

BEFORE THE ELECTRICITY OMBUDSMAN

No. 16 C-1, Miller Tank Bed Area
Vasanthnagar, Bengaluru-560 052.

Present: S.S. Pattanashetti
Electricity Ombudsman

Case No.OMB/H/G-295/2018

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M.P.Kavade
M/s Shree Ram Oil Industries
C/o Tushar M.Baddi,
"Arihant Park"
Keshwapur,
Hubballi-580023.

: Appellant

VS

1. The Assistant Executive Engineer(Ele),
O & M Sub-Division,
HESCOM, Guledgudda,
(Represented by Advocate
Sri H.V. Devaraju, No.39, Shop No.24,
Mezzanine Floor, A,S,V,N,V,Bhavan
K.G. Road, Bangalore-560 009.

2. The Chairperson, CGRF, HESCOM,
Bagalkot Dist,
Vidyagiri.
Bagalkot-587102

: Respondents.

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This is an Appeal filed under Regulation 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the order of CGRF, HESCOM, Bagalkot District, (herein after referred to as the 2nd

Respondent) in case No: ಬಿಜಿಕೆ/ಅಅ(ವಿ)/ಉಲೆನಿ/ಸಲೆ/ಹಿಸ-1/2016-17/12519-23 dated 16-03-2018 . The appellant has prayed to call for records, set aside the impugned order issued by the 2nd Respondent, award interest as per KERC guidelines, direct the respondent individual to strictly comply with the provisions of the KERC Regulations and Act specified thereunder, direct the Head of HESCOM to take strict action on the respondent individual for his wilful disobedience, award cost to instant litigation as this authority deems fit in the interest of justice and equity.

Both the Parties were informed vide letter No.OMB/H/G-287/2017/D-947 dated: 05-04-2018 regarding the availability of provisions in Sub-Regulation 1 of Regulation 20 of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement through conciliation and mediation and to intimate the Ombudsman at the time of hearing on 17-04-2018. However, they have not availed the benefit of the said provision.

The 2nd Respondent CGRF, Bagalkot Dist, in their order No: ಬಿಜಿಕೆ/ಅಅ(ವಿ)/ಉಲೆನಿ/ಸಲೆ/ಹಿಸ-1/2016-17/14303-14307, dated 28-01-2017 have passed the following order:

- “ 1. ದಿನಾಂಕ 26-07-2005 ರಿಂದ 6 ತಿಂಗಳ ಅವಧಿಗೆ ಮಾಡಿದ ಬೇಡಿಕೆಯನ್ನು ಮಿತಗೊಳಿಸುವುದು.
2. ತದನಂತರ ಬೇಡಿಕೆಯನ್ನು ಹಿಂಪಡೆಯಲು ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಇಂಜಿನಿಯರ್(ವಿ) ಮತ್ತು ಪಾ ಉಪ ವಿಭಾಗ ಗುಳೇದಗುಡ್ಡ/ ಕಾರ್ಯನಿರ್ವಾಹಕ ಇಂಜಿನಿಯರ್(ವಿ) ಕಾ ಮತ್ತು ಪಾ ವಿಭಾಗ ಬಾಗಲಕೋಟೆ ರವರು ಕ್ರಮ ಜರುಗಿಸುವುದು.

3. 6 ತಿಂಗಳಿಗೆ ಮಿತಗೊಳಿಸಿ ಗ್ರಾಹಕರು ಭರಿಸಿದ ವಿದ್ಯುಚ್ಛಕ್ತಿ ಬಿಲ್ಲನ್ನು ಬಡ್ಡಿರಹಿತ ಗ್ರಾಹಕರಿಗೆ ಮರಳಿಸುವುದು.
4. ಸದರಿ ಸ್ಥಾವರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಭದ್ರತಾ ಠೇವಣಿಯನ್ನು ಗ್ರಾಹಕರಿಗೆ ಬಡ್ಡಿರಹಿತವಾಗಿ ಹಿಂದಿರುಗಿಸುವುದು.
5. ಸ್ಥಾವರವು ಚಾಲ್ತಿಯಲ್ಲಿದ್ದ ಅವಧಿಗೆ ಗ್ರಾಹಕರಿಗೆ ಭದ್ರತಾ ಠೇವಣಿ ಮೇಲೆ ಕಂಪನಿಯ ನಿಯಮಾನುಸಾರ ಬಡ್ಡಿ ಕೊಟ್ಟಿರದೇ ಇದ್ದ ಪಕ್ಷದಲ್ಲಿ ಲೆಕ್ಕ ಹಾಕಿ ಆಂತರಿಕ ತನಿಖೆಗೆ ಒಳಪಟ್ಟು ಗ್ರಾಹಕರಿಗೆ ಹಿಂದಿರುಗಿಸುವುದು”.

Further the 2nd Respondent CGRF in their second order No: ಬಿಜಿಕೆ/ಅಅ(ವಿ)/ಉಲೆನಿ/ಸಲೆ/ಹಿಸ-1/2016-17/12519-23, dated:16-03-2018 have passed following order.

“ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಪಾವತಿಯಲ್ಲಿ ಉಂಟಾಗಿರುವ ವಿಳಂಬದ ಕಾಲಾವಧಿಗೆ ಎಸ್ ಓ ಪಿ ಕ್ರಮ ಸಂಖ್ಯೆ 14ರ ಪ್ರಕಾರ ಅರ್ಜಿದಾರರಿಗೆ ಪಾವತಿ ಮಾಡಬೇಕಾದ ದಂಡದ ಮೊತ್ತವನ್ನು ಲೆಕ್ಕಾಚಾರ ಮಾಡಿ ಈ ಆದೇಶದ ದಿನಾಂಕದಿಂದ 15 ದಿನಗಳೊಳಗಾಗಿ ಪಾವತಿ ಮಾಡಲು ಕಾನಿಇ(ವಿ), ಕಾ& ಪಾ, ವಿಭಾಗ, ಹೆಸ್ಕಾಂ, ಬಾಗಲಕೋಟೆ ರವರಿಗೆ ಆದೇಶಿಸಲಾಗಿದೆ. ಮುಂದುವರೆದು, ಸದರಿ ದಂಡ ಮೊತ್ತವನ್ನು ಈ ವಿಳಂಬಕ್ಕೆ ಕಾರಣರಾದ ಅಧಿಕಾರಿ/ಸಿಬ್ಬಂದಿ ರವರ ವಯಕ್ತಿಕ ಖಾತಿಯಿಂದ ವಸೂಲಿ ಮಾಡಲು ಸೂಚಿಸಿದೆ ಮತ್ತು ಮುಂದುವರೆದು, ಈ ಬಗ್ಗೆ ಕ್ರಮ ತೆಗೆದುಕೊಂಡ ವರದಿಯನ್ನು ಈ ವೇದಿಕೆಗೆ ಸಲ್ಲಿಸಲು ಕಾನಿಇ(ವಿ), ಕಾ& ಪಾ, ವಿಭಾಗ, ಹೆಸ್ಕಾಂ, ಬಾಗಲಕೋಟೆ ಇವರಿಗೆ ಆದೇಶಿಸಿದೆ”.

The Respondent No.1 AEE filed statement of objections on 14-08-2018 submitting that the appellant has availed power supply for running an industry wide installation RR No.GLDMP/1279-80 which was serviced on 10-08-1967 with sanctioned load of 58 HP and the appellant deposited 3 months minimum deposits on various dates and also meter security deposit amounting to Rs.64263/- (Rs.56823 towards MMD + 7440 towards MSD). The appellant has been paying

consumption charges. Subsequently the installation was disconnected temporarily on 26-07-2005 on the ground that the industry was not running. However, the appellant was paying fixed charges and therefore the meter was released on 26/07/2005 by the LT meter rating staff. At this stage the appellant on 17-08-2009 submitted a letter to the Respondent No 1 AEE stating that even the power supply was disconnected and meter was removed the appellant has been paying fixed charges and requested to refund fixed charges together with 3 months minimum deposits and meter security deposits and fixed charges up to November 2009 was refunded to the appellant. As per the orders of CGRF dated 28-01-2017 a sum of Rs.1,57,736/- was refunded to the appellant including a sum of Rs.93753 towards fixed charges paid by the appellant even during the disconnection period excluding 6 months period from the date of disconnection Rs.53823 towards MMD + 7440 towards MSD. Further Rs.50/day towards compensation for the delay in refunding the deposit amount was also paid to the appellant as ordered by the CGRF in order No. ಬಿಜಿಕೆ/ಅಅ(ವಿ)/ಉಲೆನಿ/ಸಲೆ/ಹಿಸ-1/2016-17/12519-23 on 16-03-2018. The prayer of the appellant is that the Respondents have to pay interest on Security Deposit at the Bank Rate prevailing as on 1st April of the Financial Year for which interest is due, and also to pay at 2% interest per month for the delay in refunding of deposit amount, which was not considered by CGRF. The order dated:28-01-2017 has not been challenged by the Appellant, wherein CGRF has passed an order to

refund the amount without interest and therefore the Appellant has not challenged the order and after complying the order dated: 28/01/2017 and 16/03/2018 and however the Appellant has filed the above Appeal against the order dated:16/03/2018 with a direction to the 1st Respondent to pay interest is not maintainable and therefore the Appeal is liable to be dismissed.

Notices were issued to both the parties vide this office letter No.OMB/H/D-1029/2018 dated 03-07-2018 to appear before this authority to put forth their arguments. On the e-mail request of the representative of appellant the case was posted for hearing on 31st July 2018.

This case was taken up for hearing on 31-07- 2018 and on 14-08-2018. Advocate for Respondent No.1 and Respondent No.1 both were present. Representative of appellant was also present. Advocate for Respondent filed statement of objections along with 8 annexures. He also filed memo requesting to treat statement of objections as written submissions. Appellant's representative sought time to file his written submissions and later on 29-08-2018 he filed the written submissions. Representative of the appellant in his memo filed before this authority on 29-08-2018 states as follows:

“It is most respectfully submitted that the installation bearing RR No.GLDMP1279-80 was disconnected on 26-07-2005 and accordingly the licensee is bound to receive interest as per SBI base rates 9.1% per annum excluding 6(six)months from

the date of disconnection ie from Feb 06 to Nov 09. Further, in terms of clause 29.08 of KERC Conditions of Supply Regulations 2006 the licensee is bound to pay interest @2% ie from Jan-10 to Oct 17 as the deposit amount is received on 21-10-2017.

The appellant further submits that the licensee has committed a mistake in calculating the Monthly Minimum Charges (Fixed charges) paid by the appellant; the appellant is bound to receive the difference of amount remitted by the appellant.

It is prayed before this authority to direct the respondent to award the interest calculated to the appellant in the interest of justice and equity with cost.”

Heard both the parties and examined the written submissions made by them before this authority.

The argument of the Respondent – 1 AEE is that the order of CGRF dated: 28/-01/2017 where the CGRF has refused to Pass an order with regard to interest has not been challenged by the Appellant and it has reached finality. The contention of the Respondent-1 AEE is that the Appellant has filed Appeal only against the order of CGRF dated: 16/03/2018 and not the earlier order dated:28/-01/2017. This argument of the Respondent-1 AEE cannot be accepted. Though the Appellant in his Appeal dated: 31/03/2018, has said that the appeal is against the order passed by CGRF, HESOM dated: 16/03/2018, in the

same para he goes on to say that “Aggrieved by the two orders passed by the 2nd Respondent, the Appellant submits his case as under...”

Hence the appeal cannot be restricted only to the order of CGRF dated 26/03/2018 but the order dated: 28/01/2017 also has to be taken into consideration. Even in the memo filed by the appellant dated:20/08/2018 he has said that,

“Accordingly the CGRF Bagalkot passed an order on 28/01/2017 in case no.1/2016 to refund the deposit along with fixed charges (FC) excluding 6 months ie., from the date of disconnecting the installation without interest. Since there was some error apparent on the face of record, the appellant went before Authority for correcting the errors, wherein the Authority refused to entertain the request of the consumer. There was no legally sustainable rejection of the appellants prayer, accordingly there was no findings recorded in that order. Therefore the appellant went before the CGRF for re-consideration. The cause of action arose only when the appellants request was not fulfilled. If the first order was the speaking order covering all aspects which the appellant/complainant had brought before the Authority, recording details either acceptance or rejection the appellant would not have been aggrieved, since there was a need to approach once again before the same Authority, the appellant approached the CGRF once again. consumer was aggrieved by the order of the CGRF the consumer waited for the licensee action.”

Hence, it is treated that the present complaint on hand is an appeal challenging both the orders dated 28/01/2017 and 16/03/2018.

Clause 3.1 of K.E.R.C. (Interest on Security Deposit) Regulations, 2005 reads as follows:

“3.0 Interest on Security Deposit:

3.1 The Licensee shall pay interest on security deposit of the Consumer at the Bank Rate prevailing as on 1st April of the Financial Year for which interest is due”

Clause 29.08 of Conditions of Supply of Electricity of Distribution in the State of Karnataka reads as follows:

“ 29.08(a) Adjustment of Erroneous bills:

29.08(a)-“In case the verification of the consumer’s account shows excess claims made in the past the excess amount shall be credited to the consumer’s account along with the interest of Bank Rate from the date of payment up to the date of credit. This shall be done within one month from the date of pointing out the excess claims. **If for any reason there is delay in crediting the amount to the consumer’s account, interest at 2% per month shall be paid to the consumer for the period beyond two months. “**

Both the above provisions are applicable to the Appellant in the present case.

OMB/H/G-295/2018/D-1114

Dated: 05-11-2018.

O R D E R

In view of the foregoing facts, the appeal is allowed and directed the Respondent No.1 AEE to,

- (1) pay interest to the appellant as per SBI base rate 9.1% per annum as per Clause 3.1 of KERC (Interest on Security Deposit) Regulations 2005 excluding 6 months from the date of disconnection ie from Feb 2006 to Nov 2009.
- (2) pay interest amount at the rate of 2% per month as per Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for the delayed period in crediting the refund deposit amount to the appellant's account ie.,Jan-2010 to Oct 2017.

This order shall be implemented within Thirty days from the date of issue of order, and compliance be reported.

Sd/-

(S.S.Pattanashetti)
Electricity Ombudsman

- 1) Sri M.P. Kavade**
C/o Tushar M.Baddi, "Arihant Park"
Keshwapur Guledgudda.
- 2) The Assistant Executive Engineer,**

- O & M Sub-Division, HESCOM,
3) Sri H.V. Devaraju, No.39, Shop No.24,
Advocate, Mezzanine Floor, A,S,V,N,V,Bhavan
K.G. Road, Bangalore-560 009.
4) The Chairman, CGRF, HESCOM, Bagalkot
5) The Managing Director, Corporate Office, HESCOM, P.B Road,
Navanagar, Hubli-30
6) PS to Hon'ble Chairman, KERC
7) PS to Hon'ble Member (A), KERC
8) PS to Hon'ble Member (M), KERC
9) PS to Secretary, KERC