

**Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore**

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/H/G-70/09/8109
Dated 22.04.2010**

Shri Dayanand H.Shanbhag,
Shanbhagh Rice Mill,
N.H.17, Main Road,
Haldipur,
Honnavar Taluk
Uttara Kannada District
(Represented by his authorized representative
Sri Aravind Narashima Mahale)

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Complainant

Vs

1.Hubli Electricity Supply Company, Hubli
by Assistant Executive Engineer(E)
O & M City Sub Division,
HESCOM, Honnavar
Uttara Kannada District
(represented by Sri Shankar Gowda,
Section Officer, Honnavar Sub Division)

2. The Consumer Grievance Redressal Forum
H.E.S.C.O.M.
Keshavapur, Shivaganga Layout,
HUBLI

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Respondents

I. This is a petition filed by the above mentioned Complainant represented by Shri Aravinda Narashima Mahale under the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 directed against the Order dated 15.07.2009 passed by the 2nd Respondent in file No.CGRF/Cys-28.

II. The brief facts of the case are as follows:

The Complainant availed an electrical connection bearing RR No.HDP 12617 with a sanctioned load of 66 HP at Haldipur, Honnavar Taluk, Honnavar on 5.1.2006. The Complainant has alleged that the AEE, HESCOM, Honnavar Sub Division has demanded a PF penalty of Rs.7100/- from 15.7.2006 to 15.9.2008 on the ground that the PF of the installation was less than 0.90 although it was above 0.85. The HESCOM authorities failed to clarify as to why penalty was claimed when the Power Factor was 0.85 for LT installations in terms of the Tariff provisions. The Executive Engineer, HESCOM, Karwar Division, Karwar also failed to reply when a letter was addressed to him.

Hence, the Complainant challenged this demand before the KERC, Bangalore on 14.10.2008. The Secretary, KERC referred the matter, vide letter No.5098 dated 7.11.2008, to the 2nd Respondent asking him to take suitable action in the matter. The 2nd Respondent, after conducting a hearing, passed an order No.CGRF/CYS/28 dated 15.07.2009 rejecting the claim of the Complainant. The Complainant has alleged that out of 3 Members of the 2nd Respondent, one Member, Sri R.K.Rangrej expressed that LT consumers shall maintain 0.85 PF and not 0.90 PF and Clause 23.04 applies only for billing purposes and not for imposing PF penalty. However, the Chairperson and the other Member, Sri T.Shivalingaiah, did not agree with this opinion and turned down the request of the Complainant.

Aggrieved by the orders of the 2nd Respondent, the Complainant has filed this appeal petition praying for the following:

III. P R A Y E R

1. To quash the order dated 15.07.2009 passed by the CGRF, HESCOM , Hubli.
2. To direct the Respondent to refund Rs.7100/-.

IV. Settlement by Agreement

Both the parties were informed to explore the possibilities of settlement by conciliation and mediation by this office letter No.OMB/B/G-70/09/7637 dated 12.01.2010. The Complainant has submitted that as per the letter from this Authority, when he approached the 1st Respondent for reconciliation and mediation, he enquired with the neighbouring sub divisions over phone and was told by the neighbouring Kumta and Bhatkal sub divisions that penalty was not being claimed from such consumers. After consultation with the SE, HESCOM, Sirsi, the 1st Respondent informed that no compromise was possible. During the hearing on 20.04.2010 also, efforts were made to reach at a settlement. Since both the parties were not interested in a settlement by conciliation and mediation, this Authority decided to hear and pass an award.

V. Discussion and Analysis

Some of the important arguments advanced by both the parties are detailed below:

A) The arguments made by the nominee of the Complainant are as follows:

1. Uniform procedure or rules are not being followed by HESCOM.
2. In similar cases in the neighbouring sub divisions some are claiming PF penalty for LT installations having trivector meter and having PF above 0.85 and less than 0.90 and in some other sub divisions, no penalty is claimed and that the staff of HESCOM in the area are confused.
3. As per Grid Code of Karnataka, approved by KERC and the various Tariff Orders of KERC, the approved PF is only 0.85 for LT installations and that the penalty claimed in the instant case is wrong.
4. When there is a rule that PF has to be maintained at 0.85 and when the consumer has maintained 0.85, there is no question of claiming any surcharge/penalty

and that because of the confusion prevailing in the Respondent Licensee's office, the consumers should not suffer.

VI. Per contra, the contentions of Shri Shankar Gowda, Section Officer, HESCOM, Honnavar Sub Division, Honnavar representing the Respondent Licensee are as follows:

1. This installation is a LT Motive Power and is provided with ETV meter and the Complainant had availed Demand Based tariff from 22.7.2008.
2. He argued that as per Clause No.23.04 (b) and 22.00 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, surcharge is being levied from this consumer when the Power Factor is less than 0.90 even if it is more than 0.85.
3. He informed that the consumer has been informed about the provisions of the above Clause but the consumer is not agreeing and has been agitating.
4. He has categorically stated that the contention of the Complainant that the neighbouring sub divisions are not claiming penalty or surcharge is not concerned with the working of his sub division and that he is not commenting on the working condition of the neighbouring sub divisions.
5. He has further contended that penalty of Rs.7100/- claimed by his sub division is in order and that the Complainant has paid this penalty as per the provisions of the Conditions of Power Supply of the Distribution Licensees in the State of Karnataka.
6. The argument of the Complainant that 0.85 is the maximum power factor provided in the grid code of Karnataka State approved by the KERC and also in the various tariff orders are not relevant here for claiming the penalty or the surcharge as this surcharge is claimed as per the provisions of 23.04 (b) and, hence, it is in order.

7. The CGRF, HESCOM, Hubli has rightly upheld the contention of the Respondent Licensee and turned down the request of the Complainant. He has sought this Authority not to consider the request of the Complainant and reject the same.

VII. Findings

It is clear that the HT and LT consumers have to maintain certain Power Factor specified by the Karnataka Electricity Regulatory Commission (KERC) in its Tariff Orders, Grid Code and Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. It is argued by the 1st Respondent that the penalty/surcharge is leviable when the Power Factor is below 0.90 and above 0.85 as per the provisions of Clause 23.04 (b) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Chapter VI of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka deals with the Power Factor. Clause 22.00 deals only with the HT installations and Clause 23.00 deals only with the LT installations.

It is specified at Clause 23.01 "To maintain the Power Factor at not less than 0.85 for LT installations including IP set installations, other than X-Ray installations, shall be provided with capacitors of rating as indicated below"

Installed Capacity	Rating of P.F. correction Apparatus
For Motors (both single phase and three phase). (i) Upto and inclusive of 1 KW	0.4 RKVA (35 MFd.)
(ii) Above 1 KW Upto and inclusive of 3 KW	1 RKVA
(iii) Above 3 KW	KW Rating x0.4 RKVA rounded off to the nearest integer.

The meaning of this clause is to maintain power factor at not less than 0.85.

Vide Clause 23.04(a) it is clarified that even after capacitors, as recommended in Clause 23.01 and 23.03 are provided, if during any periodical or other testing/rating by the Licensee, the power factor of the installation is found to be less than 0.85, the consumer shall install additional capacitors of rating as required within three months from the date of intimation and inform the same, in writing, to the office of issue, failing which power factor surcharge shall be leviable as specified from the billing month following the expiry of the said three months.

It means that the penalty is payable only when the power factor is less than 0.85. Clause 23.04(b) says that **"In respect of LT installations where Trivector Meter is fixed, the provisions under Clause 22.00 as applicable to HT installations shall be applied."**

This Clause refers to Clause 22.01(b) which is reproduced here below:

"The average power factor is the ratio of KWh to the KVAh consumed during the billing month/period.

Billing Power factor shall be the average PF recorded in ETV meter. In case the same is not available, the ratio of KWh to KVAh consumed during the billing period and in case of non-availability of the above also, the PF obtained during the rating shall be taken."

It clarifies the procedure to be followed in arriving at the value of power factor. Wherever ETV meter is there, it shall be the average power factor recorded in ETV meter.

Nowhere it is stated that the LT installations which are installed with ETV meters have to maintain the power factor at not less than 0.90. The entire Clause 22 deals only with the HT installations and it is specified that the HT installations should maintain the Power Factor at not less than 0.90. The reference made at Clause 23.04(b) clarifies the procedure to be followed to calculate the PF when ETV meter is provided to the installation. **Therefore, it is wrong to interpret that the LT power factor should not be less than 0.90 for LT installations where ETV meters are provided.** There is no mention about the power factor for LT installations in Clause 22.00.

Therefore, the argument of the Complainant is valid and the counter-argument of the 1st Respondent is not valid as Clause 23.04(b) is wrongly interpreted.

Further, one of the Members of the 2nd Respondent, Sri R.K.Rangrej has expressed his dissent and unfortunately, the Chairperson and the other Member of the 2nd Respondent have not agreed with him and erred in passing the impugned order. Therefore, the Order needs to be set aside.

Having regard to the above said discussions, analysis and findings, the following order is passed:

VIII. ORDER

1. The order passed by the 2nd Respondent in No. CGRF/Cys-28 dated 15.07.2009 is set aside.
2. The demand of Rs.7100/- made by the 1st Respondent from the Complainant is quashed and this amount already paid is ordered to be refunded by the 1st Respondent to the Complainant by way of adjustment in future bills of RR No.HDP 12617.

(S.D.Ukkali)
Ombudsman

1. Shri Dayanand H.Shanbhag, Shanbhagh Rice Mill, N.H.17, Main Road, Haldipur, Honnavar Taluk, Uttara Kannada District.
2. The Consumer Grievance Redressal Forum, HESCOM, Keshavapur, Shivaganga Layout, Hubli.
3. The Asst.Executive Engineer, O & M City Sub Division, HESCOM, Honnavar, Uttara Kannada District
4. The Managing Director, HESCOM Corporate Office, P.B.Road, Navanagar, Hubli.

5. PS to Hon.Chairman, KERC
6. PS to Hon.Member(H), KERC
7. PS to Hon.Member(S), KERC
8. PS to Secretary, KERC
9. Director(Tariff)
10. Deputy Director (Legal)
- 11, OCA