

**GUJARAT ELECTRICITY REGULATORY COMMISSION
BEFORE THE ELECTRICITY OMBUDSMAN, GUJARAT STATE
Polytechnic Compound, Barrack No.3, Ambawadi,
Ahmedabad-380015**

CASE NO. 164/2015

Appellant: Managing Director
 Shree Extrusion Limited
 Phase-2, 217-218 GIDC, Udyognagar, Nr. Dared
 Okha-Rajkot Road, JAMNAGAR

Represented by: Shri Anvesh Vyas, Learned Advocate
 Shri Nimish Bavishi, Accounts Officer

V/s.

Respondent: Executive Engineer,
 Paschim Gujarat Vij Company Ltd.,
 City Division Office No.2, JAMNAGAR.

Represented by: Shri A.K.Mehta, EE, PGVCL, Jamnagar
 Shri P.G.Kanjariya, Dy.SA, PGVCL, Jamnagar

:::PROCEEDINGS:::

- 1.0.** The Appellant had submitted representation aggrieving with the order No.10079 dated 02.11.2015, passed by the Consumer Grievances Redressal Forum, Paschim Gujarat Vij Company Limited, Rajkot, in complaint No.69/Q.03/2014-15. The representation was registered at this office as Case No.164/2015. The hearing of this case was kept on 28.01.2016.
- 2.0.** The Appellant has represented the case as under.
 - 2.1. Appellant has requested to condone the delay for 8 days in filing appeal before Ombudsman.
 Appellant is HT consumer of PGVCL, bearing consumer No. 27024, having contracted load of 1000 KVA, situated at Plot No.217/218, GIDC, Phase II, Dared, Jamnagar.
 - 2.2. The said connection was checked by the officer of the Respondent on 11.12.1996 and it was found that meter was running slow by 46.91% due to defect in CTPT Unit. Supplementary bill was

issued by Respondent of Rs. 19,72,919.89 on 06.01.1997 for the less consumption recorded by 46.91% for the period from July, 1996 to December, 1996.

- 2.3. The said supplementary bill was challenged before Electrical Inspector, Jamnagar, and upon checking it was found that the meter was slow by 43.328 % and accordingly Electrical Inspector, Jamnagar has directed to issue supplementary bill for the period of past six months vide order dated 02.05.1997.
- 2.4. Appellant being aggrieved and dissatisfied by the order passed by Electrical Inspector, challenged the order before Secretary, EPD, GOG, Gandhinagar, and after hearing the parties, Secretary, EPD had issued order to review the period of bill from 30.08.1996 to 11.12.1996 on the basis of checking dated 29.08.1996.
- 2.5. The erstwhile GEB (known as PGVCL) has challenged the order passed by Secretary, EPD, Gandhinagar before Hon'ble High Court by way of writ petition, bearing SCA No. 4961/1997. Hon'ble High Court has rejected the Petition preferred by PGVCL by way of an order dated 02.12.2009.
- 2.6. On 31.12.2012 Appellant has received an amount of Rs.9,72,355.38 as per the observations carried out in the order dated 02.12.1997 by Hon'ble High Court in SCA No. 1461/1997.
- 2.7. Appellant has served a letter to Respondent through an Advocate and requested to pay interest upon the amount of Rs.9.72,355.38 from 01.08.1997, which was rejected by Respondent vide letter No.2185 dated 06.03.2013. It was stated that Hon'ble High Court has nowhere mentioned about the payment of interest by way of order dated 02.12.2009. Appellant has also filed notice through Advocate to Respondent vide letter dated 06.02.2014.
- 2.8. Thereafter appellant has preferred application before CGRF, PGVCL, Rajkot and CGRF has rejected the said application by way of order dated 20.08.2014.

Earlier Appellant had filed representation before Ombudsman which was not considered by Ombudsman by way of order dated 07.05.2015 on the ground of pendency of grievance before CGRF.

- 2.9. It is submitted that CGRF has rejected the application of Appellant by way of order dated 02.11.2015 and being aggrieved by the said order, present representation is filed with below mentioned ground.
- (A) While passing the order respondent authority has not considered the fundamental principle of Electricity Act and important legal aspects in favour of Appellant, therefore same is required to be set aside.
 - (B) Writ Petition SCA No.4961/1997 preferred by Respondent is concerned with respect to legality and validity of order passed by Secretary, EPD and interest was not at all a part of the petition and therefore Hon'ble High Court has not interpret anything about the interest in the order dated 02.12.2009.
 - (C) Appellant has primarily raised an issue with respect to interest accrued upon the bill and initially Electrical Inspector has passed an order on 02.05.1997 calculating the interest upon the bill. However since the issue is pending before adjudication, Appellant has not paid the bill amount and subsequently the said order came to be challenged before Secretary, EPD, GOG, and Secretary has issued an order dated 17.06.1997, revising the order passed by Electrical Inspector.
 - (D) It is stated that the matter was sub judice the total payment of supplementary bill was paid up to 19.07.1997 in instalments and even though the matter was before concerned Court Respondent company has recovered the total amount of supplementary bill along with the delay payment charges/interest to the tune of Rs. 4,10,075.17 as

per the statement sent by Respondent Company vide letter No.3825 dated 13.10.1997 by EE, Jamnagar city, which was paid by Appellant to run his Unit.

- (E) It is submitted that Appellant had approached Civil Court, Jamnagar vide Civil Suit No. 35/1998 raising the dispute and recovery of an amount of Rs. 4,22,446.70 imposed as a delay payment charges. The case was withdrawn by letter dated 25.08.2011, and having alternate remedy available under the special status, accordingly Appellant had filed grievance before CGRF, PGVCL.
- (F) Appellant is engaged in business of manufacturing unit and liquidity of amount is a matter of credit of any company, and guise of present circumstances amount of Rs. 972355.38 came to be lying with Respondent without any fault of Appellant, and Appellant was refrained from using the said amount for the development of his business. Respondent has enjoyed the said amount for 197 months and said action is clearly under the definition of deficiency of service as per Consumer Protection Act.
- (G) Appellant has referred the Section 154(6) of the Electricity Act,2003 for the sake of case. The supplementary bill was issued for the technical defect in the meter and therefore interest ought to have been paid as per natural justice.
- (H) It is submitted that supplementary bill is sub judice and as per request of Appellant instalments were granted for the payment of supplementary bill and it was paid by the Appellant. In fact when the bill is disputed, same ought to have been treated as a deposit but Respondent has preferred to be credited against the bill.

2.10. Appellant has prayed as under:

- (1) To quash and set aside the Forum order dated 02.11.2015.
- (2) To direct Respondent to pay the interest considering the amount lying with him from 01.08.1997 to 30.04.2014 at the rate of 12% for 202 months.
- (3) To grant Rs. 1 lakh against mental harassment and any other action as deemed fit.

3.0. Respondent has represented the case as under:

- 3.1. The connection was checked on 11.12.1996 and as per checking report CTPT was found defective and meter was running slow by 46.91%. Supplementary bill of Rs. 1972919.89 was issued on 06.01.1997 for the period from July,1996 to December,1996, for six months.
- 3.2. After checking of Instalation, Electrical Inspector, Rajkot has directed to revise the supplementary bill for the period of six months for the meter slowness of 43.328%.
- 3.3. Secretary, EPD, GoG has ordered against the order of Electrical Inspector to revise the period from 30.08.1996 to 11.12.1996 for the slowness of meter, for issuing supplementary bill.
- 3.4. Appellant has paid the amount of revised bill of Rs. 10,00,564.41 by way of instalments up to 19.07.1997, against original supplementary bill amount of Rs. 19,72,919.89.

The details of payment made by Appellant as per his statement are as under:

Amount paid	Date of payment	Days of late payment	Delay payment charges
5,00,000	23.06.1997	175	70471.13
2,50,000	28.06.1997	180	34841.13
2,50,000	07.07.1997	189	3667.29
0564.51	19.07.1997	201	95.26
1000564.51		Total:	142077.81

- 3.5. It is stated that as per the order issued by Secretary, EPD, GoG, supplementary bill was revised which was paid late by Appellant,

hence Delay Payment Charges on pending arrears amount along with bill amount of Rs. 4,10,071/- was debited in the month of October,1997 to the account of Appellant.

- 3.6. It was informed by Respondent vide letter No.JMCD/97 dated 13.10.1997 to pay the delay payment charges of Rs. 4,10,075.17 before 23.10.1997.
- 3.7. As Appellant has not paid Rs. 12,51,743.77, as per Section 24(1) Respondent has issued notice vide letter No. JMCD/4243 dated 10.11.1997 to pay delay payment charges of Rs. 4,10,075.17 (DPC on supplementary bill Rs.1,42,077.81 + DPC on regular bill amount of Rs. 2,67,997.36), and bill amount of Rs. 8,41,768.60 for the month of October,1997 i.e. total Rs.12,51,743.77.
- 3.8. Appellant has paid Rs. 12,51,844/- vide Receipt No.345221 dated 21.11.1997.
- 3.9. Appellant has requested to General Manager (Comm), vide letter dated 17.05.1999 to grant instalments for the payment of disputed supplementary bill of Rs.9,72,355.38 in 12 instalments. Hence the arguments of appellant for the payment of supplementary bill before 19.07.1997 is not true.
As requested by appellant instalments have been granted by G.M.(Comm) vide letter No. 1730 dated 18.05.1999 to pay the above disputed amount in six instalments. As per ledger record disputed amount has been paid by Appellant in instalments up to Sept.1999.
- 3.10. As per request of Appellant to waive the delay payment charges, G.M.(Comm) vide letter No.2152 dated 29.05.1999 has stated that Secretary, EPD, GoG has ordered not to withdraw the supplementary bill amount, but it was ordered to revise the period of supplementary bill. Hence there is no question to waive the delay payment charges.
- 3.11. It is submitted that Civil Court, Jamnagar has passed order in case No.106/1997 in favour of Respondent. Aggrieved by order of

Civil Court, Appellant has filed Appeal vide SCA No.462/2011 before Hon'ble High Court, which was subsequently rejected by Hon'ble High Court.

- 3.12. The Panel Advocate of Respondent has submitted copy of order in SCA No.462/2011 filed by Appellant, which was rejected by Hon'ble High Court of Gujarat. Thereafter, Respondent has asked approval from the competent authority on 24.12.2012 for revision of supplementary bill and to credit the amount to the account of Appellant. Rs.972355.38 was credited to the account of Appellant in the month of January,2013, which was intimated to Appellant vide letter dated 01.01.2013.
- 3.13. CGRF, PGVCL has decided the subject grievance matter and not granted the request of Appellant. Therefore, order of CGRF may be considered on the ground observed by Forum. It is stated by Respondent that earlier Ombudsman has rejected the representation of Appellant. It is submitted that the request of Appellant may not be considered.

:::ORDER:::

- 4.0.** I have considered the contentions of the Appellant and the Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.
- 4.1. Appellant has filed grievance before CGRF on 20.11.2014 praying for refund of Delay Payment Charges of Rs.1,38,020.37 and interest accrued upon the excess recovery of Rs.1,38,020.37 in respect of supplementary bill dated 06.01.1997 to the tune of Rs.19,72,919.89 before CGRF, PGVCL, Rajkot. Whereas before Ombudsman representation is filed with prayer for giving interest accrued upon the excess recovery of Rs.9,72,355.38 in respect of supplementary bill issued on 06.01.1997.

- 4.2. Hon'ble High Court passed an order dated 02.12.2009 and upheld the order of Secretary, EPD, Gandhinagar dated 17.06.1997 and held that supplementary bill is to be issued only for the period from 30.08.1996 to 11.12.1996. Hon'ble High Court has given direction while passing the order dated 02.12.2009.
- 4.3. The subject matter in the present representation is related with refund of interest on DPC amount along with DPC paid against supplementary bill issued by Respondent on 09.01.1997. As per Para No.3.12, Respondent has credited the amount of Rs.9,72,355.38 after revision of supplementary bill and after order issued in SCA No. 462/2011 by Hon'ble High Court.
- 4.4. In the case filed by Appellant before Civil Court, Jamnagar, vide C.S.No.106/1997, Civil Court has noted findings of order of Hon'ble High Court in order dated 02.12.2009 and rejected the Appeal of Appellant.
 Subsequently first appeal SCA No. 462/2011 was filed by Appellant aggrieving by order passed by Civil Court, Jamnagar in case No.106/1997 and it was withdrawn by Appellant.
- 4.5. Appellant has filed Civil Suit No. 28/1997 at Civil Court, Gandhinagar against Respondent with pray not to disconnect the power supply which was subsequently withdrawn by Appellant as stated by Respondent and recorded in order in case No.106/1997 passed by Civil Court, Jamnagar.
 In Para No.2 of the order it was submitted by Respondent before Civil Court, Jamnagar that supplementary bill was issued to Appellant for meter slowness and appellant has to pay the same along with Delay Payment Charges.
 In Para No.15 of the order, Hon'ble Court has recorded submission of Appellant filed by his Advocate.

In said para it was contended by Appellant that Respondent has issued meter slowness bill and Appellant has objected the said bill for payment along with DPC and interest.

Appellant has argued that to refund the amount of supplementary bill as per order passed by Secretary, EPD, Gandhinagar and as per order passed by Hon'ble High Court in SCA No.4961 of 1997 issued on 02.12.2009.

Above recording was there in the order passed by Civil Court, Jamnagar in case No. 106/1997 dated 07.08.2010 and dismissed the appeal of the Appellant.

- 4.6. As per order passed by Secretary, EPD, Gandhinagar, Notice dated 21.07.2012 was received by Advocate of Appellant asking refund of Rs. 9,72,355.38.

Rs. 9.72,355.38 was credited to account of Appellant in the month of January,2013 after getting necessary approval from the competent authority.

- 4.7. Appellant has filed complaint before CGRF on 16.05.2014 asking interest on refund amount, which was rejected by CGRF.
- 4.8. In subject matter before Hon'ble High Court in SCA No. 4691/1997 or before Civil Court in Civil Suit No.106/1997, interest on refund amount or DPC amount was not decided by any Court while dealing with the issue of meter slowness and supplementary bill issued by Respondent.
- 4.9. In response to application dated 24.05.99 of Appellant, waiver of Delay Payment Charges for the supplementary bill amount as per order of Dy. Secretary, EPD, it has been replied to Appellant by General Manager(Comm) vide letter No.2152 dated 29.05.1999 that "supplementary bill issued by GEB was not withdrawn as per order of Government but it was only revised and as such there is no question of not to levy Delay Payment Charges for the arrears amount of the bill amount. The Delay Payment Charges calculated by field office are in order and as per rules. However,

proportionate Delay Payment Charges amount calculation was directed to field office before reconnection.”

- 4.10. In reply to letter dated 17.05.1999 of Appellant, General Managar(Comm) has written a letter to Appellant vide No.1730 dated 18.05.1999, in which it was stated that during hearing of SCA No.4961/1997 on 16.03.1999, Hon'ble High Court has stayed the order of Dy. Secretary(Power), Govt. of Gujarat, passed on 16.06.1997 and as such Appellant is liable for making payment of supplementary bill issued by Respondent. Due to non-payment of dues, the connection was disconnected on 09.05.1999 by Respondent Executive Engineer, City Division Office, Jamnagar.

In pendency of matter, Respondent has granted instalments as under:

Rs. 9,72,365.38 to be paid in six equal monthly instalments.

1st instalment amounting to Rs. 1.63 lakh + DPC + energy bill of April,1999 + reconnection charges are payable by 20th May,1999 before reconnection.

Thereafter further five instalments are to be paid by 20th of each month. However current bills are to be paid by due date i.e. by 10th/11th of each month.

From the above, Respondent has accorded to pay supplementary bill amount with instalments along with Delay Payment Charges for making reconnection of power supply and accordingly Appellant has paid supplementary bill in instalments with Delay Payment Charges.

- 4.11. It is further observed that the appellant had applied to the Electrical Inspector and challenged the slowness of the meter stated by the Respondent Licensee. Electrical Inspector had passed an order and set aside the slowness decided by the Licensee. He has not passed any order with regard to interest payable/DPC on the principle amount. Aggrieved by the order of

Electrical Inspector, Appellant has challenged the order before EPD, Govt. of Gujarat. EPD also set aside the order of Electrical Inspector and decided the slowness period as four months instead of six months, decided by Electrical Inspector. Thus, EPD, Govt. of Gujarat also has not passed any order with regard to interest on principle amount of supplementary bill. The order of Secretary, EPD has been challenged before the Hon'ble High Court by the Respondent, which is upheld by Hon'ble Court.

The Hon'ble High Court has not passed any order regarding interest payable on principle amount. Thus no authority has passed any order with regard to interest payable to the Appellant by the Respondent on the supplementary bill amount. The appellant is relied and demanding the interest based on the order of Secretary, EPD, Govt. of Gujarat and Order of Hon'ble High Court of Gujarat, which has attained a finality. In absence of any order from above authority regarding interest, the claim of Appellant for interest is having no merits, hence the same is rejected.

- 4.12. The Appellant has relied Section 154(6) of Electricity Act,2003 and submitted that the Respondent should require to pay the interest as per the aforesaid provision as whenever any amount paid or deposited by the consumer higher than the required amount, the interest need to be paid on deposited amount. The aforesaid section says that the amount payable or deposited against civil liability by the consumer or the person against the amount payable by it and Special Court in such case able to pass an order for payment of interest on excess amount paid by the consumer at the rate of Prime Lending Rate of Reserve Bank of India. The fact of the present case is pertaining to the slowness of meter and amount payable on it. As per the provisions of Section 24(2) of Indian Electricity Act, 1910, the said Section is silent on the payment of interest on such amount. Therefore, the reliance

of the Appellant on the aforesaid section is unfounded and not valid. Therefore, the said plea is rejected.

4.13. I order accordingly.

4.14. No order as to costs.

4.15. With this order, representation/Application stands disposed of.

(Dilip Raval)
Electricity Ombudsman
Gujarat State

Ahmedabad.

Date: 15.03.2016.