

D-869

BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

Present: B.N.Krishnaiah
Electricity Ombudsman

Case No.OMB/H/G-239/2016

Dated : 21.04.2017

D.K.Chavan,
C/o Tushar M.Baddi,
Near SBI, Keshwapur,
Hubballi.

... Appellant

(By Tushar M Baddi, Authorized Representative)

V/S

1. The Assistant Executive Engineer(EI),
O&M, Sub-Division,
HESCOM, Kalghatgi,
Dharwad District

2. The Chairperson, CGRF,
Dharwar District, HESCOM,
Office of the Superintending Engineer,
O&M Circle, Shivaganga Layout,
Kusugal Road, Hubballi

... Respondents

(R-1 by Sri H.V.Devaraj, Advocate)

1. This is an appeal filed under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, HESCOM, Hubli (here in after referred to as the 2nd Respondent) dated 22.12.2015 . The appellant has sought the following reliefs :

- (a) Direct the respondent to refund the 1/3rd deposit amount paid in respect of Appeal;
- (b) Award interest at 2% per month as per KERC Conditions of Supply Regulation 29.08 with costs;
- (c) Direct the respondent to strictly comply with the provision of Section 146 and 127(6) of the Electricity Act, 2003 and KERC Conditions of Supply Regulation 44;
- (d) Direct the head of HESCOM to take appropriate action against the Respondent individual for his wilful disobedience of Licensing Regulations and the Electricity Act in adjusting the 1/3rd deposit amount towards revenue arrears.

2. The case of the appellant is as follows :

- (i) The installation bearing SKMP-8 was standing in the name of Shankar Industries and was sanctioned 35 HP power on 31.01.1996;
- (ii) The appeal was filed on 27.09.2005 after depositing 1/3rd amount (Rs.14,095) vide receipt number 9261 dated 27.09.2005;
- (iii) The appeal filed by the appellant to the Appellate Authority came to be allowed by order dated 07.05.2011. The amount of Rs.14,095 deposited was ordered to be refunded;

- (iv) On 02.06.2011 a request was made to the AEE for refund of the amount and the order passed by the Appellate Authority was also produced;
- (v) Since the amount deposited was not refunded reminders were sent on 01.08.2011, 27.12.2011 and 27.02.2012;
- (vi) The AEE by letter dated 09.03.2012 has informed that during the appeal before the Appellate Authority the 1/3rd amount (Rs.14,095) has been adjusted against the dues;

3. The AEE by his letter dated 01.03.2016 has submitted as under :

- (i) The installation was serviced on 31.01.1996 with a sanctioned load of 35 HP;
- (ii) The AEE and meter testing officer, Dharwad has submitted Report No.742 dated 16.05.2005 stating that the meter is sticky and hence back billing at Rs.42,284 raised on average basis for six months;
- (iii) The appellant has filed the appeal before the Appellate Authority by depositing 1/3rd amount. During the pendency of the appeal against the arrears of Rs.16,800, the appellant has paid only Rs.2,295. By oversight the amount of Rs.16,351 was considered as arrears and the deposited amount was adjusted against the dues. No interest was calculated on the disputed amount of Rs.42,284;

- (iv) The Superintending Engineer, Hubli, has passed an order dated 07.05.2011 directing refund of the deposited amount. As the deposited amount was adjusted against the arrears and no interest was levied on the arrears, no amount was refunded to the consumer. This fact has been informed to the consumer.

4. The authorised representative for the appellant has filed the written arguments contending as follows :

- (i) It is evident that the installation bearing RR No.SKMP-8 is serviced on 31.01.1996 with a sanctioned load of 35 HP. The LTR wing on 16.05.2005 has rated the energy meter as sticky and thus a short claim for a period of six months amount to Rs.42,284 was raised. The same was challenged before Licensee Appellate Authority. The Appellate Authority ordered to refund the amount. But the amount of Rs.14,095 deposited on 27.09.2005 was not refunded.
- (ii) The Licensee has addressed letter stating that the deposited amount was adjusted against the revenue arrears which the law does not permit them to do so. The Licensee has acted contrary to Regulations and credited the appeal amount in the appellant's monthly revenue account without any order or directions from the Appellate Authority;
- (iii) Under Section 127(2) of Electricity Act *"No appeal against an order of the Assessment under sub-section (1) shall be entertained unless an amount equal to one third of the assessment amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with appeal"*.

Hence the appellant has contended that if the 1/3rd amount was deposited by way of bank draft then it was not possible for the licensee to adjust the disputed amount in the revenue arrears wherein the complainant would also be entitled for benefit of interest;

- (iv) A conjoint reading of Section 127(6) and 154 (6) of the Electricity Act, the complainant has to be paid an additional amount of 16% pre annum;
- (v) The Licensee has failed to comply with the Electricity Act, Orders or Directions issued by their superior's and hence breached the Statutes and has committed a severe offence by intervening with the procedures of the Appellate Authority. Hence the authorised representative has contended that the offender should be punished under Section 146 of the Electricity Act;
- (vi) The CGRF, Hubli, has overlooked the issue and deliberately shielded the mistake of its employees.

5. The learned Advocate for the respondent has contended that, though the appellant has filed the appeal by depositing 1/3rd amount (Rs.14,095), subsequently, as there were arrears the Licensee has adjusted the entire deposited amount against the arrears. No interest has been levied for the arrears. The learned Advocate contended that the action cannot be faulted as levying interest on the arrears and recovering the same with interest would amount to refunding the deposit amount with interest. Hence he prayed to dismiss the appeal.

6. The written and oral submission made by both the parties are considered. The Respondent authority should have refunded the 1/3rd amount deposited immediately as ordered by the Appellate Authority. If any arrears were there, the License should have initiated action to recover the same. At least at the time of adjusting against arrears the consumer should have been updated and informed. Here we see a lapse on the part of Licensee. The HESCOM authorities should initiate action against the official concerned.

7. The submissions made and order of the CGRF reveal that there were arrears due from the Appellant. It is also seen that by adjusting the deposited amount to the HESCOM no loss occurred to the Appellant and Respondent authority. But the Authorities should keep in mind the procedures/rules while initiating proceedings.

8. Considering all the above, it is seen that the proceedings and order of the CGRF is in order. Hence the appeal is dismissed.

Sd/-

(B.N. Krishnaiah)
Electricity Ombudsman

To :

1. Sri Tushar M Baddi, Arihant Park, Keshwapur, Hubballi.
2. Sri H.V.Devaraj, Advocate, No.39, Shop No.24, Mezzanine Floor, A.S.V.N.V.Bhavan, K.G.Road, Bangalore.
3. The Assistant Executive Engineer(EI), O&M, Sub-Division, HESCOM, Kalghatgi, Dharwad District

4. The Chairperson, CGRF, & Superintending Engineer, Dharwar District, HESCOM, O&M Circle, Shivaganga Layout, , Kusugal Road, Hubballi
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. PS to Secretary, KERC
