

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

**Present: S.D.Ukkali  
Ombudsman  
Case No.OMB/M/G-56/09/7488  
dated 10<sup>th</sup> December 2009**

Shri J.L.Subramanya Bhatta,  
T.M.Road, Hariharapura Post,  
**Koppa Taluk-577120**  
Chickmangalur District

.. Complainant

**Vs**

1. Mangalore Electricity Supply Company Ltd.,  
represented by its  
Executive Engineer (Ele),  
O & M Division,  
MESCOM  
**Chickmagalur**

2. The Consumer Grievance Redressal Forum,  
MESCOM Corporate Office,  
Paradigm Plaza, A.B.Shetty Circle,  
**MANGALORE**

.. Respondents

**I.** This is an appeal complaint filed by the above named Complainant under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 not satisfied with the Order dated 16.12.2008 passed by the Consumer Grievance Redressal Forum (CGRF for Short), Mangalore Electricity Supply Company Limited (MESCOM for short), Mangalore in file No. **PA/UA/P/PE. 6/08.**

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

a) The Complainant's Irrigation Pump set (IP) installation bearing RR No.470/1-27 situated at Hariharapura, Chickmagalur District was serviced during 1990. On his

request, this installation was disconnected during the year 2002 and was permanently dismantled during 2003 by the 1<sup>st</sup> Respondent's concerned officer. He made a written request on 10.10.2003 to the 1<sup>st</sup> Respondent duly enclosing the receipt to refund the Security Deposit (deposit for short) amount due to him, duly crediting to his another electrical installation RR NO.AEH 363. His request was not conceded. He continued to make request by way of several letters but to no avail.

b) **In a letter dated 2.6.2008 he brought to the notice of 1<sup>st</sup> Respondent that the deposit as per rules was to be refunded within 60 days of receipt of request and the failure to do so would attract a penalty of Rs.50/- per day of delay. He further made it clear that if the amount was not refunded within 8 days, he would file a complaint before the 2<sup>nd</sup> Respondent. Even after this letter, the 1<sup>st</sup> Respondent failed to settle the matter and the Complainant filed the complaint with the 2<sup>nd</sup> Respondent on 15.09.2008 praying for directing the Respondent to pay**

1. The interest for the delayed period.
2. The penalty of Rs.50/- per day of delay in refunding the deposit as per the provisions of KERC (Licensees' Standards of Performance) Regulations 2004 for 1834 days of delay from 10.12.2003 to 18.10.2008 amounting to Rs.91,700/-.
3. Rs.7500/- adjusted by the Government of Karnataka along with 10% interest.

c) Thereupon, the 2<sup>nd</sup> Respondent, after conducting hearing, though held that the Licensee has failed to meet the Standards of Performance, has not granted the penalty of Rs.91,700 on the plea that it should not result in **"unexpected gain to the consumer"** due to mistake/delay on the part of the department and passed an order granting 1% interest per month for the period of delay in refunding the deposit in terms of KERC (Licensees' Security Deposit) Regulations 2007 and further ordered **to recover the penalty from the concerned officers and officials of the 1<sup>st</sup> Respondent for the lapses in discharging their duties.**

**The Complainant, not fully satisfied with this order, has filed this appeal complaint on 29.06.2009 and has questioned the decision of the 2<sup>nd</sup> Respondent as to how right, it was to reject the request of the consumer for the sole reason that giving such a big relief would result in unexpected gain to the consumer? He has further questioned whether the 2<sup>nd</sup> Respondent has powers to reject the regulations prescribed by the KERC and to impose its own decision. He has prayed for the following:**

### **III.**

### **PRAYER**

The Complainant has prayed to direct the Respondent MESCOM to give effect to the Standards of Performance regulations and pay him the compensation of Rs.91,700/- for the delay in refunding the deposit amount.

### **IV. Contention of the 1<sup>st</sup> Respondent:**

The 1<sup>st</sup> Respondent in his reply AS&P&E(«)/-ÉC./» . (1)/4898-99 ÇÉÁÁÀ 22.07.2009 has stated that as per the Order passed by the 2<sup>nd</sup> Respondent on 16.12.2008, an amount of Rs.525/- at 1% interest relief on the deposit amount of Rs.900/- has been sent to the Complainant vide DD No.353515 dated 07.01.2009 on Syndicate Bank, Hariharapura Branch on 09.01.2009. He presumed that the Complainant was happy for having received this amount by way of relief. The 1<sup>st</sup> Respondent further states that the order passed by the 2<sup>nd</sup> Respondent is just and the same has been implemented.

### **V. Maintainability:**

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. 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) do not exist in the Regulations.

2. The order is passed on 16.12.2008 by the 2<sup>nd</sup> Respondent and the appeal complaint is filed on 29.06.2009 within one year. This appeal, as per the time limit prescribed in Form B, is maintainable.

**An opportunity by way of this office letter dated 10.09.2009 was extended to both the parties to explore the possibility of settlement by conciliation and agreement. The Complainant vide his letter dated 12.09.2009 has clarified that the conciliation at this stage was not possible and requested for passing a suitable order by this Authority.**

## **VI. INABILITY TO ATTEND PERSONAL HEARING**

The Complainant in his appeal complaint has stated that since he is an old man of 70 years with ill health, he was not able to personally depose before this Authority at Bangalore and that he would be furnishing additional information/document through correspondence.

The 1<sup>st</sup> Respondent was informed by a letter dated 5.10.2009 that in case he wished to appear and depose in person before this Authority, he could do so on 15.10.2009. However, he did not appear on 15.10.2009 but clarified by a letter dated 12.10.2009 that there was no more additional record or information available at his office.

## **VII. ANALYSIS AND FINDINGS**

a) **It is clear from the records submitted and the order passed by the 2<sup>nd</sup> Respondent that there is a definite failure to meet the Standards of**

**Performance on the part of the MESCOM officers/officials in refunding the deposit amount to the Complainant.** Admittedly, the Complainant has submitted the request on 10.10.2003 duly enclosing the receipt for refund of the deposit held against RR No.470/1-27 which was disconnected and dismantled on his request. Even after several letters, the concerned officers/officials of the Licensee have not taken action to refund the deposit amount.

b) **A warning from the Complainant by a letter dated 02.06.2008 that for the failure to refund the deposit the Licensee was liable to pay an amount of Rs.50/- per day of delay had least effect on the 1<sup>st</sup> Respondent.**

Only after filing the complaint and the intervention by the 2<sup>nd</sup> Respondent., the deposit was refunded on 18.10.2008.

c) **The 2<sup>nd</sup> Respondent has dealt the matter systematically duly hearing the matter by providing an opportunity to the Complainant and has held that there were lapses leading to failure to meet the Standards of Performance on the part of the officers/officials and passed order in its 2<sup>nd</sup> para to recover this amount from the officers/officials responsible for the delay.** The findings of the 2<sup>nd</sup> Respondent further reveals that though there were lapses on the part of officers/officials of the Licensee, the Complainant's prayer to grant Rs.91,700 was not considered by the 2<sup>nd</sup> Respondent on the plea that the mistakes/delays on the part of the Respondents should not become unexpected gains to the Consumer and instead granted interest at 1% per month. **Though the Complainant has accepted the relief granted by the 2<sup>nd</sup> Respondent by way of interest, he has urged this Authority by this appeal complaint to grant further relief of Rs.91,700/- at the rate of Rs.50/- per day of delay in refunding the deposit as per the provisions of KERC (Licensees' Standards of Performance) Regulation 2004 for the mental agony caused to him by the harassment meted out to him by forcing him to visit the Licensee's office several times.**

In terms of Regulation 6.3 of KERC (Licensees' Standards of Performance) Regulations 2004:

***"If the Licensee fails to meet the Standards of Performance specified in Schedule I, the Licensee shall pay to the affected consumer an amount as indicated against each of the Standards of Performance in Schedule I."***

In terms of the provisions as at Sl.No.14 of Schedule I, the 1<sup>st</sup> Respondent definitely is liable to pay the amount at the rate of Rs.50/- per day for each day of delay in refunding the deposit amount.

**It is worthwhile to note here that the Complainant has filed his request on 10.10.2003 and the amount was not refunded till 18.10.2008 and after allowing the statutory time of 60 days from 10.10.2003, he has claimed the amount from 10.12.2003 to 18.10.2008. This amount is claimed under the KERC (Licensees' Standards of Performance) Regulations 2004 which came into effect from 10.06.2004.**

d) The following issues emerge from these facts:

(1) Under these provisions, whether the Complainant can claim the amount of Rs.50/- per day of delay for the period earlier to 10.06.2004?

(2) Whether the Complainant is also eligible for the additional relief he has sought for the period of delay in refunding the deposit even though he has accepted the interest at 1% per month granted by the 2<sup>nd</sup> Respondent?

(3) What relief the Complainant is entitled to?

**Issue 1:** The decision has to be in the negative for the reason that the Complainant is not eligible for the amount of Rs.50/- per day of delay earlier to **10.06.2004**, as the effective date from which the provisions of these Regulations were applicable was from **10.06.2004 onwards.**

**Issue 2:** The decision has to be in the affirmative for the reasons mentioned herein. The Complainant is entitled for a relief sought by him in his prayer in terms of provision of Section 57(2) of the Electricity Act 2003, which is enumerated here below:

**“If a licensee fails to meet the standards specified under sub-section (1) without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission.”**

Accordingly, KERC has determined the compensation by framing the KERC (Licensees’ Standards of Performance) Regulations 2004. The Complainant is entitled for the relief under these provisions in addition to the interest amount already received.

**Issue 3:** The order passed by the 2<sup>nd</sup> Respondent is implemented and settles part of the grievance of the Complainant. **In addition to the interest amount already paid, a reasonable amount of compensation needs to be granted for the act of deliberate delay in refunding the deposit causing mental agony to the Complainant, a Senior Citizen with ill-health.**

**The letter dated 02.06.2008 from the Complainant to the 1<sup>st</sup> Respondent is the most crucial one.** In spite of warning that delay in refund of deposit would lead to a penalty of RS.50/- per day of delay and that for the failure to refund the deposit within 8 days, a complaint would be filed with the 2<sup>nd</sup> Respondent had no effect on the concerned officers/officials of the Respondent Licensee, **thereby exhibiting arrogance and disregard to the regulations framed by the KERC and the negligence of duties leading to failure to meet the Standards of Performance.**

Only after the intervention by the 2<sup>nd</sup> Respondent, the deposit was refunded on 18.10.2008. Therefore, the reasonable relief would be to grant penalty from 11.06.2008 – the day after the lapse of 8 days of a warning letter dated 02.6.2008 - to 17.10.2008 for 129 days of delay, an amount of Rs.6450/- at the rate of Rs.50 per day of delay.

Having regard to the aforesaid facts and circumstances , in addition to the relief already granted by the 2<sup>nd</sup> Respondent, the appeal complaint stands ordered as follows:

### **VIII.**

### **ORDER**

1. In terms of Regulation 6.3 of KERC (Licensees' Standards of Performance) Regulations, 2004, it is held that the 1<sup>st</sup> Respondent of the Distribution Licensee (MESCOM) has failed to meet the standards of performance in Schedule 1 Sl.No.14 of the said Regulation in refunding the deposit amount and is liable to pay Rs.6450/- (Rupees Six Thousand Four Hundred and Fifty only) at the rate of Rs.50/- per day of delay for 129 days.

2. In terms of Regulation 6.4 of KERC (Licensees' Standards of Performance) Regulations 2004, the payment shall be made by the 1<sup>st</sup> Respondent by way of adjustment against existing, current and/or future bills for supply of electricity to the Complainant's other existing 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 1<sup>st</sup> Respondent.

(S.D.Ukkali)  
Ombudsman

TO:

1. Shri J.L.Subramanya Bhatta, ,T.M.Road, Hariharapura Post, Koppa Taluk-577120 Chickmangalur District
2. Consumer Grievance Redressal Forum, MESCOM, Paradigm Plaza, A.B.Shetty
3. The Executive Engineer, O & M Division, MESCOM, Chickmagalur
4. 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







