



**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/G/G-117/2011/115

Dated 26.09.2012

M/s.Karanja Industries Private Limited,
Sindabandagi Village,
Humnabad,

BIDAR District.

**(Represented by Sri M.G.Prabhakar -
Authorised Representative)**

.. Appellant

Vs

1. Asst.Executive Engineer,
O & M Sub-Division,
GESCOM
Humnabad

Bidar District

(Represented by Shri Ravindra Reddy, Advocate)

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 Regulation 21.2 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum, Gulbarga (hereinafter referred to as 2nd Respondent) vide case No 05/2010 and 06/2010 dated 03.06.2011 in respect of the Appellant's grievance relating to refusal of the 2nd Respondent to issue directions to the Assistant Executive Engineer, O & M Sub-Division, GESCOM, Humnabad, Bidar

District (hereinafter referred to as the 1st Respondent) to pay interest to the Appellant on account of the excess claim made by GESCOM in the past (as the 1st Respondent had not extended certain rebates to the Appellant by oversight) and extending such benefits after the Appellant filed a complaint before the 2nd Respondent for the period from 1999 to 2011 in respect of R.R No HKHT-4 and from 2002 to 2010 in respect of R.R No HKHT-5. Aggrieved by the 2nd Respondent's order, the Appellant has submitted his case as under:

2. The Appellant is a private company incorporated under the Companies Act 1956. The Appellant Company has availed power supply to its installations bearing R.R No HKHT-4 and R.R No HKHT-5. During the year 2009, the Appellant Company had engaged an external agency to analyse the energy cost. During this exercise, the external agency observed certain rebates not being extended by GESCOM to the Appellant Company like rebate on high voltage usage of power etc. Since the 1st Respondent did not respond to the claims, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, based on the joint reconciled statement filed by both parties, passed the impugned order. The impugned order, though allowed rebate as per the reconciled statements, has not issued any directions to the 1st Respondent to pay interest to the Appellant for the relevant period as per Clause 29.08(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence, the Authorised Representative of the Appellant prayed this Authority to issue directions to the Distribution Company to pay interest from the date such excess claims were made.

3. The 1st Respondent's comments were called vide letter No OMB/G-117/2011/10555 dated 15.07.2011 and the 1st respondent furnished his comments vide letter No GESCOM/HBD/AEE/AE(T)/12-13/214-15 dated 03.05.2012.

4. In his comments, the 1st Respondent submitted that both the Appellant and the 1st Respondent had filed a joint reconciled statement before the 2nd Respondent and, in the statement, the Licensee had agreed to allow the rebate on use of High Voltage Power, but the 2nd Respondent had declined to consider the request of the

Appellant for payment of interest from the periods when such excess claims had been made and, hence, the 1st Respondent prayed this Authority to confirm the order passed by the 2nd Respondent.

5. The case was taken up for hearing on 02.07.2012. On behalf of the Appellant, the Authorised Representative, Shri M.G Prabhakar appeared and put forth his arguments. On behalf of the 1st Respondent, the Assistant Executive Engineer (EI) O & M Sub-Division, Humnabad appeared and sought time to engage the services of a Legal Counsel. Time was granted and, subsequently, GESCOM appeared through its Advocates Shri Ravindra Reddy and Smt.Girija Patil.

6. Accepting the stand taken by the 1st Respondent to extend rebate on usage of High Voltage Power, the Authorised Representative of the Appellant submitted that the 2nd Respondent had failed to consider the claims of the Appellant for payment of interest from the dates when such excess claims had been made in the past under Regulation 29.08(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence, prayed this authority to set aside the impugned order of the 2nd Respondent and to direct GESCOM to pay interest to the Appellant from the dates when such excess claims had been made in the past.

7. The Advocate for the 1st Respondent appeared and sought time to argue the case. Time granted at the request of the Advocate and case was posted to 07.09.2012 for final hearing. On 07.09.2012, the Senior Advocate did not appear and, hence, this Authority advised the Junior Advocate, who appeared on behalf of the Senior Advocate, to file written arguments. The Advocate agreed to file written arguments on or before 14.9.2012.

8. The Advocate for the 1st Respondent submitted that the claims of the Appellant was not maintainable and the same was liable to be dismissed and the claims made in the petition was barred by limitation and the same was not permissible under the Regulations of the Electricity Supply Code. The Advocate further submitted that the erroneous bills as alleged and claimed by

the Petitioner, as per joint statement which was filed before the 2nd Respondent, was claimed from the year 2002 which is not permissible and such claims could be made only for a period of 6 months and, hence, interest claimed for more than 6 months was without any basis.

9. The Advocate for the 1st Respondent added that the 2nd Respondent had passed order on the basis of statement jointly filed by both parties, which is in the nature of reconciliation of the issue and, hence, the 2nd Respondent had passed order only in terms of joint statement and it is not an order and whatever terms had been agreed in the joint statement of the parties had been considered. The complainant, after agreeing for the said joint statement of the parties and the same had been agreed and that the Complainant after agreeing for the said joint statement and terms, and after receiving the benefits in terms of the joint statement, could not go back and question the same, which was not acceptable.

10. The Advocate for the 1st Respondent made further submissions that the Complainant who filed an appeal before this Authority is not maintainable, as there had been no claim of interest in the joint statement which had been signed only after agreeing to the terms of the statement, and now Complainant could not make fresh claim of interest, which is not permissible and the claims of the Complainant was quite contrary to the terms of the statement, hence, above complaint was liable to be dismissed.

11. Clarifying the judgement cited by the Authorised Representative of the Appellant, the Advocate for the 1st Respondent submitted that the judgement rendered by the Hon'ble Appellate Tribunal for Electricity, facts and circumstances of the said judgement were not applicable to the above case, for the reason that, in the judgement cited case reasons had been forth coming for the delay in claim, wherein in the above case no reasons were assigned for the claim pertaining to the year from 2002 and, moreover, the Electricity Supply Code of the Karnataka State clearly mentioned that in regard to erroneous bills only up to 6 months claims could be made, the said Regulation was applicable to either of the parties, hence, claim of

the Petitioner for payment of interest is unknown to law and the same was liable to be rejected. Hence, prayed this Authority to dismiss the claim with cost in the interest of justice.

12. Both parties were informed vide letter No.OMB/G/G-117/2011/902 dated 04.06.2012 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.

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

a) Whether the Appellant has, along with the rebate, claimed interest in his complaint filed before the 2nd Respondent?

b) Whether the 2nd Respondent is right in disallowing the interest claims of the Appellant?

c) Whether the 1st Respondent is liable to pay interest for the excess claim made in the past?

14. In order to answer the first question, we will have to refer to the joint reconciled statement filed by the parties before the 2nd Respondent and also issues raised by the Appellant in Form No.A.

15. From the appeal memo, it can be seen that the Appellant Company, on the basis of external agency's report which disclosed that GESCOM had not allowed certain benefits to the Appellant company, filed a complainant before the 2nd Respondent. The 1st Respondent conceded the claims of the Appellant Company before the 2nd Respondent and sought time to reconcile the figures and to determine the amount to be paid in the form of rebate. Subsequently, the parties filed a joint reconciled statement before the 2nd Respondent and, as per this statement, the 1st

Respondent was to pay an amount of Rs.3,42,467/- to the Appellant in respect of R.R.No HKHT-4 and Rs.39,718/- in respect of R.R. No HKHT-5. The 2nd Respondent passed the impugned order under the terms of the joint reconciled statement as far as rebate is considered. As regards interest, though nothing is stated in the joint reconciled statement, the 2nd Respondent has not allowed payment of interest to the Appellant in its order.

16. The Authorised Representative of the Appellant in his arguments submitted that, though the Appellant registered his claims for payment of interest in Form No. A, the 2nd Respondent had not dealt with this issue nor given any ruling in the impugned order.

17. Verification of Form No.A reveals that the Appellant had made a claim for payment of interest and the impugned order disclosed that the issue regarding payment of interest has been dealt with but no justification for disallowing interest is given. From the brief order of the 2nd Respondent, it is seen that the 2nd Respondent has passed order in terms of the joint reconciled statement filed by the parties and also gone beyond the joint reconciled statement and disallowed interest. The joint reconciled statement covered the period from which rebate to be extended and the total amount to be refunded etc. but not the interest issue. When the joint reconciled statement had not covered the issue raised by the Appellant in Form No. A, it was the duty of the 2nd Respondent to pose this issue to the 1st Respondent and elicit their stand and, afterwards, pass appropriate orders in conformity with law. It is shocking that the 2nd Respondent, without taking the opinion of the 1st Respondent whether it is willing to pay interest or not, on its own, has arbitrarily disallowed payment of interest. Disallowance of interest issue has not formed part of joint reconciled statement. The Chairperson and Members of the 2nd Respondent have to be non-partisan and impartial while dispensing justice to the parties and should not be seen partisan. Hence, the argument of the Appellant that his claim regarding payment of interest by the 1st Respondent is not appreciated by the 2nd Respondent and no order has been passed cannot be fully accepted but it can be said that issue of payment of interest has been summarily rejected by the 2nd

Respondent. While rejecting the claims of the Appellant for payment of interest, the 2nd Respondent has not given any reason, justification or explanation. It is just a one and half line order.

18. The Advocate for the 1st Respondent argued that, as per the joint reconciled statement filed before the 2nd Respondent, the Appellant made his claims from the year 1999 in respect of installation HKHT-4 and from 2002 in respect of installation HKHT-5 and, as per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, erroneous bills could be claimed by the Appellant for a period of 6 months and not more than that and, hence, interest claimed by the Appellant from that period is without any basis. This argument is hollow because the time-frame referred to by the Advocate for the 1st Respondent is applicable to the claims made by the Licensee against the Consumer and not vice-versa under Clause 29.08 (a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 1st Respondent has conceded the claims of the Appellant with regard to non-extending of rebate from the year 1999 in respect of installation HKHT-4 and from 2002 in respect of installation HKHT-5 and, hence, the amount collected tantamounts to excess claim by the 1st Respondent under Regulation 29.08(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

19. In the light of the above, we have to decide whether the Appellant is legally entitled to receive interest for the excess claims made by the 1st Respondent in the past.

20. It is seen from the joint reconciled statement filed by the parties before the 2nd Respondent that the 1st Respondent has conceded that it has made excess claims from 1999 to 2011 in respect of RR No.HKHT-4 and from 2002 to 2010 in relation to RR No.HKHT-5. In the light of this admission, the 1st Respondent is liable to pay interest from the period when such excess claims are made under Regulation 29.08(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In view of this, this Authority finds merit in the arguments of the Appellant that he is entitled to receive interest for the excess claims made by the 1st Respondent in the past. The period from which such excess claims are made are

available in the joint reconciled statement filed by the parties before the 2nd Respondent. Hence, the 1st Respondent's argument that the Appellant is bound by the joint reconciled statement filed by the parties before the 2nd Respondent cannot be accepted as there is no merit in such arguments. Hence, the following orders:

ORDER

21. For the foregoing reasons appeal is allowed in terms of the following:

22. The 1st Respondent to pay interest for the excess claims made for the periods mentioned in the joint reconciled statement filed by the parties before the 2nd Respondent at the rate allowed under KERC Regulations.



(B.R Jayaramaraje Urs)
Electricity ombudsman

1. M/s.Karanja Industries Private Limited, Akkamahadevi Colony, Bidar.
2. Assistant Executive Engineer, O & M Sub-Division, GESCOM, Humnabad, Bidar District.
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