



**Before the Electricity Ombudsman  
9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers,  
M.G.Road, Bangalore-560001  
Present: B.R.Jayaramaraje Urs, IAS (Retd.)  
Electricity Ombudsman  
Case No.OMB/G/G-85/2010/200  
Dated 31.05.2013**

M/s.Mahadev Khandsari,  
A-2 & A-3 ,  
"Shivasharan Sankiran"  
Khuba Plots, Court Road,  
**GULBARGA-585102**

**Represented by Sri Manjunath Rao, Advocate,  
Authorised Representative)**

**.. Appellant**

**Vs**

1. Executive Engineer,  
O & M Division,  
GESCOM,  
**BIDAR.**

**(Represented by Shri Ravindra Reddy, Advocate  
- Authorised Representative)**

2. Consumer Grievances Redressal Forum (C.G.R.F)  
GESCOM Corporate Office,  
Opp Hotel Parivar, Main Road,  
**GULBARGA**

**.. Respondents**

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, GESCOM, Gulbarga (herein after referred to as the 2<sup>nd</sup> Respondent) vide No 2/2008 dated 10.10.2008 in respect of Appellant's grievance

relating to wrongful adjustment of Rs.8,33,421/- Security Deposit against the energy bills of the Appellant and refusal of the 2<sup>nd</sup> Respondent to issue directions to the Executive Engineer, O & M Division, GESCOM, Bidar (hereinafter referred to as the 1<sup>st</sup> Respondent) not to adjust the Security Deposit amount against the energy bills of the Appellant. Aggrieved by the order passed by the 2<sup>nd</sup> Respondent, the Appellant has submitted his case as under:

2. The Appellant M/s Mahadev Khandsari is a Partnership Firm and owns a Sugar Factory at Manahalli Village in Bidar District. The Appellant is an Electricity Consumer of GESCOM bearing R.R.No H.T-27. The Electricity installation was serviced on 17.11.1989.

3. The Executive Engineer (Ele) K.E.B Bidar District, Bidar issued an Official Memorandum on 20.12.1997 transferring the installation from M/s.Mahadev Khandsari to M/s Sree Mahadeva Khandasari Sugar Factory. The Appellant, subsequently, came to know of this illegal transfer of installation and, hence, gave a representation to the 2<sup>nd</sup> Respondent objecting to this illegal transfer of installation in the name of M/s Sree Mahadeva Khandsari Sugar Factory. Following the objection, GESCOM withdrew its earlier OM and issued a fresh order transferring back the installation in the name of the Appellant. Later the Executive Engineer (EI), K.E.B, Bidar District, Bidar disconnected the installation on 21.02.1998 on the directions of the Chief Engineer (EI) GESCOM, Gulbarga and sent a compliance report on 23.02.1998.

4. Initially, when power was sanctioned, the Appellant paid Rs.8,61,930/- as Security Deposits and Rs.13,000/- as D2 Deposits. As per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, after disconnecting the power supply, the Licensee has to refund the Security Deposit to the consumer, but in the case of the Appellant, the Licensee has not returned the Security Deposit amount so far. When the Licensee failed to refund the Security Deposit, the Appellant made a representation to the Licensee for refund of Security Deposit.

Following this representation, GESCOM placed this subject before its Board and the Board, after deliberating on this issue, resolved to refund (3 MMD) a sum of Rs.8,61,930/- and also D2 deposit. In spite of Board resolution, GESCOM has not refunded the Security Deposits to the Appellant till date.

5. Subsequently, the General Manager, KPTCL(T), in his letter dated 28.01.2001, informed the Appellant that he had directed the Executive Engineer(EI) Bidar District, Bidar to refund the Security Deposits furnished by the Appellant before the transfer of the installation after duly deducting the dues up to the transfer of installation. Later, the Executive Engineer (Ele) Bidar District, Bidar issued a certificate that the Appellant had not been in arrears of any amount to GESCOM as on the date of alleged transfer. Suddenly, on 26.7.2001, KPTCL issued one more Official Memorandum informing the Appellant that out of Rs.8,74,930/- paid towards Security Deposits, an amount of Rs.8,33,421/- had been adjusted towards D2 & 3 MMD and, hence, the Appellant was eligible to receive a refund of Rs.41,509/-. This O.M was contested, but the Appellant did not receive any response from GESCOM. Aggrieved by the non-refunding of the amount, the Appellant filed a Writ Petition before the Hon'ble High Court and the Hon'ble High Court, after hearing the matter, disposed the writ petition advising the Appellant to first exhaust the legal remedies available under the law and further directed the Appellant to make a detailed representation before the Competent Authority and that the Competent Authority to consider such representation and pass suitable order in the matter. In pursuance of the Court directions, the Appellant made a detailed representation before the Competent Authority. The Competent Authority, on the Appellant's representation, issued a reply dated 21.04.2007 that GESCOM was not liable to refund the Security Deposits as claimed by the Appellant. Hence, the Appellant filed the appeal before the Ombudsman seeking directions to the 1<sup>st</sup> Respondent to refund the Security Deposit of Rs.8,61,930/-.

6. The 1<sup>st</sup> Respondent's comments were called vide letter No OMB/G/G-85/10/8141 dated 29.04.2010.

7. In his comments vide letter No.BDR/EEE/AO/AAO-2/SA-4/10-11/3608-14 dated 22.06.2010, the 1<sup>st</sup> Respondent submitted that the Appellant had challenged the adjustment of Security Deposit of Rs.8,33,421/ by GESCOM against the outstanding energy bills of the Appellant before the Hon'ble High Court and the Hon'ble High court, after hearing the matter, disposed the WP advising the Appellant to approach 2<sup>nd</sup> Respondent for settlement of his grievance. Following this order, the Appellant filed a complaint before 2<sup>nd</sup> Respondent and the 2<sup>nd</sup> Respondent, after detailed hearing, passed the impugned order holding that the Appellant was entitled to receive a refund of Rs.41,509/-.

8. The 1<sup>st</sup> Respondent added that the subject installation had been transferred from M/S Mahadeva Khandasari to M/s Sree Mahadeva Khandasari Sugar Factory on 21.12.1997 subject to the conditions that (1) all the arrears as stood on that date to be cleared , (2) undertaking to pay any dues that may arise due to any short claim detected at a later date even in respect of periods prior to the date of transfer and (3) An indemnity bond shall be executed by the consumer indemnifying the Board to pay any arrears in case of any dispute between the parties. Subsequent to the agreement, the transferee of the installation failed to adhere to the conditions of OM and, hence, the transfer had been rescinded on 16.02.1998 duly maintaining the statues quo of the ownership. Prior to the alleged transfer of the installation, there had been an arrears of Rs.8,33,421/- and as per the agreement, M/s.Sree Mahadev Khandsari Sugar Factory had to clear these arrears. The Firm paid this amount. Subsequently, when the parties failed to adhere to the conditions of the O.M., the amount paid by M/s.Sree Mahadev Khandsari Sugar Factory towards the arrears of M/s.Mahadev Khandsari had been withdrawn and adjusted against the energy bills of M/s.Sree Mahadev Khandsari Sugar Factory which accrued after the transfer of the installation. Thus, the arrears existed prior to the transfer of the subject installation remained undischarged after the amount paid by M/s.Sree Mahadev Khandsari Sugar Factory had been withdrawan and adjusted against the energy bills of M/s.Sree Mahadev Khandsari Sugar Factory. Arrears relating to M/s.Mahadev Khandsari had

to be recovered and, hence, steps had been taken to recover the arrears of Rs.8,33,421/- out of the Security Deposit furnished by the Appellant firm. The Appellant was eligible for refund of Rs.41,509/- after the adjustments.

9. The case was taken up for hearing on 30.01.2013. On behalf of the Appellant, Advocate Manjunath Rao of Shridhar Prabhu Associates filed vakalat and on behalf of the 1<sup>st</sup> Respondent, Advocate Shri Ravindra Reddy filed vakalat. After several adjournments, finally on 11.03.2013, the Advocate for the Appellant submitted his arguments. Again, the case was adjourned several times and finally on 22.04.2013, the Advocate for the 1<sup>st</sup> Respondent argued briefly and sought adjournment to conclude his arguments on the next date of hearing. At the request of the Advocate for the 1<sup>st</sup> Respondent, case was adjourned to 16.5.2003 for final hearing. The Advocate for the 1<sup>st</sup> respondent again sought time on 16.05.2013 to conclude his arguments. Since sufficient time had been granted earlier, the Advocate for the 1<sup>st</sup> Respondent was advised to file his written arguments on or before 24.05.2013 and also to supply a copy of the written arguments to the Advocate for the Appellant. Accordingly, the Advocate for the 1<sup>st</sup> Respondent filed his written arguments before this Authority marking a copy to the Advocate for the Appellant. The Advocate for the Appellant filed his additional written arguments and reply to the written arguments filed by the advocate for the 1<sup>st</sup> Respondent.

10. The Advocate for the Appellant has reiterated the submissions made in the appeal memo.

11. The advocate for the 1<sup>st</sup> Respondent, in his written arguments, submitted that the Appellant had filed the appeal challenging the orders passed by the 2<sup>nd</sup> Respondent in order No 2/2008 dated 10.10.2008 wherein the 2<sup>nd</sup> Respondent concluded that the arrears against the petitioner firm up to 20.12.1997 was liable to be deducted from the deposits held against the petitioner firm and to refund the balance amount.

12. The Advocate for the 1<sup>st</sup> Respondent maintained that the Petitioner had been running Khandasari Sugar Mills at Manahalli in Bidar District in the name and style of M/s Mahadeva khandasari and this Mill had been taken on lease basis from one M/s Tirupathi Khandasari Sugar Mills. The installation bearing R.R No H.T-27 had been standing in the name of M/s Mahadev Khandasari and after the expiry of the lease period, one Shri Kamal Kishore, the owner of M/s.Tirupathi Khandasari Sugar Mills, Mannahalli, Bidar District approached the 1<sup>st</sup> Respondent for transfer of the said installation in the name of M/s Sree Mahadev Khandasari Sugar Factory and, accordingly, the 1<sup>st</sup> Respondent transferred the installation in the name of M/s Sree Mahadev Khandasari Sugar Factory and, prior to the transfer, there had been an arrears pertaining to M/s Mahadev Khandasari to the tune of Rs.8,33,421/- which had not been cleared by M/s Mahadev Khandasari in spite of several reminders.

13. The Advocate for the 1<sup>st</sup> Respondent added that the installation bearing RR No HT-27 of M/S Mahadev Khandasari had been under disconnection dated 27.03.1997 for non-payment of arrears of Rs.6,34,359/ as on 20.12.1997. There had been arrars of Rs.8,33,421/- outstanding against the installation including interest and these arrears had to be paid by the Petitioner. Further, at the time of transfer of the installation M/s. Sree Mahadev Khandasari Sugar Factory had remitted an amount of Rs.5,32,500/- as fresh deposit under receipt No 021079 dated 20.12.1997 and Meter Deposits of Rs.55,450/- under receipt No 21080 dated 20.12.1997 and the said subsequent consumer M/s Shree Mahadev Khandasari Sugar Factory also cleared arrears belonging to earlier consumer M/S Mahadev Khandasari of Rs.8,33,421/- vide payment of Rs.1,95,407/- under receipt No 21082 dated 20.12.1997 and through cheque bearing No 001283 dated 20.12.1997 and Rs 6,38,014/ under receipt No 21083 dated 20.12.1997 drawn on State Bank of Hyderabad Branch Bidar as per one of the conditions of transfer of the installation. At any point of time, these arrears had not been paid by the earlier consumer M/s Mahadev Khandasari and rightly the 1<sup>st</sup> Respondent had adjusted the Petitioner's deposit amount of Rs Rs.8,74,930/- towards the said arrears and amount refundable to the petitioner was only Rs.41,509/-.

14. The Advocate for the 1<sup>st</sup> Respondent contended that as per the instructions of KPTCL vide letter dated 20.0.01 Security Deposit furnished by the Petitioner had been adjusted against its outstanding energy bills relating to the pre-transfer period i.e. prior to 20.12.97 after duly deducting the dues up to the date of transfer. The dues up to the date of transfer had been Rs.8,33,421/- and refundable amount was only Rs.41,509/-.

15. Further, the Appellant Firm, relying on letter dated 13.07.2001, contended that the certificate had been issued only after payment of arrears due and said that payments had been made by subsequent consumer that is M/s Sree Mahadev Khandasari Sugar Factory. Further, even vide letter dated 24.08.07 issued by the 1<sup>st</sup> Respondent asking the petitioner to produce the details of payments with original cash paid receipts or the counterfoils of cheques drawn and bank statements duly certified by the Bank authorities of its Bank Account for having issued cheques. In spite of the letters, the Appellant had failed to produce the same. It was clear from the records of the 1<sup>st</sup> Respondent that the previous arrears up to 20.12.1997 were paid by the subsequent Consumer. And now the Appellant was making false claim of refund of deposits, for which he was not entitled. Hence, he prayed this Authority to dismiss the appeal of the Appellant and confirm the orders passed by the 2<sup>nd</sup> Respondent .

16. Both parties were informed vide letter No.OMB/G/G-85/10/2012/8362 dated 02.06.2010 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.

17. Having regard to the contending positions of the parties, the issues that emerge for our consideration are :

**a) Whether the 1<sup>st</sup> Respondent is justified in adjusting Security Deposit of Rs.8,33,421/- furnished by the Appellant Firm against its energy bills?**

**b) Whether the Appellant firm is eligible for refund of Security Deposit of Rs.8,33,421/- as claimed?**

18. It is the case of the Appellant that the subject installation which had been standing in its name had been illegally transferred in the name of M/s Sree Mahadeva Khandasari Sugar Factory. As per the Regulations, after disconnecting power supply and after transfer of the installation, the 1<sup>st</sup> Respondent ought to have refunded the security deposit of Rs.8,33,421/- to the Appellant and the 1<sup>st</sup> Respondent has failed to refund the amount in spite of GESCOM's Board resolution and G.M GESCOM'S letter.

19. The Advocate for the 1<sup>st</sup> Respondent, in his written submission, has countered these arguments and submitted that the Appellant firm had been running Khandasari Sugar Mill at Mannahalli in Bidar District in the name and style of M/s Mahadeva Khandasari and the Mill had been taken over by the Appellant firm on lease basis from one M/s Tirupathi khandasari Sugar Mill and, after the expiry of the lease period, Shri Kamal Kishore, the owner of M/s.Tirupathi Khandasari Sugar Mills approached GESCOM for transfer of the installation in the name of M/s Sree Mahadeva Khandasari Sugar factory and as per the request of the owner, the installation had been transferred. Hence, there is no irregularity. At the time of transfer, there existed an arrears of Rs.8,33,421/- and these arrears had to be cleared either by the Appellant or by the new consumer and, in the present case, the new consumer namely M/s Sree Mahadeva Khandasari Sugar Factory, by virtue of the agreement, had agreed to pay the arrears of Rs.8,33,421/- standing in the name of the Appellant and based on the agreement, GESCOM had initially transferred the installation in the name of M/s Sree Mahadev Khandasari Sugar Factory by issuing an O.M and, subsequently, the parties had broken apart and the new consumer refused to adhere to the conditions of the agreement and the O.M and, hence, the amount paid by M/s.Sree Mahadev Khandasari Sugar factory at the time of transfer had been adjusted against its energy bills and, on account of this adjustment, the



arrears belonging to the Appellant remained undischarged and, hence. GESCOM had rightly adjusted the Security Deposit of the Appellant against its energy bills which was held by GESCOM.

20. The appellant's argument that the installation has been illegally transferred from the appellant firm to M/s.Sree Mahadeva Khandasari Sugar Factory appears to have no basis as the OM dated 20.12.1997 issued by the EE (KEB), Bidar, clearly states that "consequent to expiry of lease deed, M/s Mahadeva Khandasari Sugar Mills have given their consent for transfer of Government License and Permits to M/s Tirupathi Khandasari. Manahalli, dated 01.10.1994" and further M/s Tirupathi Khandasari Sugar Mills have changed the name of industry from "Tirupathi Khandasari" to M/s Sree Mahadeva Khandasari" vide their partnership deed dated 01.04.1996. This clearly shows that the transfer has been effected with the consent of the appellant firm.

21. Secondly, in the OM dated 20.12.1997 issued by the EE (EI)KEB, Bidar, clearly stipulates that (1) "All the arrears against the installation as on this date be cleared". The Advocate for the 1<sup>st</sup> Respondent in his written arguments submitted that the installation RR No.HT-27 of M/s Mahadev Khandasari had been under disconnection on dated 27.03.1997 for non-payment of arrears of Rs.6,34,359/- and as on dated 20.12.1997 the outstanding arrears over the said installation bearing RR No.HT-27 of the petitioner including interest and fixed charges had been Rs.8,33,421/- and these arrears had been liable to be paid by the petitioner only, as the same is not paid by the petitioner inspite of several demands made by the Respondents.

22. The written arguments of the Advocate for the 1<sup>st</sup> respondent disclose that the new consumer namely Sree Mahadeva Khandasari Sugar Factory not only paid the fresh deposits of Rs.5,32,500/- under receipt No.021079 dated 20.12.1997 and meter deposit of Rs.55,459/- under receipt No.21080 dated 20.12.1997 and also cleared arrears belonging to the appellant firm of Rs.8,33,421/- vide payment of Rs.1,95,407/- under receipt No.21082 dated 20.12.1997 through cheque bearing

No.001283 dated 20.12.1997 and Rs.6,38,014 under receipt No.21083 dated 20.12.1997 through cheque No.001282 dated 19.12.1997 drawn on the State Bank of Hyderabad Branch, Bidar as per one of the conditions for transfer of installation RR No.HT-27. And, the appellant's claim that he has paid the arrears of Rs.8,33,421/- is debunked as the appellant has failed to produce the original cash paid receipts or the counter foils of cheques and Bank Statements duly certified by the Bank Authorities of its Bank Account for having issued cheques inspite of reminders from GESCOM.

23. It is also seen from the records that GESCOM has rescinded the transfer of installation from the appellant firm to Sree Mahadeva Khandasari Sugar Factory as the parties failed to adhere to the conditions of transfer of installation issued in the form of OM by GESCOM. Further, payment of arrears is a pre-condition for transfer of installation and in the present case M/s Sree Mahadeva Khandasari Sugar Factory is found to have paid Rs.8,33,421/- towards the arrears. Subsequently, because of non-adherence to the conditions of transfer of installation, amount paid by M/s Sree Mahadeva Khandasari Sugar Factory at the time of transfer towards the arrears was adjusted against the energy bills of that Company. Consequently, the arrears of Rs.8,33,421/- relating to pre-transfer period remained undischarged and hence GESCOM has justifiably adjusted Rs.8,33,421/- out of the security deposit furnished by the appellant firm. Hence, this Authority does not find any strong grounds to interfere in the orders of the CGRF, GESCOM. Hence the following order.

## ORDER

For the foregoing reasons, **the appeal is dismissed.**

  
(B.R Jayaramaraje Urs)  
Electricity Ombudsman

1. M/s.Mahadev Khandsari, A-2 & A-3, "Shivasharan Sankiran", Khuba Plots, Court Road, Gulbarga-585102 (Represented by Sri Manjunath Rao, Advocate, Shridhar Prabhu Associates – Authorised Representative).
2. Executive Engineer(EI), O & M Rural Sub-Division, GESCOM, Bidar (Represented by Sri Ravindra Reddy, Advocate – Authorised Representative).
3. Consumer Grievance Redressal Forum, GESCOM Corporate Office, Opp. Hotel Parivar, Main Road, Gulbarga
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