



**Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore**

**Present: B.R.Jayaramaraje Urs, IAS (Retd.)
Electricity Ombudsman
Case No.OMB/H/G-153/2013/247
Dated 26.07.2013**

M/s.Khimji Flow Equipments P.Ltd.,,
(Installation No.HT-1027)
C/o T.M.Baddi,
Near S.B.I.,
Keshavapura,
HUBLI
**(Represented by Sri Tushar M.Baddi,
Authorised Representative)**

.. Appellant

Vs

1. Assistant Executive Engineer,
O&M Rural Sub-Division,
HESCOM,
Tabib Land
HUBLI
2. Consumer Grievances Redressal Forum (C.G.R.F)
HESCOM
Keshavapura, Shivaganga Layout,
Bijapur Road,
HUBLI-25

.. Respondents

1. This is an appeal under Clause 21.2 of KERC (Consumer Grievance Redressal Forum) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, HESCOM, Hubli (hereinafter referred to as the 2nd Respondent) vide No. 154/CYS-1/13-14 dated 09.05.2013 in respect of Appellant's grievance relating to levying twice the LT-7 normal tariff by the Assistant Executive Engineer(EI), O & M Rural Sub-Division, HESCOM, Hubli (hereinafter referred to as the 1st Respondent) in respect of his installation bearing R.R No HT 1027. Aggrieved by the impugned order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is an Electricity Consumer of HESCOM bearing R.R. No HT 1027. The installation was serviced on 31.03.2012 with a connected load of 30 kVA. Earlier, in the same premises, the Appellant had a temporary connection under LT-7 tariff with a connected load of 5 kVA. Later, HESCOM removed the Meter connected to L.T-7 installation without any written request from the Appellant. However, in the said premises, construction activity and other works like erection of machines etc., continued. Though this is in conformity with the KERC Tariff order, HESCOM levied penalty at twice the L.T-7 normal tariff from 04.10.2012 on the ground of misuse of power under Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. At the time of servicing the H.T installation, HESCOM officials visited the premises and observed construction and other works like erection of machines were under progress and, after satisfying about these activities, HESCOM serviced the installation under HT-2(a) tariff.

3. Aggrieved by HESCOM's decision to levy penalty, the Appellant filed a complaint before the 2nd Respondent seeking direction to cancel the penalty. However, the complaint was dismissed by the 2nd Respondent and, hence, aggrieved by the impugned orders; the Appellant filed the present appeal before

this Authority. The Appellant has prayed this Authority to issue directions to the 1st Respondent to refund the amount collected under LT-7 tariff and also the penalty amount collected at twice the L.T.-7 normal tariff after deducting the amount payable under HT 2(a) tariff.

4. The 1st Respondent's comments were called vide letter No OMB/H/G-153/2013/214 dated 18.06.2013 and the respondent has furnished his comments vide letter No. G « ° Ā / Ą P Ą . ρ . EA («) Ą Ą Ą Ą 1621-23 ϕ E Ą Ą P Ą 05.07.2013.

5. In his comments, the 1st Respondent submitted that as per the request of the Appellant dated 15.11.2011, HESCOM sanctioned power on 31.03.2012 under HT-2(a) tariff and assigned RR No HT-1027 to the installation. Under Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, both HT & LT Installations cannot co-exist and, hence, power was stopped to L.T installation bearing RR No RTL 1275 on 15.05.2012.

6. Further, at the time of servicing HT installation bearing R.R.No.1027, the Assistant Executive Engineer, HT Rating Division had been there for pre-commission test and for checking the installation. The Assistant Executive Engineer, HT Rating, Division during his visit, found that the power supplied under HT 2(a) had been utilised for construction purposes and, hence, suggested billing of the installation under LT-7 tariff. He also obtained the signature of the Appellant for being present during inspection. Further, the issue had been discussed with the Executive Engineer (EI) Rural Division, Hubli and the Executive Engineer (EI), in turn, instructed the 1st Respondent to bill the installation under LT-7 tariff from the date of servicing the HT installation. Demand notice had been sent to the Appellant to pay the amount and to file objections, if any, within 7 days. Though the Appellant failed to reply to the notice, he had paid LT-7 tariff up to October 2012.

7. The 1st Respondent further added that the Accounts officer (Internal Cell), HESCOM Hubli during auditing of the subject installation for the period from January 2012 to June 2012, observed that power supplied under HT-2(a) tariff had been misused for construction purposes by the Appellant, and, hence, he should be levied penalty at twice the regular LT-7 tariff. This issue had again been discussed with the Executive Engineer(EI) and the Executive Engineer(EI) clarified that the Appellant should be levied twice the regular LT-7 tariff. This had been conveyed to the Appellant through letters and also advised to pay the short claims. The Appellant had not filed objections. Hence, the Executive Engineer(EI), in order to resolve this issue, called a meeting of the Assistant Executive Engineer(EI), HT Rating Division and Accounts Officer and, after detailed deliberations, final notice had been issued to the Appellant on 17.11.2012. In response to this notice, Shri T.M Baddi, the Authorised Representative, filed objections on behalf of the Appellant on 19.11.2012. Objections pointed out that as per KERC Tariff Order 2012, the HT consumer could use power within his premises for construction purposes without exceeding the contracted demand. However, these objections of the Appellant had been overruled and resolved in the meeting to levy penalty at twice the normal LT-7 tariff on the grounds of misuse of power under Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

8. The 1st Respondent further submitted that as per the advice of CGRF dated 26.04.2013, the Executive Engineer (EI), the Assistant Executive Engineer(EI), Accounts officer & the Appellant's representative Shri T.M.Baddi visited the premises and prepared a report. The report said that construction work was going on in the premises and no machines were erected nor any production taking place. Hence, levying of penalty was justifiable.

9. The case was taken up for hearing on 22.07.2013. On behalf of the Appellant, his Authorised Representative, Shri T.M Baddi appeared and advanced his arguments. On behalf of the 1st Respondent, the Assistant Executive Engineer (EI) O & M Rural Sub-Division, HESCOM, Hubli appeared and submitted his arguments. Arguments from both sides got over on 22.07.2013.

10. The Appellant's Authorised Representative argued that installation bearing R.R No HT 1027 had been serviced on 31.03.2012 and earlier in that premises there had been an LT installation bearing R.R No RTL 1275 which had a sanctioned load of 5 kw. At the time of servicing the HT installation, construction activity and other works like setting up of machines had been under progress. HESCOM verified this and also verified the test report given by the Electrical Contractor. The test report showed the existence of welding, polishing and cutting machines in the premises and, based on this report, HESCOM sanctioned power supply under HT-2(a) tariff. From the date of servicing HT installation, HESCOM had been billing the installation under LT-7 tariff on the basis of H.T Rating Division's report. HESCOM staff advised the Appellant to apply for power under HT-2(a) tariff which could be used for construction and also for production purposes, but HESCOM did not give this in writing. The LT installation existed for 120 days after servicing the HT installation. The LT installation had been disconnected on 15.05.2012 without any letter from the Appellant and without any notice to the Appellant.

11. The Authorised Representative of the Appellant added that on 04.10.2012, the Assistant Executive Engineer(EI) O & M Rural Sub-Division, HESCOM, Hubli levied twice the LT-7 normal tariff on the Appellant on the grounds of Appellant misusing power under Clause 42.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Following this, the Appellant filed objections to levying of penalty and pointed out that when LT installation had been in service, he had been paying Rs.6000/- – Rs.7000/- as consumption

charges, whereas as H.T. consumer, he was paying Rs.40,000/- - Rs.45,000/- per month.

12. Citing various provisions of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the Authorised Representative of the Appellant submitted that the Appellant being a H.T. consumer could use HT power for construction, modification and expansion purposes within his premises without exceeding the contract demand as per KERC 2012 Tariff Order. The Appellant had not exceeded the maximum demand and such recording had been coming around 9 KVA to 10 kVA per month. This had been brought to the notice of the Assistant Executive Engineer(EI), O & M Rural Sub-Division, HESCOM, Hubli and, in spite of this, HESCOM had levied penalty twice the normal tariff of LT-7 and, on account of this, the Appellant had been made to pay Rs.30,000/- to Rs.40,000/- per month against the earlier payment of Rs.6000/- -Rs.7000/- per month. The Appellant being a H.T. consumer could use power for construction purposes and, hence, levying penalty at twice the normal tariff under LT-7 was against to KERC 2012 Tariff Orders. If HESCOM wanted to levy LT-7 tariff for construction activity, then it should not have disconnected LT-7 connection and, hence, HESCOM was liable to refund the difference amount between LT & HT tariff and also penalty collected at twice the normal LT-7 tariff. The HT installation had been serviced after verifying that power had been used for construction purposes. The Appellant being the HT consumer could use power for construction and it did not amount to misuse of power as alleged by the Assistant Executive Engineer(EI). Because of levy of heavy penalty, the Appellant could not set up machines and could not continue construction activity.

13. The Authorised Representative of the Appellant, quoting various regulations under Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, submitted that as per Clause 4.02.4 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, both HT

& LT installations could be serviced by providing a separate service mains. In the case of the Appellant also two service mains had been provided for both HT & LT installations. As per Clause 8.14 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the H.T. consumer could avail power for construction activity without exceeding the contract demand and such use did not amount to prejudicial use of power. The Assistant Executive Engineer(EI) had levied penalty of Rs.1,74,720/-. The Appellant had paid 50% amount under protest on 17.05.2013 after CGRF had rejected his prayer for grant of interim relief. This penalty had been levied at twice the normal LT-7 tariff for a period of 7 months. This was limited to 7 months because the installation had been serviced 7 months before.

14. The Authorised Representative of the Appellant prayed this Authority to issue directions to HESCOM (a) to issue a revised bill under HT-2(a) tariff from the date of service of HT installation and (b) to refund the difference amount between LT & HT tariff with effect from 31.03.2012 and (c) to refund the penalty amount levied at twice the normal LT-7 tariff till date which comes to Rs.2.64 lakhs approximately. (d) Further, to give directions to HESCOM to pay interest @ 2% on the excess amount collected from the Appellant as per Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and (e) to pay compensation of Rs.5.00 lakhs to the Appellant.

15. The Authorised representative clarified that, in the present case, HESCOM had levied twice the Fixed Charges as it is higher vis-à-vis the Energy Charges.

16. The 1st Respondent submitted that HT installation bearing R.R No. 1027 had been serviced on 31.03.2012 by the Executive Engineer (EI) O & M Rural sub-Division Hubli. There existed a L.T. installation bearing R.R No RTL 1275 which had been disconnected after servicing the HT installation dated 15.05.2012. This had been disconnected at the request of the Appellant, but

there had been no letter from the Appellant for this disconnection. Before disconnection, notices had been served on the Appellant on 19.10.2012 and the Appellant had not filed any objections. The HT Rating Division in their inspection report recommended for levy of LT-7 tariff on the ground that the load might be used for construction purposes and, accordingly, the Assistant Executive Engineer(EI) O & M Sub Division levied LT-7 tariff. The Accounts Officer (Internal Cell) had also recommended for levying of penalty at twice the normal LT-7 tariff. The Assistant Executive Engineer (EI) sought clarification on this issue from the Executive Engineer (EI) on 06.09.2012 and reply had been received in this regard from the Executive Engineer (EI) vide letter dated 29.09.2012 and, hence, prayed this Authority to uphold the impugned order passed by the 2nd Respondent.

17. Both parties were informed vide letter No.OMB/H/G-153/2013/236 dated 12.07.2013 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.

18. Having regard to the contending positions of the parties, the issue that comes up for our consideration is:

a) The Appellant being the HT consumer, whether the Licensee is right in levying penalty at twice the LT-7 normal tariff when the Appellant has used power for construction activity and also for establishment of machines in his premises without exceeding the contract demand?

19. In order to answer this question, we have to refer to various provisions cited by the Authorised Representative of the Appellant under the Conditions of

Supply of Electricity of Distribution Licensees in the State of Karnataka. The Authorised Representative cited Clause 4.02.4 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which says that ***"power supply to building/premises either HT or LT or combination of HT< through separate distinct service main can be arranged from a single source with the provision of a common isolation point. The service main cables shall have distinct identity and separation. Metering arrangement shall be at the ground floor only. Power supply to different types of consumers in building / premises can be arranged through separate VLs having common isolation point"***

20. The Authorised Representative further quoted Clause 8.14 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka to buttress his case. This clause says ***"The HT/EHT consumer is permitted to use power within his premises for any bonafide purposes including construction works without exceeding the contract demand or permitted maximum demand/energy entitlement as the case may be. Such usage does not amount to prejudicial use"***

21. The above extracts clearly entitle the Appellant being the HT Consumer to use power for construction activity and for establishment of machines in his premises without exceeding the contract demand and such use of power does not amount to misuse of power. In fact, the Assistant Executive Engineer(EI) in his letter dated 06.09.2012 addressed to the Executive Engineer(EI) pointed out that the Appellant, being the HT consumer, could use power for the purposes of construction, modification and expansion and, further recorded that he had earlier sought clarification with the Executive Engineer(EI) on this issue and the Executive Engineer(EI) had orally clarified that since the Appellant had been using the installation for the purpose of construction, he had to be billed under LT-7 tariff instead of HT-2(a) and as per these directions, he had levied LT-7

tariff and the Appellant had been paying the tariff. Further, the Assistant Executive Engineer in the same letter brought to the notice of the Executive Engineer (EI) that the Accounts Officer (Internal Cell) had objected to levying of LT-7 tariff when the Appellant had misused the power sanctioned under HT-2(a) for construction purposes and he also sought to know why penalty at twice the LT-7 normal tariff had not been levied and, hence, he sought clarification as to whether he should levy penalty as suggested by the Accounts Officer (Internal Cell).

22. Though the Assistant Executive Engineer(EI) O & M Rural Sub-Division has correctly interpreted Clause 4.02.4 and 8.14 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, he failed to act accordingly. Instead, he sought clarification from the Executive Engineer(EI) may be because the Executive Engineer (EI) had earlier sanctioned power to the subject HT installation. Immediate reason for the Assistant Executive Engineer(EI) to act in this manner is probably because of the Accounts Officer's (Internal Cell) objections to levying only LT-7 tariff instead of levying penalty at twice the LT-7 normal tariff.

23. However, from the above discussion, we can come to clear cut conclusions that the Appellant being a HT Consumer could use power for construction and establishment of machines under Clause 4.02.4 & 8.14 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka without exceeding the contract demand. From the records, it is clear that the Appellant has not exceeded the contract demand as he was availing 9-10 KVA of power per month.

24. It can be concluded that both the Executive Engineer (EI) Rural Division, Hubli and the Accounts Officer (Internal Cell) have failed to update their knowledge regarding KERC latest Tariff Order and went on giving wrong advice

to the Assistant Executive Engineer (EI) on the basis of earlier KERC Tariff Orders which led to this anomaly.

25. In the light of the above, HESCOM is liable to refund (a) difference amount between LT-7 and HT-2(a) tariff, (b) penalty levied at twice the normal LT-7 tariff, (c) liable to pay interest on the excess amount collected over and above the HT-2(a) tariff and also on the amount collected at twice the normal LT-7 tariff in the form of penalty and (d) interest has to be paid from the date such excess collection made under Clause 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

ORDER

26. For the foregoing reasons, the Licensee is directed to:

- (a) Issue revised bill under HT2 (a) tariff from the date of servicing of HT installation as per KERC 2012 tariff order as regards subject installation.
- (b) Licensee to refund the balance amount to the Appellant i.e., Difference between LT-7 and HT-2(a) tariff.
- (c) Licensee to refund the penalty amount to the Appellant levied at twice the LT-7 normal tariff.
- (d) Licensee to pay interest to the Appellant as per Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka for the difference amount collected between LT-7 and HT-2(a) Tariff and also on the penalty amount collected at twice the LT-7 normal tariff.

- (e) Licensee to pay interest to the Appellant at Bank rate from the date such excess amount collected.
- (f) Compensation claims of the Appellant for Rs 5.00 lakh is hereby rejected in the light of the above.

27. In the result, ***the appeal succeeds.***



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Khimji Flow Equipments P.Ltd., (Case No.1027), C/o T.M.Baddi, Near S.B.I., Keshavapura, Hubli.
2. Assistant Executive Engineer, O & M Rural Sub-Division, HESCOM, Tabib Land, 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