

Before the Ombudsman, K.E.R.C., Bangalore

Present: S.D.Ukkali
Ombudsman
Case No.OMB/H/G-46/2008/6017
Dated 13.05.2009

Shri D.Mangilal Jain,
President,
Padmavathi Complex Owners Association,
Silvantargalli,
HUBLI

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Complainant

Vs

1. Consumer Grievance Redressal Forum,
HESCOM,
P.B.Road, Navanagar,
HUBLI

2. The Executive Engineer (Ele),
(O & M Division)
HESCOM,
HUBLI

3. The Asst.Executive Engineer (Ele)
(O & M Sub Division) (Rural)
HESCOM
HUBLI

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Respondents

This is an appeal complaint filed by the above mentioned Complainant under the provisions of Karnataka Electricity Regulatory Commission (KERC) (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the Order dated 17.07.2008 passed in file No.CGRF/CYS-31 by the Consumer Grievance Redressal Forum (CGRF), Hubli Electricity Supply Company (HESCOM), Hubli rejecting the request of the Complainant.

Being aggrieved by the said Order, the Complainant has filed this Appeal Complaint before this Authority. The submissions made by the Complainant in brief are as follows:

The Complainant is the President of the Padmavathi Complex Owners Association, Silvantargalli, Hubli. He availed power supply to the complex after due compliance of the necessary conditions and payments. **Before availing the electricity connection, the Complainant executed the required Agreement (Annexure A) with Indemnity Bond in favour of then K.E.B. on 18.12.1995.** In the year 2005, the Complainant noticed illegal and unauthorized use of electricity by the Occupants of this Complex related to electrical installation Nos.11385A, 43947C and 43953C. The Complainant took it seriously and wrote letter **(Annexure B)** dated 07.12.2005 informing the 3rd Respondent requesting him to terminate the Agreement and cause electricity disconnection to the above mentioned RR Nos. But there was no action from the 3rd Respondent.

Since there was no action from the 3rd Respondent, the Complainant filed a Petition dated 12.01.06 **(Annexure C)** before the 2nd Respondent requesting him to take steps to terminate the Agreement and to cause disconnection of the above 3 installations.

In addition, on the basis of the Complainant's representation to various superior authorities, the 2nd and 3rd Respondents were directed to take suitable action in the matter. These are produced as detailed below:

Letter dated 25.02.2006 by the Superintendent Engineer (Ele) O & M, HESCOM – **(Annexure D)**, Letter dated 14.03.2006 by the Consultant, OCA, KERC, Bangalore – **(Annexure E)**, Letter dated 25.04.2006 by the General Manager, HESCOM, Hubli - **(Annexure F)** and Letter dated 07.07.2006 by the General Manager, HESCOM, Hubli – **(Annexure G)**. The matter was also taken to the Karnataka Electricity Regulatory Commission (KERC), Bangalore through a complaint **(Annexure H)**.

Since there was no action by the 2nd and 3rd Respondents, the Complainant filed a Petition before the 1st Respondent in Form A, marked as **(Annexure I)**. The 1st Respondent conducted enquiry with the Complainant and

the occupants of the Complex and passed Order No. CGRF/CYS-31 dated 17.07.2008 (**Annexure J**) rejecting the prayer of the Complainant.

Aggrieved by this Order, the Complainant filed an Appeal Complainant before this Authority on the following grounds:

GROUND S URGED FOR APPEAL

1. The impugned order is illegal, unjustifiable and it is liable to be set aside.
2. The matter in dispute was solely related to the illegal and unauthorized use and consumption of electricity by the occupants of the complex and the Complainant's liability and responsibility arising out of the agreement dated 18.12.1995 Annexure A for such illegal and unauthorized use. This aspect of the matter has not been considered by the Respondent1.
3. The Respondent No.1 materially erred in hearing the occupants of the complex, who are not at all parties in the agreement under Annexure A. The Respondent No.1 instead of hearing about the technicalities of the matter heard and carried away by the matters concerning hardship and inconveniences in case of "Disconnection".
4. The Respondent No.1 utterly failed to consider and apply its mind to the question of complainant's liability and responsibility under the agreement with the Indemnity Bond as per Annexure A in case of continues illegal and unauthorized use of the electricity by the occupants.
5. There is no finding with regard to discharge of liability and responsibility of the Complainant arising out of the agreement under Annexure A, in case of violation of agreements by the occupants of the complex.

6. The respondent No.1 failed to consider all the material facts and circumstances particularly relating to the existence of otherwise of Agreement executed by the Complainant and about his discharge of liability after rejecting his prayer for disconnection of electricity and for terminating of Agreement under Annexure A.

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) does not exist in the Regulations.

2. The Order is passed by the 1st Respondent on 17.07.2008 and the Complainant has filed the complaint on 25.11.2008 after about 130 days which is well within the time limit as per Form B, the appeal complaint is admitted.

PRAYER

- a) To set aside the impugned order and to give suitable directions to the Respondents.
- b) To direct the Respondent Nos.2 & 3 to cancel the Agreement and Indemnity Bond and the Security Deposit be refunded and raising of bills in the name of President, Padmavathi Complex Owners Association (Regd) be stopped.

Sufficient opportunity to both the parties was extended. The Complainant appeared on 12.2.2009 and 12.03.09 and 2nd and 3rd Respondents appeared and deposed before this Authority on 13.3.2009. ON behalf of these two Respondents, Shri K.N.Horakere, Sr.Assistant, Rural Sub Divvision,HESCOM, Hubli also appeared on 11.2.2009. The statements of these parties were recorded.

It is learnt from these Respondents that these 3 installations bearing RR Nos. 11385A, 43947C and 43953C are the connections provided for common facilities in the Complex for the drinking water and passage lights. There are several apartments in the Complex having residential and commercial portions. It was brought out before this Authority by the Respondents that no doubt the Complainant was the President of this Complex and due to difference of opinion arising amongst the Residents and the President of the Complex, he requested the Respondents to disconnect these 3 installations and to terminate the Agreement and the Indemnity Bond.

The Respondents further stated that as per the request of the Complainant, the concerned person of the HESCOM went to the spot for disconnection of the installations. The Owners of the Complex objected for disconnection and gave a letter not to disconnect the installations as these 3 installations were common installations meant for providing drinking water supply and passage lights. They further stated that the District Registrar of Cooperative Societies, Dharwad has cancelled the registration of this Society and, therefore, the Complainant is not the President. They have chosen one Shri Leharchand Tarachand Jain who is the Resident for the maintenance of these common installations.

The District Registrar of Cooperative Societies, Dharwad has cancelled the registration but has asked the parties concerned to take action as per provisions of Section 22. Section 22 of the Act reads as follows:

"Any number not less than three-fourths of the members of any society may determine that it shall be dissolved and thereupon it

*shall be dissolved forthwith, or at the time then agreed upon, and all necessary steps shall be taken for the disposal and settlement of the property of the society, its claims and liabilities, according to the rules of the said society applicable thereto, If any, and if there are no such rules, as the governing body shall find expedient, **provided that, in the event of any dispute arising, among the said governing body or the members of the society, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the Registered Office of the society is situated; and the Court shall make such order in the matter as it shall deemed requisite;***

Provided that no society shall be dissolved unless three-fourths of the members shall have expressed a wish for such dissolution by their votes delivered in person, or where proxies are allowed, by proxy, at a special general meeting convened for the purpose.

Provided further that whenever the State Government is a member of, or a contributor to, or otherwise interested in any society registered under this Act, such society shall not be dissolved without the consent of the State Government."

There are no references as to what action has been taken as per Section 22.

The Complainant, in the absence of action under Section 22, reiterates that till today he is the President of the Padmavathi Complex Owners Association and that as per Section 5 of the Agreement, it has to be terminated within 3 months of his request but the Respondents have failed to disconnect the installations and terminate the Agreement and the Indemnity Bond. Since the Residents are involved in misuse of facilities and electricity and since he is the President and the Agreement is in his name, he does not like to be a party to the illegal activities of the Owners in the complex. Hence, he has requested to disconnect the above 3 installations and to terminate the Agreement and the Indemnity Bond.

During the deposition on 13.3.2009, he stated that he has been making representation right from 18.11.2005 to the 3rd Respondent followed by another representation dated 7.12.2005. He has alleged that the Respondents

demanded bribe to concede his request and he had complained to the Deputy Registrar of Karnataka Lokayuktha also.

He also stated that he wrote several letters to all the concerned. On an advice from this Authority to explore the possibility of settlement between the parties by conciliation , he stated that such settlement lies between the President of the Padmavathi Complex Owners Associaton and its Members and it has nothing to do with the Respondents.

He submitted that his prayer for disconnection of power, termination of Agreement and Indemnity Bond be granted and the deposit refunded.

The 1st Respondent has dealt with a party i.e.. some of the Occupants of the Padmavathi Complex Owners Association. Though they are not directly a party to the complaint, the residents are likely to face difficulty without lights and drinking water in the Complex if the request of the Complainant is conceded. Therefore, it was decided to hear Sri Leharchand Tarachand Jain who is now looking after and maintaining these three common electrical connections. A notice dated 16.3.2009 was issued to him to appear before this Authority.

In response, Sri Leharchand Tarachand Jain appeared along with 3 more occupants of the Complex, namely, (1) Sri Shivalal H.Surana (2) Shri Amrit M.Jain (3) Shri Rajendra J.Jain on 30.3.2009. They produced a copy of the notice issued by Advocate, Shri Dilip.K.Khode dated 02.09.2005 signed by the Complainant also wherein it is mentioned that the Complainant has resigned from 3.10.1994 from the Association. They argued that when the Complainant himself has given a notice that he has resigned, he can not now request disconnection of these three installations, termination of Agreement and Indemnity Bond. They requested to dismiss the Complaint. They further requested for some more time for production of further documents and two weeks time was granted to them.

There were no further documents submitted by these occupants except again stating that the Complainant has resigned on 3.10.1994 and hence his request be dismissed and a letter dated 19.4.2009 signed by Shri B.R.Kothari and others was received with the similar request.

DISCUSSION AND ANALYSIS

On a perusal of the submissions made by both the parties and some of the occupants of the Padmavathi Complex and the order passed by the 1st Respondent, the following are the findings:

1. Strictly speaking, there is no dispute between the Respondents and the Complainant. But this case has arisen due to a dispute amongst the Members and the Governing Body of the Padmavathi Complex Owners Association, Hubli.
2. The Complainant claiming to be the President of this Association has been requesting the 3rd Respondent and others concerned right from 18.11.2005 to disconnect three common installations and to terminate the Agreement and the Indemnity Bond fearing unauthorized use of the electricity and non payment of maintenance charges towards these three installations meant for common usage like drinking water and passage lights. Being a signatory to the Agreement dated 18.12.1995, he is liable and responsible for maintenance of these three installations.
3. The 1st Respondent has erred in hearing the occupants of the Complex who are not the parties to the Agreement and carried away by the matters concerning hardship and inconvenience in case of disconnection of these three common electrical installations.
4. The main contention of the 2nd and 3rd Respondents is that the Complainant is not a President of the Padmavathi Complex Owners Association on account of cancellation of the registration of the said Association by the

District Registrar of Cooperative Societies, Dharwar. It is no doubt that the registration is cancelled directing the concerned to deal with the property and ownership of the Association as per Section 22 of the Karnataka Societies Registration Act, 1960. In the absence of any action as per Section 22 till today, the Complainant claims to be the President of the said Association. There is no evidence to prove that the Complainant is not a President of the Association in the absence of action under Section 22.

5. Some of the Occupants who appeared before this Authority along with Shri Leharchand Tarachand Jain who is now responsible for maintenance of these three installations deposed and stated that the Complainant is no more a President of this Association as he resigned on 03.10.1994 as per the notice dated 2.9.2005 through his Advocate addressed to the Vice President of the Association, District Registrar and Chief Secretary to Government of Karnataka and hence he cannot request the 3rd Respondent to disconnect these common installations. **If he has resigned from the Presidentship, how was he allowed to avail electricity supply to these three common installations signing the Agreement and Indemnity Bond etc. on 18.12.1995, after his alleged resignation on 03.10.1994. Till 2005 for about 10 years, the Complainant has acted as President. The dispute arose only during the year 2005 as per the records available. Therefore, the contention of the Occupants does not hold water.**

6. The latest position after the notice dated 02.09.2005 from the Complainant's advocate is that the registration of the Society is cancelled with directions to follow the provisions of Section 22 of the Karnataka Societies Registration Act 1960 about the ownership and assets of the Society. No action seems to have been taken yet under this Section by the Members of the Association. Till the dispute is settled under this Section, the Complainant has a right to demand action from 3rd Respondent as per the terms and conditions of the Agreement to cease his responsibilities and liabilities arising out of the Agreement.

7. Clause 5 of the Agreement signed by the Complainant as President of the Association reads thus:

“Termination of Agreement without prejudice to the rights and liabilities of the parties in respect to any matter antecedent to termination and subject to payment of the minimum charges for the unexpired period of the initial period of agreement either party to this agreement may terminate the agreement by giving three months, notice.”

As per this Clause, the 3rd Respondent is duty bound to act on the request from the Complainant within three months. But he has not done so. A certain time limit is felt necessary for the Occupants/Members of the Association to seek further legal remedy to take care of their hardship and inconvenience likely to be caused due to disconnection of these three installations.

8. The 1st Respondent also erred in not taking into consideration the liability and responsibility of the Complainant and carried away by the hardship and inconvenience to the Occupants and has taken shelter under some other Agreement between the developer and the owners which is not relevant here.

There is a delay of nearly 3 months in passing this Order as sufficient opportunity to both parties was extended and efforts were made to settle the case by conciliation and mediation. The conciliation was not possible.

Having regard to the facts and circumstances of the case, the following Order is passed.

ORDER

1. The impugned order of the 1st Respondent is hereby set aside.

2. The 3rd Respondent is directed to disconnect these three installations, namely, 11385A, 43947C and 43953C within 6 weeks from the date of receipt of this Order and further terminate the Agreement and Indemnity Bond, refund the Security Deposit and further stop sending monthly bills.

(S.D.UKKALI)
Ombudsman

To:

1. Shri D.Mangilal Jain, President, Padmavathi Complex Owners Association, Silvantar Galli, Hubli - 20
2. The Chairman, CGRF, HESCOM, Hubli
3. The EE(Ele), O & M Division, HESCOM, Hubli.
4. The AEE(Ele), O & M Sub Division, (Rural) HESCOM, Hubli.
5. The Managing Director, HESCOM, Hubli.
6. PS to Hon.Chairman/PS to Hon.Member(H)/PS to Hon.Member(S)
7. PS to Secretary
8. OCA
9. Chairpersons of all CGRF
10. Advisory Committee Members & Members of CGRF nominated by the Commission

