

**Before the Electricity Ombudsman
K.E.R.C., Bangalore**

**Present: S.D.Ukkali
Electricity Ombudsman
Case No.OMB/M/G-43/2008/5150
Dated 20.11.2008**

Between

Smt.Lacchi Poojarthi,
Avadesaalu Mane,
Ballur,
Post Ballur,
Coondapur Taluk,
Udupi District

..

Complainant

And

1. The. Asst.Executive Engineer,
O & M Sub Division,
MESCOM, Coondapur
2. The Executive Engineer,
O & M Division,
MESCOM, Udupi
3. The Consumer Grievance Redressal Forum,
MESCOM,
Paradigm Plaza, A.B.Shetty Circle,
MANGALORE

..

Respondents

This appeal complaint is filed by the Complainant under the provisions of Karnataka Electricity Regulatory Commission (KERC)(Consumer Grievance Redressal Forum & Ombudsman) Regulations 2004 against the Order dated 21.06.2007 passed by Consumer Grievance Redressal Forum (CGRF) of Mangalore Electricity Supply Company (MESCOM) in file No. ಮೆಸ್ಕಾಂ/ಸಾದೂ/ಕ್ರಾಕುಂಕೊನಿವೇ-2/07-08 rejecting the Complainant's request for payment of amount in terms of the provisions of Regulation 7.3 of KERC (Licensees Standards of Performance) Regulations 2004 for the failure to meet

the standards of performance specified in Schedule 1 by delaying to extend domestic electricity connection to the Complainant's premises.

The submission by the Complainant Smt.Lacchi Poojarthi of Avadesaalu Mane, Ballur, Coondapur Taluk, in brief is as follows:-

She registered an application for electricity connection to her premises of 1 KW on 5.2.2002. It is alleged by the Complainant that the 1st Respondent has delayed the connection to her premises first by delaying power sanction for a period of 7 months 11 days. The power sanction was communicated on 16.9.2002 and the 1st and 2nd Respondents **have taken much time** at each stage of processing the application. Finally, when the Section Officer of MESCOM, Coondapur was ready to give connection on 21.12.2002, there was an issue of objection raised by Smt.Shringari Shedthi in whose property the service wire passes through. Ultimately, the 1st Respondent has arranged connection on 22.1.2007 after District Magistrate(DC) Udupi vacated the objection from Smt.Shringari Shedthi by rejecting it by an Order dated 8.1.2007.

She approached the 2nd Respondent by a letter dated 01.03.2007 praying for payment of an amount of Rs.3,62,600 (Rupees Three lakh sixty two thousand six hundred only) for a delay of 1813 days in giving the connection at the rate of Rs.200/- per day. The 2nd Respondent has contended that MESCOM was not responsible for the delay in extending the connection as the delay was due to the objection filed by Smt.Shringari Shedthi as the service wire was passing through her property . The Condition 4.05(iii) of the KERC (Electricity Supply and Distribution) Code 2000-01 prescribes that the Applicant shall furnish the consent of the owner of the property, if the proposed service line has to pass through the property of some person(s) other than the Applicant. The Complainant did not furnish such consent from Smt.Shringari Shedthi. Further, the 2nd Respondent has also clarified that the date of registration of the application was not 5.2.2002 but was 5.7.2002. The 2nd Respondent further contended that the connection was given within 30 days of vacation of the objection from Smt.Shringari Shedthi by

the District Magistrate, Udupi and, therefore, MESCOM is not responsible for the delay and hence not liable to pay any amount.

Not satisfied with the reply given by the 2nd Respondent, the Complainant filed a complaint with the 3rd Respondent requesting to arrange for payment of Rs.3,62,600 by MESCOM for the failure to achieve the Standards of Performance of KERC (Licensees Standards of Performance) Regulations, 2004, by delaying the electric connection for 1813 days at the rate of Rs.200/- per day.

The 3rd Respondent has passed an order cited above dismissing the request of Complainant concluding that there was no failure to achieve the Standards of Performance or any intentional delay from the 1st and 2nd Respondents in giving electricity connection to the Complainant.

Aggrieved by the Order passed by the 3rd Respondent, she has filed this appeal complaint on 9.6.2008 requesting to arrange for the payment of Rs.3,62,600 from the MESCOM authorities for their failure to achieve the Standards of Performance.

The Prayer

The Complainant has prayed to pass an order directing the Respondents to make payment of an amount of Rs.3,62,600 (Rupees Three Lakh Sixty two Thousand and Six Hundred only) to her as per provisions of the KERC (Licensees' Standards of Performance) Regulations 2004 for the delay of 1813 days in extending electricity connection to her premises at the rate of Rs.200/- per day.

Notice was issued to the 2nd Respondent. A detailed report has been sent by the 2nd Respondent, a copy of which was also provided to the Complainant on her request for her comments and her comments have also been received in this office. When she was asked to appear in person before the Ombudsman, she has pleaded that whatever she has sent in writing was sufficient and that she

was unable to depute any representative to Bangalore to plead the case at Bangalore on her behalf.

On going through the records, the report submitted by the 2nd Respondent and the submissions and the prayer made by the Complainant, the following events with dates emerge.

- 1) The Complainant claimed that she registered an application for electricity connection for her house on 5.2.2002. This is denied by the 2nd Respondent clarifying that the application was only registered on 5.7.2002.
- 2) The Complainant registered an application vide No.387 on 5.7.2002 and the application registration fee has been paid by her vide Rt.No.25319 on 29.6.2002 as per the records submitted by the 2nd Respondent.
- 3) Spot inspection report was submitted by the Section Officer on 13.8.2002.
- 4) Power sanction communicated on 16.9.2002.
- 5) Security deposit of Rs.330/- paid on 7.10.2002 & documents submitted on the same day.
- 6) Work Order No.F 29191 issued on 6.11.2002.
- 7) The Section Officer (Section 2 of Coondapur) has drawn the meter on 14.11.2002.
- 8) The Section Officer has asked the Lineman to fix the meter to the premises of the Complainant on 20.12.2002.
- 9) On 21.12.2002, when the Section Officer in the presence of the Electrical Contractor visited the premises for giving electricity connection, Smt.Shringari Shedthi has objected for the service wire passing through her property. Further Smt.Shringari Shedthi gave her objection letter in writing on 21.1.2003.

Discussions and Analysis

It is clear that the Section Officer was ready to give the connection to the premises of the Complainant on 21.12.2002. Because of the objection from Smt.Shringari Shedthi, he did not extend the electricity supply to the Applicant. Had there been no objection from Smt.Shringari Shedthi, the electricity connection would have been extended on 21.12.2002 itself. It is also alleged that the Section Officer of MESCOM, extended the connection on 20.12.2002 and disconnected on 21.12.2002, due to the objection from Smt.Shringari Shedthi.

It is observed from the records that the service mains had to pass through the property of Smt.Shringari Shedthi and in terms of the provisions 4.05(iii) of the KERC (Electricity Supply and Distribution) Code 2000-01, it was necessary that the Complainant who is the applicant had to furnish the consent of the owner of the property. This was not done by the Complainant. In order to solve the issue, the Complainant and the 1st and 2nd Respondents sought the help of Sri B.Krishna Balegar and Sri Sathyanarayana Udupa who are the office bearers of Consumer Forum, Basrur.

They have visited the premises of the Smt.Shringari Shedthi on 7.8.2003 to prevail upon her to withdraw the objection for giving connection to the premises of the Complainant. They were not successful.

The Complainant has put up an alternative proposal in writing to the 1st and 2nd Respondents that she was ready to furnish her consent for the electric pole to be shifted to her property and give connection from the pole to Smt.Shringari Shedthi's premises also.

The 2nd Respondent has expressed the helplessness of MESCOM to do so in terms of the provisions of 4.05 (iii)(a) of KERC (Electricity Supply and Distribution)

Code 2000-01 that the Licensee reserves the right to discontinue power supply after the installation is serviced, such consent is withdrawn by the property owner (the Complainant in this case).

Thereupon, the Complainant has complained by a letter to the Deputy Commissioner & District Magistrate, Udupi District on 11.8.2003. The 2nd Respondent has addressed the Executive Trustee, Consumer Forum, Basrur on 29.3.2005 informing that the 1st Respondent has initiated action to get the objection from Smt.Shringari Shedthi vacated by filing a Petition before the Deputy Commissioner and District Magistrate as per Section 16(1) of Indian Telegraph Act 1885.

The Deputy Commissioner has also replied to the Executive Trustee, Consumer Forum Basrur on 14.7.2005 that the application filed by the Complainant was looked into as per Section 16(1) of the Indian Telegraph Act 1885. For this appeal, the 1st Respondent has to pay the stamp duty and processing fee to decide on this issue. Since the 1st Respondent has done this formality on 19.1.2005 the case was fixed on 1.8.2005 for hearing. It is also on record that the 1st Respondent has submitted a Petition on 7.5.2004 to the Deputy Commissioner & District Magistrate Udupi to vacate the objection filed by Smt.Shringari Shedthi and has requested the Complainant on 24.8.2004 to pay a stamp fee and processing fee to Udupi Deputy Commissioner and District Magistrate for taking further action.

The Complainant on 13.9.2004 has replied that since she did not file a Petition to the Deputy Commissioner and District Magistrate, she was not ready to pay the stamp fee and processing fee. The 1st Respondent himself has paid the stamp fee and processing fee and the District Magistrate and Deputy Commissioner, Udupi vacated the objection by an Order on 8.1.2007 rejecting the objection from Smt.Shringari Shedthi. The electricity connection was given on 22.1.2007.

The following issues emerge from the above mentioned details:

- 1) Whether the appeal complaint is maintainable in terms of Regulation 22 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004?
- 2) Whether the application requesting for electricity connection was registered on 5.2.2002 or on 5.7.2002 with the 1st Respondent by the Complainant?
- 3) Whether there is any delay from the 1st and 2nd Respondents in processing the application, conveying power sanction and also extending electricity connection to the Complainant's premises after the Complainant complied with the formalities from her side?
- 4) Whether there was any failure from the 1st and 2nd Respondents in the duty to supply on request within 30 days in terms of the provisions of Section 43 of the Electricity Act 2003?
- 5) To what relief the Complainant is entitled?

Issue 1: In terms of the Regulation 21.2 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 the Complainant has to make a representation before the Ombudsman within 30 days from the date of receipt of the order of the Forum provided that the Ombudsman may entertain a representation after the expiry of the said period of 30 days if he is satisfied that there was sufficient cause for not filing within the said period. The Complainant has filed this appeal complaint after 353 Days. But as per the Form B prescribed for registering the complaint, it is noted that the prescribed time limit is said to be one year as per provisions of 11.3 (a) and (b) of the Ombudsman Regulations. But 11.3(a) and (b) does not exist in the Regulations. The following points need consideration.

- a) It is observed that there is ambiguity in the Regulations in prescribing the time limit. Hence, the benefit of doubt goes to the Complainant.
- b) The Complainant has recorded her ignorance about the existence of Ombudsman and the procedure etc.
- c) It is also alleged that the 1st and 2nd Respondents have not brought to her notice the existence of Ombudsman etc.

Though the Complainant is not well educated, she has put in lot of efforts. Appreciating her efforts and the assistance extended by the Office Bearers of the Consumer Forum, Basrur and the circumstances explained at (a), (b) and (c) above, **the appeal complaint is admitted condoning the delay.**

In terms of Regulation 22.3, this order was to be passed within 2 months by this Authority. It was not possible due to the reasons that the 2nd Respondent's comments were received after a lapse of 3 months and certain time elapsed in seeking clarification from the Complainant, as she expressed inability to appear or depute any person to depose on her behalf before this Authority. The Complainant requested for a copy of letter from 2nd Respondent to react properly in the matter. In the process there was certain lapse of time. After due process, the Order is passed today.

Issue 2: The Registration Fee for registering the application is paid on 29.6.2002 and the application is registered vide No.387 as per the records made available by the Respondents. Since the payment of registration fee is mandatory, the date of registration of application is 29.6.2002 and the application is actually registered on 5.7.2002 after a delay of 6 days by assigning registration No. as 387. Having regard to the aforesaid facts, the date of registration cannot be considered as 5.2.2002 but it can be considered as 5.7.2002.

Issue 3: This is a case of a simple domestic connection not involving any line work. From the dates mentioned, it is clear that there is certain delay at each stage. Till 21.12.2002, the day the Section Officer was ready to extend connection, there was a delay of 169 days. Out of these days the Complainant has only utilized 20 days for completing the formalities. There was a delay from 21.12.2002 to 8.1.2007 the day the objection from Smt.Shringari Shedthi was vacated by the District Magistrate, Udupi. For this delay, the Respondents were not responsible. There was further delay from 9.1.2007 to 21.1.2007.

Issue 4: It is interesting to note here that the KERC (Licensees Standards of Performance) Regulations, 2004 came into force from 10.6.2004. Therefore, whatever the delay that is stated to have occurred from 5.7.2002 to 9.6.2004 does not attract the provisions of the KERC (Licensees Standards of Performance) Regulations, 2004. On the day the provisions of these Regulations came into force, there was an objection by Smt.Shringari Shedthi and the case was further under process before the District Magistrate and the Deputy Commissioner, Udupi District.

From 5.7.2002 to 9.6.2004, the provisions of “**Complaint Handling and Redressal Standards relating to Distribution and Supply of Power**” approved by KERC and adopted by KPTCL by its Order No.KPTCL/B11/3083/2001-2002 dated 18.12.2001 were applicable along with KERC (Consumers Right to Information) Regulations 2001 and Consumer Grievance Handling Procedure Practice Direction No.1 from KERC. The KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 also came into force from 10.6.2004 and the Ombudsman has no jurisdiction to adjudicate for the delay during the period from 5.7.2002 to 21.12.2002 and from 22.12.2002 to 9.6.2004.

For the failure of 1st and 2nd Respondents from 10.6.2004 onwards, the KERC (Licensees Standards of Performance) Regulations 2004 are applicable. From 10.6.2004, the case was awaiting the Orders from the District Magistrate and Deputy Commissioner upto 8.1.2007. The Respondents are not responsible

for the delay upto 8.1.2007. **The 1st and 2nd Respondents are absolutely responsible for the delay from 9.1.2007 till 21.1.2007 both days inclusive for 13 days.**

It is clear from the records that the Section Officer (Section 2 of Coondapur) was ready with all the formalities to give connection on 21.12.2002 but because of the objection from Smt.Shringari Shedthi the connection was not given. It means that all the preparatory work had been done and everybody was ready for just giving connection on 21.12.2002. Therefore, the contention of the 2nd Respondent that there was a time limit of 30 days after passing of the Order by the Deputy Commissioner and District Magistrate on 8.1.2007 for giving connection is not acceptable as the period of 30 days was over before 21.12.2002 itself as everything was done to give connection on the date.

The Deputy Commissioner and District Magistrate passed an order on 8.1.2007 and when the Complainant requested on 9.1.2007 with a certified copy of this order to extend connection, the connection should have been extended by the Section Officer on 9.1.2007. The connection was only extended on 22.1.2007 after a delay of 13 days. There is a failure to this extent by the 1st and 2nd Respondents.

Issue 5: The Complainant is entitled to get an amount of Rs.2600/- only for failure to meet the KERC (Licensees Standards of Performance) Regulations, 2004 by the 1st Respondent for 13 days. The contention of the 2nd Respondent in his letter No.9165 dated 14.10.2008 that there was a delay of about 10 days in extending electricity connection due to the submission of the copy of the Order of District Magistrate to Coondapur Police station, Coondapur for their cooperation to prevent any kind of hindrance that is likely to occur and therefore this delay was not intentional etc. cannot be accepted.

Having regard to the aforesaid discussions based on facts and circumstances, the impugned order passed by the 3rd Respondent is set aside. The appeal complaint is partly allowed and stands ordered as follows.

ORDER

1. In terms of Regulation 6.3 of KERC (Licensees' Standards of Performance) Regulations 2004, the 1st and the 2nd Respondents of the Distribution Licensee (MESCOM) who are responsible on behalf of the Distribution Licensee have failed to meet the standards of performance in Schedule 1 Sl.No.7 of the said Regulation for 13 days. MESCOM is liable to pay to the Complainant an amount of Rs.2600/- for 13 days at the rate of Rs.200/- per day.

2. In terms of Regulation 6.4 of KERC (Licensees' Standards of Performance) Regulations 2004, the payment shall be made by the 1st Respondent by way of adjustment against existing, current and/or future bills for supply of electricity to the complainant's connection from the next meter reading date.

3. In the interest of natural justice in terms of Regulation 22.5 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulation 2004, the balance amount after adjustment every month be treated as security deposit, the interest payable for the security deposit also be paid by adjustment in future bills by the 1st Respondent.

(S.D.Ukkali)
Ombudsman

To:

1. Smt.Lacchi Poojarthi, Avadesaalu Mane, Ballur, Post Ballur, Coondapur Taluk, Udupi District

2. Consumer Grievance Redressal Forum, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.

3. The Executive Engineer, O & M Division, MESCOM, Udupi.

4. The. Asst.Executive Engineer, O & M Sub Division, MESCOM, Coondapur
5. The Managing Director, MESCOM, Paradigm Plaza, A.B.Shetty Circle, Mangalore.
6. PS to Hon.Chairman, KERC
7. PS to Hon.Member(H), KERC
8. PS to Hon.Member(S), KERC
9. PS to Secretary, KERC
10. Director(Tariff)
11. Deputy Director(Legal)
- 12, OCA
13. Chairpersons of all CGRF.

