



BEFORE THE OMBUDSMAN

(Appointed by the Maharashtra Electricity Regulatory Commission under Section 42(6) of the Electricity Act, 2003)

606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051
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REPRESENTATION NO. 13 OF 2006

In the matter of delay in giving H.T. Supply

Shri Prakash Ramdeo Jaiswal, Gondia..... Appellant
V/s
Maharashtra State Electricity Distribution Co. Ltd., Bhandara..... Respondent

Present:

1. Shri W. G. Gorde, Ombudsman

On behalf of the Appellant:

1. Shri Prakash Jaiswal, Gondia

On behalf of the Respondent:

1. Shri C.V. Singh, Superintending Engineer, MSEDCL, Bhandara

Date: 10th April, 2006

ORDER

Shri Prakash Ramdeo Jaiswal, the resident of Gondia has filed the representation on 24th February, 2006 against the order of the Consumer Grievance Redressal Forum (Nagpur Rural Zone) rejecting his request to grant any compensation or cost of the case. The Forum, in its order dated 3rd February, 2006 held that the Appellant is not entitled for any compensation or cost and rejected the grievance made by the Appellant in this behalf. Being aggrieved with the order issued by the Forum, the Appellant has filed this representation, which is registered at Serial No. 13 of 2006. The Appellant has briefly stated his case as under.

2. The Appellant is a consumer of Maharashtra State Electricity Distribution Co. Ltd (hereinafter referred to as the Respondent) and had applied to the Superintending Engineer of the Respondent for conversion of LTP-G 65 H.P. connection to H.T.P. 225 H.P, on 12th April, 2005. It is alleged that no supply was given to him and therefore he served a notice for this delay to the Respondent on 5th November, 2005 under the M.E.R.C. (Standard of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2005. He claimed Rs. 7500/- as compensation for failure to meet standard of performance as stipulated in the said Regulations.

3. The Appellant has an industrial unit at Gondia. The Respondent initially in January, 2004 and then on 17th November, 2005 informed that the Appellant has to pay Rs. 6,52,425/- as dues on account of flying squad inspection recovery of which he paid only 20% for restoration of electricity supply and balance amount is shown as arrears. The Respondent referred the matter to Head Office regarding sanction of additional load to the Appellant. The Appellant contends that the issue of arrears as a result of the vigilance search by the flying squad is a separate one and not connected with the present application for additional load. The Appellant had, on 15th January, 2004, objected to this provisional assessment. The Respondent delayed the issue of assessment regarding the vigilance search by the flying squad. One of the consumers, similarly affected approached the High Court to expedite the matter. Upon directions from the Court, the Assessing Officer i.e. Superintending Engineer made the order on 20th October, 2005 under Section 126 of the Electricity Act, 2003. The Appellant disagreed with the order and appealed against this order under Section 127 of the Act and the matter is still pending.

4. The Appellant approached the Internal Grievance Redressal Cell to expedite the matter of sanctioning of additional load. The Cell passed an order on 15th December, 2005 and informed that action regarding sanction of additional load will be taken within 7 days as per the advice issued by the Head Office and thereafter only the Distribution Licensee would consider the issue of compensation to the Appellant as per the Regulations.

5. The Appellant contended that the Respondent did not give load extension until 29th December, 2005 and therefore he approached the Forum for redress and compensation. The Forum upon hearing the matter, rejected the request for compensation but issued directions to the Respondent to take action on sanction of additional load to the Appellant. The main reasons for rejecting the compensation by the Forum are as under:

- a) that the application for extension of load was incomplete and additional documents were necessary for preparation of estimates and sanction letter.
- b) There were pending liabilities due to old arrears and the recovery on account of the assessment made by the Respondent's Assessing Officer under Section 126 of the Act.
- c) The Distribution Licensee requires an undertaking from the sister concerns of the Appellant located in the Jai Bamleshwari Rice Mill Compound.

6. The Appellant submits that there was no delay in submission of the documents on his part as alleged by the Respondent and the application was complete as required in the Regulation 4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005. As regards the pending arrears, he states that it is due to wrong application of tariff and the matter is in process. It is a separate matter. The Appellant further submits that the Respondent required an undertaking from the sister concerns in respect of the payment of arrears. The Appellant

is opposed to this suggestion since all the four units are independent having separate proprietors, although they belong to the members of the same H.U.F.

7. The Appellant further states that although the Respondent has now sanctioned the load vide its letter dated 24th January, 2006, he is aggrieved by the order of the Forum rejecting any compensation for delay. He says that the Forum has wrongly observed that the application for additional load was incomplete. According to the Appellant, the Forum failed to judge the delay caused by the Respondent even after receiving the clear-cut instruction of Head Office and fulfillment of the formalities by the consumer. The Appellant has highlighted the fact that members of the Consumer Grievance Redressal Forum were divided in their opinion on the issue of granting compensation. One of the members strongly felt in favour of granting compensation. In view of this, the Appellant has prayed for compensation for delay in giving additional load as per Regulations. The Appellant also sought penalty in accordance with Section 43 (3) of the Electricity Act, 2003. He further seeks to delete the Condition No. 18 (1) of the sanction letter dated 24th January, 2006 which binds the Appellant to pay the old arrears in line with the decision of the Court of Law in respect of connections inside the Jai Bamleshwari Rice Mill Compound.

8. The Appellant, alongwith the representation, filed copies of the letters exchanged with the Respondent on different occasions. Notice was issued to both the parties calling upon to consider if they can work out any proposal for settlement through conciliation or mediation. In addition, the Respondent was directed to submit written statement of defence on the points raised by the Appellant. There was no proposal for settlement from either of the parties.

9. The Respondent submitted its written statement of defence explaining the sequence of events in processing of the Appellant's application for 225 H.P. power supply. It states that the application was received on 10th March, 2005 and was sent to the Executive Engineer on 16th March, 2005 for joint inspection on site, deciding the point of supply and framing of the estimate for supply. List of documents required for application were sent on 6th April, 2005. Further, vide letter dated 2nd May, 2005, the Appellant was informed to submit a detailed map of premises where the power supply is needed alongwith the boundaries and entrance. By the same letter, the Appellant was asked to clear all the liabilities and arrears due to theft case. It agreed that the Appellant submitted the required documents on 21st July, 2005. The Respondent narrated further details of the correspondence with its Head Office in connection with the application for additional power. The Respondent concedes that the estimate of charges was communicated to the Appellant only on 16th December, 2005. Details of the ongoing cases in the Court of the Judicial Magistrate as well as the appeal pending with the Appellate Authority are also mentioned in the statement. The Respondent further submits that the Appellant made payment of current liabilities on 23rd January, 2005 where after load was sanctioned on 24th January, 2005. According to the estimate, the execution of the work is to be carried out by the Appellant at his own cost and after due inspection by the Executive Engineer (Testing) supply to the installation is to be released. In view of this background, the Respondent prayed not to accept the Appellant's prayer

of relief since the Respondent, MSEDCL has responded from time to time to the Appellant.

10. The matter was heard on 3rd April, 2006. Shri Prakash Jaiswal, the Appellant was personally present. Shri C. V. Singh, Superintending Engineer represented the Respondent, MSEDCL, Bhandara. The Appellant took the stock of the events in the process of application and submitted that the Respondent has delayed the sanction of power inspite of the fact that all the required papers were submitted from time to time. He reiterated all the statements made in his written representation. As regards to the appeal filed under Section 127 of the Electricity Act, 2003, the Respondent informed that recently on 22nd March, 2006, the said appeal has been decided by the Appellate Authority. Copy of the order by the Authority in respect of this appeal was submitted during the hearing. The same is taken on record for information.

11. The Appellant agreed that the estimate of charges was given to him on 16th December, 2005 and that he made the payment of current liabilities on 20th December, 2005 and 23rd January, 2006. This does not include any dues on account of the disputed arrears in respect of which the cases under Section 127 or 135 of the Act were filed. He reiterates his prayer for compensation for the delay caused in the whole application process for sanction of H.T. Power.

12. The Respondent reiterates the points mentioned in his written statement of defence. Most points relate to the correspondence exchanged between the Appellant and the Respondent, which are the matters of record. While deposing on chronology of events, the Respondent conceded that the Appellant finally decided to go for 11 KV supply and agreed to bear the entire cost. He did not comment on the Appellant's letter that all the documents were submitted on 20th April, 2005. The Superintending Engineer of the Respondent mentioned that vide letter dated 14th July, 2005, the Appellant was asked to submit separate 7/12 extracts and the copy of the new map, which the Appellant submitted on 21st July, 2005.

13. Upon query, he confirmed that there was no further communication to the Respondent asking for any other documents, which were required for preparation of the estimate. The Chief Engineer (Commercial) vide letter dated 3rd December, 2005 informed the Superintending Engineer, Bhandara to decide the matter at his level for sanction of power. No directions or advice was given by the Head Office to the Superintending Engineer on whether or not the application should be sanctioned. The Superintending Engineer confirmed that all actions regarding estimate, sanction of power, etc were carried out at the circle level. He prayed that no compensation should be awarded to the Appellant since there was no delay in sanction of load after payment of current liabilities was made by the Appellant.

14. The main contention of the Appellant is the issue of compensation for the delay in sanction of load extension. Compensation is sought in terms of the provision contained in the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation)

Regulations, 2005 and also penalty for delay as provided under Section 43 of the Electricity Act, 2003. The Appellant explained that the issues relating to appeal under Section 127 and the cases pending in the Court of Judicial Magistrate under Section 135 of the Electricity Act, 2003 do not have any bearing on the issues raised in the present representation. It is admitted that the flying squad of the Respondent inspected premises of the Appellant, sometimes in the year December, 2003 based on which the Respondent raised the provisional assessment bill of Rs. 6,52,425/-. The Appellant objected to raising of this bill, on 15th January, 2004 and approached the Superintending Engineer to sort out the matter. It is also claimed that Superintending Engineer delayed the matter and maintained silence over this issue. Some other consumer similarly affected approached the High Court to expedite the matter. The Superintending Engineer issued an assessment order on 20th October, 2005 under Section 126 of the Electricity Act, 2003 upon directions from the High Court. This assessment is challenged by the Appellant under Section 127 and the matter is pending with the Appellate Authority.

15. The Appellant argued during the hearing that the matters relating to assessment under Section 126 and 127 of the Act are quite different and which should not have any bearing on processing of the application for extension of load. The Respondent has filed the case under Section 135 of the Electricity Act, 2003 against the Appellant in the Court of Judicial Magistrate, Gondia. It was apprised during the hearing that the cases are still pending in the Court. It is acknowledged that there are issues of disputes between the Appellant and the Respondent, which gave rise to legal cases as above.

16. The issue in focus, therefore is, whether there was any delay in processing Appellant's application for H.T. Power supply in terms of the provision contained in the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005. It is, therefore, vital to recapitulate the sequence of events that took place after the application was filed by the Appellant.

17. The Appellant filed the application for high tension supply first on 10th March, 2005 and then corrected on 12th April, 2005. The Respondent, on the same day, visited the site and had joint inspection for fixing the point of supply in the presence of the Executive Engineer and the Dy. Engineer, Bhandara. The Appellant agreed that the site plan would be submitted shortly. By the same letter, the Appellant had informed the Respondent that he had earlier applied on 10th March, 2005 for 11 KV separate express feeder but he noticed that 33 KV line is passing through his premises and therefore requested the Respondent to sanction supply on 33 KV line. This was followed by a communication dated 19th April and 2nd May, 2005 from the Executive Engineer, Gondia to the Appellant informing that the 33 KV main feeder cannot be tapped and in case the Appellant needs supply on 33 KV feeder, it would have to be given from the nearest 33 KV sub station at the Appellant's cost.

18. On 12th May, 2005, the Appellant informed his willingness to bear the cost of all the equipments and the lines as per the ORC scheme. He further informed that the maps of the premises are already submitted to the Respondent on 20th April, 2005. Further, on

31st May, 2005, the Appellant revised his request and agreed to go for 11 KV feeder, instead of 33 KV feeder since the supply of 33KV is meant for load exceeding 1500 KVA. The Appellant also reiterated having submitted the site map, etc to the Respondent's office on 20th April, 2005, and revised map and 7/12 records on 21st July, 2005.

19. There appears no further communication between the Appellant and the Respondent until 26th October, 2005 when the Respondent informed that the Appellant's case for additional H. T. Power is referred to the Head Office, the Competent Authority and further action would be taken on receipt of the instructions from the Head Office. This was followed by a meeting of the Appellant with the officials of the Respondent at Head Office on 25th November, 2005 in the presence of the Executive Engineer in charge of the concerned division. It appears, on 25th November, 2005, the Appellant was asked to furnish an undertaking to pay the disputed arrears on account of Court cases filed by the Respondent in the Court of Judicial Magistrate at Gondia and also the appeal filed by the Appellant under Section 127 of the Electricity Act, 2003. The Appellant furnished an undertaking dated 27th November, 2005 to the Respondent on 6th December, 2005 agreeing to pay the full amount of arrears, if any as per the decision of the Court of Law.

20. It is also on record that the High Court issued directions to the Superintending Engineer to hear the matters and make order within the stipulated time. The Superintending Engineer accordingly made the order under Section 126 on 20th October, 2005 regarding assessment. In this background, it is pertinent to note that the Chief Engineer (Commercial) on 3rd December, 2005 advised the Superintending Engineer to decide the matter on assessment under Section 126 as directed by the High Court at his level. The Head Office did not give any advice to the Superintending Engineer as to whether or not application for H. T. Power should be sanctioned. The estimate of charges was issued by the Superintending Engineer on 16th December, 2005, without insisting any undertaking from the sister units of the Appellant.

21. The above sequence of events show that the estimate of charges was finally issued on 16th December, 2005 in terms of the application which was originally filed on 10th March, 2005. On 20th December, 2005, the Superintending Engineer asked the Appellant to furnish an undertaking from all the four sister units of the Appellant in connection with the payment of arrears, before which date the estimate was already issued. Followed by issue of the estimate, the Respondent asked the Appellant to clear off the current liability of Rs. 1,13,912/- upto November, 2005 before the load sanction is effected. Accordingly, the Appellant made the payment of arrears on 30th December, 2005 and 23th January, 2006. The demand note was thereafter issued on 24th January, 2006 for Rs. 1,85,790/- in respect of the application for additional H. T. Power.

22. The Appellant, in the meantime, aggrieved with inaction of the Respondent and delay in sanction of power, approached the Forum on 29th December, 2005 for expediting load sanction and claiming compensation under Regulation 4 of MERC (Standard of Performance of Distribution Licensees, Period of Giving Supply & Determination of Compensation) Regulations, 2005 and penalty under Section 43 (3) of the Electricity Act,

2003 for the delay. The Forum rejected the application for compensation and penalty holding that the Appellant is not entitled for any compensation or cost of the case. The Forum, however, directed the Respondent, Maharashtra State Electricity Distribution Co. Ltd. to implement the conversion into H. T. Power within 15 days from completion of the formalities.

23. Aggrieved with the decision, the Appellant prays that he is entitled for compensation for the delay period in terms of the Regulation 4 of MERC (Standard of Performance of Distribution Licensees, Period of Giving Supply & Determination of Compensation) Regulations, 2005 and Section 43 (3) of the Act. Facts on record show that the application for additional power was filed on 10th March and 12th April, 2005. The Respondent, on the same day carried out site inspection. Thus, there is no delay as far as site inspection is concerned. However, there appears protracted correspondence between the Appellant and the Respondent on whether the power is required on 11 KV or 33 KV. On 31st May, 2005, the Appellant confirmed its willingness to bear the cost for extension of power and to get the power on 11 KV feeder. The Appellant, by his letter dated 12th May, 2005 confirmed that the required map, etc was already furnished on 20th April, 2005. Upon further request from the Respondent, revised map with 7/12 records was submitted on 21st July, 2005. The Respondent conceded having received map and documents to enable it to prepare the estimate of charges. The communication on 25th October, 2005 from the Superintending Engineer to the Head Office sought advice from the Head Office on sanction of power, with reference to the issue of theft cases and the arrears due from the Appellant. This goes on to show that the preparation of the estimate of charges was never held up for want of the site map or any document but was due to entirely different reasons as explained above.

24. It in this background that the delay in issue of estimate of charges has to be examined with reference to the provisions under the Regulations. Regulation 4 of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005, which reads as under:

“4.1: The Distribution Licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply.

4.2: The application referred to in Regulation 4.1 shall be deemed to be received on the date of receipt of the duly complete application in accordance with the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

4.3: The Distribution Licensee shall complete the inspection of the premises related to an application for supply of electricity not later than seven days from the date of submission of such application for supply in towns and cities and within ten days from the date of submission of such application for supply in rural

areas, regardless of whether such application is deemed to be complete under Regulation 4.2.

4.4:

4.5: Where the supply of electricity to premises requires extension or augmentation of distributing mains, the Distribution Licensee shall give supply to such premises within three months from the date of receipt of complete application in accordance with the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

4.6:

4.7: Where the supply to an applicant requires extension or augmentation of distributing main or commissioning of a new sub station, the Distribution Licensee shall complete the inspection of premises within seven days and intimate the charges to be borne by such applicant within thirty days from the date of submission of such application for supply regardless of whether the application is deemed to be complete under Regulation 4.2.”

25. Perusal of the above provisions make it clear that inspection of the premises has to be completed within 7 days from the date of submission of the application regardless of whether such application is deemed to be complete under Regulation 4.2. Regulation 4.7 further makes it clear that the estimate of charges to be borne by the applicant is required to be communicated within a period of 30 days from the date of submission of such application for supply regardless of whether the application is deemed to be complete under Regulation 4.2. In view of this, completion or otherwise of the application, does not come in the way of inspection of the premises as well as for issuing the estimated charges. It is only for providing the supply as mentioned in the Regulations 4.2 and 4.5 that the application must be duly completed before the supply is given.

26. In this case, the supply of electricity requires augmentation of distribution mains. The Respondent was therefore duty bound to give an estimate of charges to the Appellant within a period of 30 days from the date of submission of the application. The Appellant had initially applied on 10th March, 2006 for 11 KV supply, followed by its request on 12th April, 2005 for supply on 33 KV feeder. The Appellant modified its request on 31st May, 2005 to get the supply on 11 KV feeder for the reasons explained in his application. Considering these events, the Respondent should have provided the estimate of charges on or before 30th June, 2005. It is further seen that the Respondent wrote again on 14th July, 2005 seeking documents about 7/12 extracts of the land and the map, which if at all were required, should have been asked much earlier. Nevertheless, the Appellant complied with this requirement vide his letter dated 21st July, 2005. Assuming that this information was crucial to work out the estimate of charges, the Respondent should have certainly given the estimate on or before 20th August, 2005. Instead of issuing the

estimate, the Superintending Engineer of the Respondent made a reference to the Head Office in October, 2005 seeking advice on issues like pending theft cases or recovery of arrears, etc which had in fact no connection with processing of the application to the extent it relates to issue of estimate for supply. It did not issue the estimate until 16th December, 2005. Non-payment of current arrears (which the Appellant paid in December, 2005 and 23rd January, 2006) was in any case not the ground for delay in giving the estimate of charges.

27. Thus, analysis of facts and documents as above lead me to conclude that the Respondent is bound to compensate for the delay in accordance with the provision contained in the Regulation 4 of MERC (Standards of Performance, Period of Giving Supply and Determination of Compensation) Regulations, 2005 read with Appendix A. The compensation for delay in issue of the estimate of charges needs to be calculated beyond thirty days from 21st July, 2005 and upto 16th December, 2005 at the rate of Rs. 100/- per week or part thereof as provided in the Regulation. The delay works out to 17 weeks. The Respondent is therefore, directed to pay Rs. 1700/- as compensation to the Appellant for delaying the issue of the estimate of charges.

28. As regards sanction of additional power, which came on 24th January, 2006, it is seen that the Appellant made the payment of liabilities though under protest, on 30th December, 2005 and 23rd January, 2006. The Respondent was prompt enough to sanction the additional load thereafter on 24th January, 2006. There appears no delay on this account and therefore the Appellant cannot seek any compensation for delay in sanction of load.

29. The Appellant has prayed for penalty for delay in sanction of additional power in terms of the provision contained in the sub Section 3 of Section 43 of the Electricity Act, 2003. The prayer relates to penalty under this Section, which is distinctly different from the issue of compensation claimed by the Appellant under the Regulations. Perusal of the Regulation 8.2(3) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 reveals that the Forum can make order and award compensation to the consumer in the situations mentioned in the Regulations. Similarly, the Forum can examine the award of compensation for failure to meet the standard of performance as per Regulation 4 read with the Appendix A of the MERC (Standards of Performance, Period of Giving Supply and Determination of Compensation) Regulations, 2005. There is no provision in the Regulations for the Forum or the Ombudsman to consider the prayer for awarding penalty under Section 43 (3) of the Act. In any case, as observed earlier, there appears no delay in sanction of additional power in this case. Therefore, no order can be passed on the prayer for penalty made by the Appellant in this behalf, as being beyond our jurisdiction.

30. As regards the prayer for deleting condition no. 18(1) of the sanction letter dated 24th January, 2006, it is seen that it relates to payment of disputed arrears as may be decided by the Court of Law. The record shows that the Appellant has already furnished an undertaking on 27th November, 2005 agreeing to pay the dues as per Court Orders.

There is, therefore, nothing unusual incorporated by way of condition no. 18(1) referred to above. There is no merit in the prayer made by the Appellant in this behalf.

31. The Representation is disposed of with the above directions as elaborated in the preceding paragraphs. This order must be complied immediately and compliance reported within a period of 30 days from the date of this order.

Sd/
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary