

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 58 OF 2021

In the matter of admissibility of appeal against the order passed by the Forum

Dashrath Narsu Kusale Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Kedgaon (MSEDCL)..... Respondent

Appearances:

For Appellant : Dashrath Narsu Kusale

For Respondent : 1. Rajendra Edake, Executive Engineer, Kedgaon
2. Mahajan, Dy. Ex. Engineer

Coram: Deepak Lad

Date of hearing: 8th September 2021

Date of Order : 28th September 2021

ORDER

This Representation is filed on 26th August 2021 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) against the Order dated 18th February 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL, Baramati Zone (the Forum).

2. The Forum, by its order dated 18.02.2020 has rejected the grievance application in Case No.25 of 2019.


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3. Aggrieved by the order dated 18.02.2020 of the Forum, the Appellant has filed this Representation stating as under: -

- (i) The Appellant has prayed for delay in condonation in filing the instant Representation which is against the order dated 18.02.2020 passed by the Forum.
- (ii) The Appellant is in the business of poultry farming having Consumer No. 184340042038 from 14.01.2019 with sanctioned load of 25 HP at Gat No 981, Nimgaon Mhalungi, Shirur, Pune. The power supply is fed from 25 KVA Distribution Transformer
- (iii) There was frequent interruption of power supply for the period April 2019 to July 2019.
- (iv) The Appellant filed the complaint with Internal Grievance Redressal Cell (IGRC) on 31.07.2019. The IGRC, by its order dated 17.09.2019 has directed the Respondent to take steps for maintaining continuous power supply of the complainant and his meter be replaced within ten days. Not satisfied with the IGRC order, the Appellant approached the Forum on 18.12.2019. The Forum, by its order dated 18.02.2020 has rejected the grievance application.
- (v) The Appellant stated that 796 chickens of his poultry farming were dead due to erratic power supply for which he had to run generator. Therefore, this has resulted in additional financial burden on him to the extent of Rs.1,47,442/- which needs to be compensated by the Respondent.
- (vi) The Appellant is in contract farming agreement with CPF (I) Pvt. Ltd., Talegaon branch. This company provides chicks and feed for taking further care by the Appellant. At the end of the day, the Appellant returns back the developed chickens. In the event of some mortality in this process, the Company deducts suitable amount towards loss to it.
- (vii) The Company, CPF (I) Pvt. Ltd., Talegaon deducted Rs. 1,07,000/- towards loss to it due to mortality of 796 chicks. This mortality happened due to erratic power supply.
- (viii) The Forum directed the Respondent to maintain healthy power supply. In pursuance to these directives, the Respondent informed that the work of


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connecting link between the 22 kV IBP Feeder and the 22 kV Warude Gaathan Feeder supplying the Appellant is awarded to Zenith Power Control. This will provide alternate feed to the Appellant in the event of tripping of the parent feeder.

- (ix) As per the work order of the Respondent, Zenith Power Control has completed the work of HT line in the month of December 2020, and it has been commissioned.
- (x) The Appellant has requested the Section Officer, Shikrapur to feed the distribution transformer supplying power to the Appellant on the 22 kV IBP Feeder. However, it has not yet been switched over.
- (xi) The Appellant complained to the customer care of the Respondent but of no avail. Surprisingly, the complaint was closed without resolving the issue. The snapshot of the complaint is kept on record.
- (xii) The Forum, in its order has observed that the feeder supplying power to the Appellant is approximately 40 to 50 km which could be the reason for unhealthy power supply. Healthy power supply needs to be provided to all consumers irrespective of whether it falls under urban or rural areas.
- (xiii) The Appellant submits that he had sent an application to the office of the Electricity Ombudsman (Mumbai) on 18.05.2020 which was in-warded in the office on 08.07.2020. It was informed by the office that he needs to submit his grievance in prescribed Schedule B form. However, the same could not be submitted as the Appellant suffered from Covid-19 infection. Hence, delaying in filing the Representation be condoned.
- (i) The Appellant therefore prays that
 - (a) his power supply be connected on 22 kV IBP Feeder, and
 - (b) he be compensated for total Rs.2,54,442/- towards loss suffered due to mortality (Rs. 1,07,000/-) and the cost of diesel (Rs.1,47,442/-).

4. The admissibility hearing on e-platform was held on 08.09.2021. During the hearing, the Appellant argued in line with his written submission covering all points mentioned above and reiterated that his premises be fed from 22 kV IBP Feeder.


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5. The Respondent argued that it has acted on its own and awarded work of link connecting the existing feeder which supplies power to the Appellant to that of 22kV IBP Feeder. The said work is completed and commissioned. However, when it tried to source power supply to the Appellant from 22kV IBP Feeder, there were transient trippings due to touching of branches of a big (Audumber) tree. The villagers do not allow this tree to be chopped due to religious reasons. The Appellant is well aware of this fact and the Respondent has sought his cooperation in this regard too. Both, the regular 22 kV Warude Gaothan and the 22kV IBP Feeders are emanating from the same substation and is of approximately same length. The Respondent always pay attention to the maintenance of the feeders for healthy power supply.

6. During the hearing, the Respondent was directed to provide data with respect to tripping from the feeding 220 kV EHV Ranjangaon substation (s/dn) for a period of 4 /5 months prior to and after commissioning of the said link including the period mentioned by the Appellant. The Respondent submitted its reply vide letter dated 22.09.2021 by email dated 24.09.2021.

Analysis and Ruling

7. Heard the parties and perused the documents on record. Basically, the hearing was scheduled for deciding the admissibility of the Representation because the Forum passed the order on 18.02.2020 and the Representation finally came to be registered on 26.08.2021. It is necessary to go into the brief history for the period from 18.02.2020 to 26.08.2021.

8. The Forum passed the order on 18.02.2020 which inherently mentions that if the complainant is not satisfied with the order of the Forum, he can file an appeal with the Electricity Ombudsman (Mumbai) within 60 days from the date of the order. Not only this, but it did also mention the address of the office of the Electricity Ombudsman (Mumbai). The entire set of information forms the part of the order. To cap it all, the office of the Forum sent its order through a covering letter bearing No. 572 dated 18.02.2020 which also mentions that the appeal against the order of the Forum can be made within 60 days from the date of its order to the office of the Electricity Ombudsman (Mumbai). Therefore, there was no scope for the Appellant to have not noticed this information which has been exclusively mentioned.


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The Appellant has taken shelter of Covid-19 infection. The Forum passed the order on 18.02.2020. The appeal period expires on 18.04.2020. Lockdown was imposed on 23.03.2020. Thus, the Appellant has wasted valuable time of almost 35 days out of 60 days prior to lockdown. He could have well filed the appeal within these 35 days period. Therefore, attributing the entire delay due to Covid-19 is highly misplaced and not correct.

9. Instead of filing the Representation in prescribed Schedule B form, the Appellant sent a letter dated 18.05.2020 which was received by this office on 08.07.2020. The secretariat of this office informed the Appellant telephonically and by letter dated 16.07.2020, the procedure of filing the Representation in this office. Not only this, but the Schedule B form was also enclosed with the said letter. It was further advised in the same letter that the said Form can be downloaded from the website www.mercombudsman.org.in of this office.

The Appellant despite being informed clearly about the procedure, the Representation was finally submitted on 26.08.2021. He has again wasted time from 16.07.2020 to 26.08.2021 which is a period more than 13 months. Thus, total delay amounts to more than 16 months which he wants to be condoned on the pretext of Covid-19 infection.

10. The Appellant has cited Covid-19 epidemic and situation arising out of it as the reason for delay in filing the instant Representation. It has, therefore, become necessary to examine it in this backdrop.

11. The delay in filing the representation being pretty long (15/16 months considering 60 days to file the appeal) it is necessary to examine the prayers of the Appellant in light of various issues such as lockdown and Mission Begin Again (MBA) with respect to Covid-19 epidemic in Maharashtra and various orders of Government of Maharashtra (GoM). The chronology in this regard is as below:

- (a) The GoM on 18.03.2020 issued order prohibiting movements of the people at large, and attendance at various offices, etc.


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- (b) Subsequently, the GoM issued notification on 20.03.2020 vide which all workplaces, excluding essential services and public transport, in Mumbai, Mumbai Metropolitan Region, Pune, Pimpri-Chinchwad and Nagpur are ordered to be closed until 31.03.2020.
- (c) Vide order dated 02.05.2020 lockdown was extended till 17.05.2020.
- (d) Vide order dated 17.05.2020 it was further extended till 31.05.2020.
- (e) Vide order No. DMU/2020/CR.92/DisM-1, dated 31.05.2020 eased out restrictions and phase wise opening of lockdown (MBA).

The specific quote in this order is as follows: -

“Whereas the State Government is satisfied that the State of Maharashtra is threatened with the spread of Covid-19 Virus, and therefore to take certain emergency measures to prevent and contain the spread of the virus, the Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897, read with all other enabling provisions of The Disaster Management Act, 2005, it is expedient to extend the lockdown in the entire State of Maharashtra further till midnight of 30th June 2020.

Now, therefore, in exercise of the powers conferred under section 2 of the Epidemic Diseases Act, 1897 and the powers, conferred under the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, State Executive Committee, hereby issues directions to extend the lockdown, with amendments ,to operationalise MISSION BEGIN AGAIN for easing of restrictions and phase-wise opening, till 30th June 2020 for containment of COVID-19 epidemic in the State and all Departments of Government of Maharashtra shall strictly implement the guidelines issued earlier form time to time.”

Under this notification, in Municipal Corporations of MMR Region including MCGM, Municipal Corporation of Pune, Solapur, Aurangabad, Malegaon, Nashik, Dhule, Jalgaon, Akola, Amravati and Nagpur, following activities are additionally permitted with restrictions in phases as described below except containment zones. This is in addition to the activities already allowed and permitted.

- MBA Phase 1 started from 03.06.2020
 - Outdoor physical activities with respect to individual exercises were permitted with certain restrictions.
 - All Govt. offices (excluding emergency, health & medical, treasuries, disaster management, police, NIC, food & civil supplies, FCI, N.Y.K., municipal services who can operate at the levels as per the needs) will function at 15% strength or minimum 15 employees whichever is more.


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- MBA Phase 2 started from 05.06.2020
 - All markets, market areas and shops except malls and market complexes are allowed to function on P1-P2 basis (opening of shops on one side of the road on odd and even dates with certain time restrictions).
 - Long distance travel for non-essential items will not be permitted.
 - Use of motorized vehicles for shopping will be strictly discouraged.
 - Movement of people is allowed in following manner (1+2 for taxi rickshaw, four-wheeler, and only essential one rider for two-wheeler).
- MBA Phase 3 started from 08.06.2020
 - All private offices can operate with up to 10% strength.
 - In rest of State except the areas covered in Clause 6, all activities, which are not in the clause 8 of this order and which are not explicitly prohibited or banned, shall continue to be permitted with following conditions.
 - ✓ No permission is needed from any Govt. authorities for permitted activities.
 - ✓ All public and private transport will follow passenger management.

Movement of people was allowed in following manner:-

(i) Two Wheeler – 1 rider, (ii) Three & Four Wheeler – (1+2).
 - ✓ All markets / shops will remain open from 9 a.m. to 5 p.m.

From the above, it is clear that for all practical purposes, lockdown was literally eased out from 30.06.2020. It is important to note that Government offices including this office were not closed from day one barring few restrictions.

12. The Hon'ble Supreme Court of India passed its judgment on 23.03.2020 in Suo Moto Writ (Civil) No. 3 of 2020 with reference to Cognizance for Extension of Limitation with IA No.48411/2020. Operative part of the said Judgment is quoted below:


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“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

In furtherance to above Judgment, the Hon’ble Supreme Court of India passed Judgment on 06.05.2020 in Suo Moto Writ (Civil) No. 3 of 2020 with reference to Cognizance for Extension of Limitation with IA No.48411/2020. Operative part of the said Judgment is quoted as below: -

*“In view of this Court’s earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings. **In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.**”
(Emphasis added)*

The Hon’ble Supreme Court of India passed Judgment on 10.07.2020 in Suo Moto Writ (Civil) No. 3 of 2020 in Re: Cognizance for Extension of Limitation with IA No.48411/2020. Operative part of the said Judgment is quoted as below:-

“Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it


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appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.”

From all these three Judgments of the Hon’ble Supreme Court, it is observed that in the first place, the Hon’ble Supreme Court passed Judgment on 23.03.2020 for extension of limitation from 15.03.2020 till issue of further orders by the Hon’ble Supreme Court. Then the limitation period was further extended by it through another Judgment dated 06.05.2020 in which, it ruled that the limitation period which expired on 15.03.2020 was extended till lifting of lockdown with additional 15 days of moratorium period.

13. In sum and substance, any litigant who wish to file a case before the appropriate Court of Law / Adjudicating Authority, etc. limitation of which has already ended, can file it after expiry of the lockdown with 15 days of additional moratorium.

14. In view of the Hon’ble Supreme Court Judgments quoted above, and the fact that Government of Maharashtra issued various orders with respect to imposition of lockdown and subsequent easing out the same (Mission Begin Again), the lockdown has practically ended on 30.06.2020. However, the Hon’ble Supreme Court vide its order dated 08.03.2021 has further extended the limitation period up to 15.03.2021. The Appellant filed the instant Representation on 26.08.2021. Here also the Appellant wasted 5 and half months unnecessarily.

15. It is also important to note that this office has also hosted notice on its website on 16.07.2020 for filing of representations by email followed by submission in hard copies. Then afterwards, various litigants started filing representations through email and the respective Respondents also submitted their replies / statement of defense by email. Hearing through video conferencing on e-platform were being conducted from the initial stages of lockdown which is still being implemented by this office. The notice which was hosted on the website of this office on 16.07.2020 is quoted below: -

“Submission of Representation on E-mail in light of the current ongoing Covid-19 pandemic, and in order to avoid potential risk of Corona infection, it is to notify to all those who wish to file


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Representation against the order of the Forum that they can now file it along with all necessary documents by email on Email ID electricityombudsmanmumbai@gmail.com to be followed by submission in hard copy in triplicate. The formats are same as here to before. After the representation is registered, hearing though e-platform will be scheduled. This will continue till current situation persists.”

16. The Hon’ble Supreme Court in its Judgment dated 13.03.2019 in Civil Appeal No.2960 of 2019 has laid down that there is no necessity to go on merits and the plaint can be rejected if it is clearly barred by limitation.

17. Considering the entire sequence of events, including the orders of the Hon’ble Supreme Court, I do not find any substantial reason whereby the prayer of the Appellant for condonation of delay can be considered. Therefore, the delay is not condoned, and the Representation is rejected not being admissible.

18. While parting with the order, the Respondent submitted statement of interruptions for the period January 2021 to August 2021 pursuant to directions in the hearing. This statement shows that there are interruptions on 22 kV Warude Gaothan Feeder emanating from 220 kV Ranjangaon EHV substation. The Respondent in its submission has said that in the event of major interruptions on this feeder, its load can be shifted on the other feeder and interruptions can be avoided. Here, it is important to note that feeding the consumers with reliable and quality power supply is the primary duty of the Respondent, therefore, it is not necessary for the undersigned to enter into this exclusive domain of the Respondent.

Sd/-
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