

Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore
Present: B.R.Jayaramaraje Urs, IAS
Electricity Ombudsman
Case No.OMB/H/G-108/2011/10853
Dated 02.09.2011

Between

Shri Ishwarsa E.Miskin,
 C/o Tushar M.Baddi
 Near State Bank of India,
 Keshwapur,
HUBLI
 (Represented by Shri Tushar M.Baddi)

.. **Appellant**

Vs

1. Asst. Executive Engineer,
 O & M Rural Sub-Division,
 HESCOM,
Hubli
2. Consumer Grievance Redressal Forum (CGRF)
 HESCOM,
 Keshavapura, Shivaganga Layout,
 Bijapur Road,
HUBLI-25

.. **Respondents**

This is an appeal under the provisions of K.E.R.C (Consumer Grievance Redressal Forum & Ombudsman) Regulations,2004 against the orders passed by the 2nd Respondent Vide No. UÁ® Á/ CYS-196 dated 04.01.2011 (hereinafter referred to as "Forum") in respect of the Appellant's grievance relating to unlawful levying of Fixed Charges amounting to Rs.20,600/- by the 1st Respondent. The Forum declined to issue direction to HESCOM (Hubli Electricity Supply Company- herein after referred to as 1st Respondent) not to collect the Fixed Charges. Being aggrieved by the Forum's order (the impugned order), the Appellant has submitted his case as under:

The Appellant is a consumer of electricity. The electric installation No AGMP-24 located at Adaragunchi, Hubli Taluk stands in the name of the Appellant. The Appellant was sanctioned 35 H.P. power. The Electric installation was serviced by Asst. Executive Engineer(Ele) Rural Sub-Division, Hubli on 7th May 1988. Power was availed for running a flour mill. The Appellant stopped availing electricity from July 2005. Afterwards, the flour mill was closed and there was no utilisation of power from August 2005. At the time of closure of the flour mill, the Appellant owed Rs.4353/- by way of arrears, Rs.56/- by way of Electricity Taxes, Rs.69/- as interest and Rs.1050/- as Fixed Charges to HESCOM. Totally, there was an arrears of Rs.5,528/-. When the Appellant approached HESCOM for dismantlement of the electric installation on 19th April 2010, HESCOM informed the Appellant that he owed Rs.20,600/- to HESCOM being the Fixed Charges, Electricity Tax and interest on Fixed Charges and Electricity Tax. The Appellant paid Rs.17,950/- and the electric installation was dismantled on 21st April 2010.

Further, in the month of July 2005, at the time of the closure of the flour mill, meter reading was 13,571 units and this figure remained unaltered till April 2010 i.e. till the dismantling of the installation. However, HESCOM collected Fixed Charges, Electricity Tax and interest on Fixed Charges and Electricity Tax amounting to Rs.20,600/-. As per the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, if any consumer is in arrears to the licensee for a continuous period of three months, then the licensee has to issue three months notice to get the installation reconnected, failing which, the power supply agreement shall be deemed to have been duly terminated on the date of expiry of the said notice. In the present case, HESCOM has failed to issue three months notice and without notice, HESCOM has disconnected supply line which amounts to violation of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and HESCOM could not have collected arrears from the date of disconnection of power supply and, hence, sought direction to HESCOM to refund the amount collected by way of Fixed Charges, Electricity Tax and interest on Fixed Charges and Electricity Tax.

The 1st Respondent has furnished parawise replies on 23rd February 2011 to the points raised by the Appellant. The 1st Respondent, in his replies, submitted that the electric

installation No AGMP-24 had been dismantled after the Appellant had paid the arrears of Rs.20,600/- on 20th April 2010. Though power supply had been stopped, agreement had not been terminated and installation had not been dismantled. The Appellant, on 19th April 2010, requested HESCOM to dismantle the electric installation, and HESCOM on 21st April 2010 issued work orders for dismantlement of electric installation after recovering the Fixed Charges and, hence, prayed for dismissal of the appeal.

The matter was heard on 20th July 2011.

On behalf of the Appellant, Authorised Representative Shri Tushar M. Baddi and, on behalf of the Respondents, Asst.Executive Engineer, Rural Sub-Division, Hubli appeared and putforth their arguments.

Shri Tushar M.Baddi , appearing for the Appellant, reiterated the submissions made in the appeal memo and added that HESCOM had not issued any notice before dismantling the electric installation and, hence, recovery of Fixed Charges and other amounts was illegal and, hence, pleaded for direction to HESCOM to refund Rs.20,600/- to the Appellant.

The Asst. Executive Engineer, arguing the case, submitted that the electric installation had been in use till June 2005 and according to customer's history, it had been shown that the flour mill had been locked for 3 months during August, September and October 2005. HESCOM disconnected power supplies in November 2005 and after this for six months levied Fixed Charges , Electricity Tax and interest on Fixed Charges and Electricity Tax. Afterwards it came to be under Long-Dis. After installation came under long-Dis, HESCOM did not raise separate demand and the demand had been shown in the monthly bills and consumer was obviously aware of the liabilities.

The Asst Executive Engineer added that the Appellant approached HESCOM on 19th April 2010 for dismantlement of the electric installation and HESCOM as per Clause 30.03 and 32.06 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka collected Rs.3,150/- Fixed Charges + Rs.158/- Electricity Tax. This amount had been added to the arrears and Security amount of Rs.2,650/- which was with HESCOM had been adjusted against the arrears and the balance arrears of Rs.17,950/- had been collected from the Appellant. Further, the flour mill had been closed for three months and there

had been arrears and, hence, on these two counts supply line had been disconnected and, after effecting disconnection, three months

' notice would have to be given to the defaulter to pay the arrears. If consumer failed to pay the amount and failed to come forward for reconnection, there would be a deemed termination of agreement after the expiry of three months. In the present case, since termination notice had not been issued by HESCOM, agreement survived. In the present case, the Asst Executive Engineer issued work order for dismantling on 21st April 2010.

Concluding his arguments, the Asst. Executive Engineer submitted that HESCOM had collected Fixed Charges due from 2005 to 2010 from its Employees. He added that enquiry was also contemplated against the concerned for not collecting the Fixed Charges from 2005 to 2010 from the Appellant.

Both parties were informed vide letter No.OMB/H/G-110/2011/10387 dated 20.06.2011 regarding availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

Having heard the arguments of the Representative of the Appellant and the 1st Respondent and having regard to the contentions urged by the parties, issue that emerges for our consideration is:

Whether levying of Fixed Charges of Rs.20,600/- on the Appellant is in order when the installation was under Long-Disconnection?

It is seen from the arguments of the parties that the electric installation No A.G.M.P-24 was serviced on 7th May 1998 and the Appellant stopped availing power on account of closure of the flour mill from July 2005. According to the Appellant, meter reading at the time of closure of the Mill in 2005 and at the time of dismantling of the electric installation in 2010 stood at 13571 units. This clarifies that the Appellant had not availed power from November 2005 and till the dismantling of the installation. It is evident that power supply

was stopped from November 2005. Further, HESCOM is found to have levied Fixed Charges for six months from November 2005 onwards but appeared to have not collected the amount. It is intriguing that when the Appellant approached HESCOM for dismantlement of the electric installation in 2010, HESCOM, instead of collecting Fixed Charges from the date of discontinuance of power supply till dismantlement of the electric installation (from November 2005 to dismantlement of the electric installation in 2010) has collected Fixed Charges arrears levied for 6 months from November 2005. This has exposed total negligence on the part of the Asst. Executive Engineer. During the hearing of the case, the Asst. Executive Engineer submitted that differential amount was being collected from the Employees of HESCOM and HESCOM was also contemplating disciplinary action against the delinquent officials and staff. It is desirable that the Managing Director, HESCOM look into this issue personally and wrong doers are dealt with appropriately and amount recovered from the delinquent officials and staff.

It is clear from the above that neither of the parties has initiated any action to terminate the agreement after the discontinuance of power supply or after the Appellant defaulted on payment of arrears. Under Clause 32.06 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka **"During the agreement period the Licensee or consumer at liberty to terminate the agreement by giving at least three months advance notice. However, the consumer shall clear the outstanding arrears before terminating the agreement."** In the present case, the Appellant was in arrears to HESCOM and, hence, the Appellant could not have exercised termination of agreement option till he cleared the arrears. Hence, it is to be construed that the agreement survived till the arrears were paid and installation dismantled in 2010. The Appellant's argument that agreement will have a deemed termination after the discontinuance of power supply cannot be accepted because, in the present case, the Appellant was in arrears to HESCOM and there cannot be any deemed termination of agreement in such circumstances. In view of this legal position, the Appellant is liable to pay the Fixed Charges and other related amounts to HESCOM from the date of discontinuance of power supply and till the date of dismantling of the electric installation. The Appellant should not have any grievance against HESCOM in the present case. Hence, the following order.

Order

For the foregoing reasons, the orders of the C.G.R.F passed Vide No. UÁÁÁ/ CYS-196 dated 04.01.2011 is upheld and, **in the result, the appeal is dismissed.**

Orders are pronounced in the open court.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Sri Ishwarsa E.Miskin, C/o T.M.Baddi, Near State Bank of India, Keshwapur, Hubli
2. Assistant Executive Engineer, O & M Rural Sub-Division, HESCOM, Hubli
3. Consumer Grievance Redressal Forum, HESCOM, Keshavapura, Shivaganga Layout, Bijapur Road, Hubli-25
4. Managing Directors of all ESCOMs.
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. OCA