not filed copies of the bill for the above period to see as to whether bills were issued after taking reading or without taking reading or meter was faulty. In view of non filing of this documents the Grievance of the consumer regarding exorbitant average bill for this period cannot be considered, because, it is duty of the consumer to support his case with necessary documents.

12] Second period is from April, 2014 to June, 2016, for 27 months. The CPL report of quarter ending June 2016 show that for the quarter of June 2016 the meter is shown to be normal and consumption is shown to be 8 units, this is for 27 months. So, bill was issued Rs. 1,320/- for 27 months after giving credit of Rs.17,224.67/-. It show that company had taken into consideration previous 27 months and issue the bill. It is contention of the representative of the consumer that he is not informed which 27 months are considered here. But, obviously it is 27 months preceding to period June 2016 and this period comes to from April, 2014 to June, 2016. So, for the about 27 months bill of Rs. 1,320/- was issued and even credit was given of Rs. 17,224.67/-. So already corrected bill was issued for the above period and therefore, this period also cannot be taken into consideration. Here, conduct of the consumer is important that in his application before IGRC or before this Forum he did not disclosed this fact that he was issued corrected bill for 27 months and even not filed copy of that bill

for the month of June 2016. Any way, this period also cannot be taken into consideration and no relief can be granted to the consumer for the above period as he was already given the relief.

13] Now period remains to be September 2016 to September 2017. CPL shows for quarter ending September 2016, December 2016, the status of the Meter is shown RNA (reading not available). In respect of quarter ending March 2017, June, 2017 and September, 2017 the remark is that meter is Faulty. It is not disputed that for the period September 2016 to September 2017 bills were issued without taking reading showing consumption of exorbitant units in some of the bills. The representative rightly pointed out that the connection is in the open agricultural land and therefore, no question of saying RNA arises. He argued that the reading was not taken quarterly as per the para 14.3 of The Maharashtra Electric Regulatory Commission (Electric Supply Code and Other Condition of Supply) Regulation 2005, which will be hereinafter referred as 'said Regulation 2005'. The non-applicant also admitted this position and therefore, IGRC passed the order of issue of corrected bill for the period September 2016 to September 2017 by following procedure B-80. The company also complied the order of IGRC and corrected bill was issued for Rs.10.069/- for Rs. 20,750/-. On the application of the consumer the non-applicant also filed bill revision report for the above period. Summary report shows that for 15 months consumption is shown to be 9000 units i.e. 600 units per month. The proforma shows revise bill, original bill and difference of this 15 months. So as per this proforma the consumer was charge Rs. 17,855.91/- for this 15 months as

per original bill. The revise bill shows current bill amount Rs. 7,786.02/-. So difference of Rs. -10,069.89/- was adjusted.

14] It is the contention of the representative that again these bills are shown on the basis of average without taking any reading and without following said Regulation 2005. He argued that there is no base for showing consumption of 600 units per month for all the above 15 months when he is using 1 ½ H.P. Motor, though load is sanctioned of 3 H.P. He argued that there is no well etc in the field and the water being lifted from canal in which also for all the 12 months water is not available and therefore, he is not taking Rabby crops. But in support of his contention that he is using only 1 ½ H.P. Motor he has not filed any documents. Even he has not filed 7/12 extract of his agricultural land for the above period to show what crops he was taking? and in which sessions? and therefore, this just submission cannot be accepted.

15] It is the case of representative that bills were issued without taking meter reading and therefore as per para 15.3.1 of said Regulation 2005, it was incumbent on the part of company to sent an estimated bill to the consumer and the amount so paid be adjusted after the readings are taken during subsequent billing period, but, this is not followed here and again bills are issued on an average consumption for the period September 2016 to September 2017. He also drew my attention to para 15.3.5 Regulation 2005 which provides that for the purpose of para 15.3 estimated bill shall be computed based on the record consumption of last billing cycle for which the meter has been read by the Distribution Licensee. So, he prayed for issue of bill as per para 15.3 of the said

Regulation.

16] Before addressing to this issue, I would like to first refer here some important provisions from the said Regulation 2005. Para 14.3 is in respect of reading of meter. It provides that the meter reading shall be undertaken by the authorized representative at least in every three months in the case of agricultural consumer. Para 14.4 in respect of testing and maintenance of meter which provides that it is the responsibility of Distribution Licensee for the periodic testing and maintenance all consumer meter. There are two type of billing, billing in the absence of meter reading and billing in the event of defective meter. I have already referred para 15.3 of the said Regulation 2005 in respect of billing in the absence of meter reading. The relevant para in respect of billing in the event of defect in meter runs as under :-

“Para 15.4 – Billing in the event of defective meters. - 15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter alongwith the assessed bill.”

17] So, two different mode are given for billing in the event of absence of meter reading and in the event of defective meters. So here first it is to be decided as to whether bills were issued without taking meter reading or the

meter was defective.

18] Though apparently some bills were issued with a note RNA but we have go to depth of the mater and pierce the veil to look into real position. CPL is available for the period June 2014 to September 2017. I have already point out that from June 2014 till December 2016 the note is that RNA, for subsequent quarter March 2017 to September 2017 note is faulty meter. So, first it is clear that the meter was faulty at least from March 2017. But, only on this note we cannot depend as we have pierce the veil. For this CPL of June 2016 is to be considered in which though meter is shown as Normal, but consumption is shown just of 8 units and this is in respect of 27 months, it includes all three sessions. It is not a case of consumer that the during this period he did not used that motor etc. So, though he used that motor for the 27 months it is clear that correct consumption is not shown and therefore it can be said that the meter was defective from the period April 2014 to June 2016 and on wards, though, apparently shown Normal. Even consumer filed bill for the month of June 15 to show defective meter reading. The consumer file bill for the month of June 2015 and pointed out that this bills shows past reading 2482 and present reading 884. He rightly pointed out that how present reading could be 884, when previous reading is 2482. So, though there are note that reading was not available then also by piercing the veil real picture came out which shows that from the April 2014, the meter become defective and once meter become defective, it cannot be again normal automatically after numbers of months. It is apparent that meter recorder who has given duty to record the meter reading has not perform his

duty and just wrong report is given RNA even without visiting the spot, because, as I have already point out that RNA is not possible for such long period when the connection is in open agricultural field except at the time of rainy sessions, but, this cannot be feature for such long period. As per procedure if meter reader would not have access to the place at particular quarter it was incumbent on his part to visit the spot next time and record correct meter reading. But, continuous showing the note RNA show that meter reader had not perform his duty assign to him, he must have prepared everything by sitting at his office. This non performance of the duty by the employee of the company even cause loss to the company apart from inconvenience to the consumer.

19] From this discussion, Forum come to the conclusion that, it is a case of defective meter and therefore billing should be done as per para 15.4.1 and the amount of consumer bill be adjusted for a maximum period three month prior to the month in which the dispute has arisen. Now we have to see which three months period is to be considered here. According to the consumer, the dispute arises from the date of connection i.e. for the period 26/02/2013 onwards. But, Forum held that the period from 26/02/2013 to April 2014 cannot be considered because consumer has not filed bills etc. of this period to show whether meter was normal, faulty or RNA. But, Forum already pointed out that bills from April 2014 to June 2016 of 27 months were sent showing just reading 8 units. IGRC only directed for revision of bills for the period September 2016 to September 2017. So, meter is defective from the April 2014 and dispute can be said to be arises prior to April 2014 and therefore three months period is to be

taken prior to April 2014. But, instated of taking three months average consumption prior to April 2014, Forum is taking into consideration three quarter consumption to take average March 2014, December 2013 and September 2013. The consumption is shown in the bill of March 2014 2482 units, December 2013, 1800 units, September 2013, 1950 units total comes to 6231 units for nine months, so average comes to 692 units per month. Even company also taken average less than this average 633 units per month, but taken average of 600 units per month. So, average consumption shown of 600 unit per month by the department in bill revision report for the bill for the month of September 2016 to September 2017 cannot be said to be arbitrary and it is on lower side than average taken by the Forum and therefore, the average shown by the department can be taken into consideration.

20] Even if it is hold that bills were issued without taking meter reading for some period, then also it is not possible now to issue bill as per para 15.3.5 in view of lapse of time, in view in action on the part of consumer to take any steps from his side for long period and asked for testing of meter. Because it is contention of the company that in view of introduction new system I.T. bill for the above period cannot be corrected.

21] Therefore, I come to the conclusion that, the order of IGRC for correction of bill from September 2016 to September 2017 is correct. The bill revision report for the month of September 2016 to September 2017 is correct and I have to say that the Company also follow the order of IGRC and the corrected bills.

22] The consumer claimed for SOP and compensation of Rs. 1,000/-. The record show that from the January 2014 the meter was not shown proper reading then also department had not taken any sue moto action for testing, maintenance or replacement of meter as per para 14.4 of the said Regulation 2005. The department has not considered the aspect that though the connection is in open space then also why the meter reader is showing RNA for such long period. So, it show that Meter reader has not perform his duty properly and even, his superior controlling officer has not taken any action, this all cause inconvenience, to the consumer. This happened because of the non performance of the duties given as per regulation 2005 by the employee of the department and therefore it amounts to deficiency in services. Therefore, though the Forum hold that order of IGRC is correct and department has correctly shown average meter reading, the Forum feels that it is the case where SOP compensation will have to be granted to the consumer for not maintaining the standard of performance as per Regulation 2005.

23] Here we have considered the conduct of the consumer. Though it is contention of the consumer that from the beginning he was being issued average and excessive bill then also from his side he had not taken action for testing of meter etc. though admittedly, it is the responsibility of the department for periodic testing and maintenance of the meter. From his side if he would have taken one step ahead then inconvenience if any mental agony etc. could have been avoided. It is to be noted that, from his side he had not taken any step but abruptly stopped payment of bills from 09/01/2014, which caused loss to the

Company. So, this conduct of the consumer is to be also taken into consideration while assessing compensation if any.

24] The Grievance was filed on 26/04/2018 and Forum is deciding the same today. As per para 6.18 of Regulation 2006, Forum has to pass the order on the Grievance for its redressal within a maximum period of two months from the date of receipt of Grievance by the Forum and in case Forum could not disposed of the matter within two months, then Forum has to give reasons for it. So, Forum is giving reason for not disposing the matter within two months.

25] After receipt of Grievance, notice was issued to parties for their appearance on 24/05/2018. But, representative sent email on 22/05/2018 and informed that due to illness he was unable to attend the hearing. So, fresh notices were issued on 23/05/2018 giving next date at 13/06/2018. On this date, department filed their reply and documents, but representative seek for one adjournment to study the documents and matter was fixed on 21/06/2018. On that day hearing was taken by the Forum of the quorum Chairperson and Technical member as CPO member was not present and case was posted for order. But, before passing the order the Technical Member/ Executive Engineer was deputed for Assembly duty at Nagpur for the period 04/07/2017 to 20/07/2017 and he was to join this office on 23/07/2017. So, technical member was not available from 02/07/2017 to 23/07/2017. But, in the mean time, the technical member was transferred and took charge of his new posting on 12/07/2018. As the hearing was taken only by two members out of which one was transferred and therefore, Chairperson feels that it is not desirable to decide

the dispute by Chairpersons alone for want of quorum and therefore, on 30/07/2018 fresh notices were issued to the parties and case was reopen for hearing and case was fixed on 08/08/2018. On that day, Shri Ajay Dakhane, Deputy E.E. Gondiya (R) appeared and informed that now the village of consumer was transferred to its Gondiya Sub-division, so he had no knowledge of the case so he seek some time. So, matter was posted on 21/08/2018. On 21/08/2018 a phone message was received from the representative that due to heavy rain and late running of trains he was unable to attend the hearing and therefore, the matter was posted on 29/08/2018, on which date hearing was taken place.

26] There are also practical difficulties of this Forum that all the members were not available for discussion, consultation due to their pre-occupation, illness or going out of station etc. On 29/08/2018, the Grievance was heard by all the members, but again the regular post of technical member was filled and Shri A.M.Nitnaware E.E. joined on 11/09/2018 and in-charge secretary was relieved. So, this is case which see three technical members during this span. So, in view of transfer of previous technical member now Grievance is to be decided by only two member that is Chairperson and CPO member.

27] Forum face with one more difficulty that this Forum is not provided with Stenographer and therefore, Forum has to search for private Stenographer but a man of confidence, and the Stenographer used to attend as per his availability. In this month Stenographer which Chairperson used to call was not

available for long period in view of Festival Session and therefore judgment could not prepared earlier. Because of all these practical difficulties judgment could not be passed within the two months period, but delay is not deliberate or intentional.

28] Lastly, Forum hold that Grievance is to be allowed only for grant of SOP compensation of Rs.1,500/- (for 15 months), and Forum answer point Nos. 2 and 3 accordingly, and Forum proceed to pass following final order

ORDER

- 1] The application is partly allowed.
- 2] The non-applicant is directed to pay SOP compensation of Rs. 1,500/- (Rs. Fifteen Hundred only) to the consumer within next 30 days. However, the non-applicant is at liberty to adjust this amount in arrears of the bill to be recovered from the consumer or from future bills.
- 3] 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 2006 within the period of 60 days from the date of this order
- 4] Copy of this order be supplied to parties forthwith.
- 5] No order as to cost.

(M.R. Kedar)
Member CPO

D/- 29.09.2018

(M. L. Chouhan)
Chairperson

D/- 29.09.2018