

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-104/2011/402
Dated 07.03.2012

Between

Shri H.T.Revankar,
 C/o T.M.Baddi,
 Near S.B.I.,
 Keshwapur,
HUBLI

(Represented by Sri Tushar M.Baddi)

.. **Complainant**

Vs

1) Asst. Executive Engineer (E)
 City O & M Sub-Division-1
 HESCOM
HUBLI

2) The Consumer Grievance Redressal Forum (CGRF),
 HESCOM,
 Keshavapura, Shivaganga Layout,
 Bijapur Road,
HUBLI-25

.. **Respondents**

1. This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum (hereinafter referred to as the 2nd Respondent) vide No. UÁ@ Á/1ªEJ_s i-49, °ÁSi dated 18.06.2010 in respect of the Appellant's grievance relating to levy of Rs 1,36,377.15 as Power Factor Surcharge by AEE, CSD-1, HESCOM, Hubli (hereinafter referred to as the 1st Respondent) and orders of the 2nd Respondent to refund only Rs.15,851.47 and not the entire amount

of Rs.1,36,377.15. Aggrieved by the 2nd Respondent's impugned order, the Appellant has submitted his case as under:

2. The Appellant, Sri Harish T.Revankar, is an Electrical Consumer of HESCOM and electrical installation No H.T 187 stands in the name of the Appellant. This installation was serviced on 30.10.2006. Initially, 250 K.V.A power was sanctioned and later it was reduced to 165 K.V.A. Under Clause 22.02(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, if Power Factor of any installation is found to be less than 0.90 lag, the consumer shall have to take steps to install additional power factor apparatus to bring the power factor to not less than 0.90 lag within three months from the date of intimation. In case the consumer fails to bring down the power factor to the prescribed level within the prescribed time limits, the Licensee can levy Power Factor Surcharge.

3. In the present case, the Licensee has serviced the installation on 30.09.2006 and the Licensee has noticed power lag during 11/06, 12/06 and 01/07 and, without giving three months time to the Appellant to improve the power Factor, the 1st Respondent has collected the Surcharge in the subsequent monthly energy bill which is against to Clause 22.02 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Aggrieved by this decision, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent has held that levying of such Power Factor Surcharge was incorrect and that the 1st Respondent should refund Rs.15,851.47 surcharge collected for the period between 2/07 to 06/07 to the Appellant.

4. Before the 2nd Respondent, the 1st Respondent produced hurriedly prepared surcharge bills. In the bills, months had been shown whimsically and power lag shown between 1 to 4 months in one go and levying Surcharge every month. The 1st Respondent, before the 2nd Respondent, has not explained how he has reached surcharge notices to the Appellant. Actually, the alleged notices have not reached the Appellant and, hence, the 1st respondent could not have produced such notices before the 2nd Respondent. Notices issued earlier to 12/09 and notices issued during

2007, the 1st Respondent noticed power lag less than 0.90 and letter had been issued vide No. 5230 dated 22.03.2007 to the Appellant to improve the power factor. Since the Appellant failed to take any steps to improve the power factor and also the power lag had been less than 0.90, the 1st Respondent had levied Power Factor Surcharge from February 2007 to September 2008. Hence, levying of Power Factor Surcharge was justified. For the months of October 2008, November 2008, December 2008 and July 2009, no Power Factor Surcharge had been levied as there had been no power factor lag. From January 2009 to June 2009 and from August 2009 to November 2009, power factor Lag had been less than 0.90 and, hence, Power Factor Surcharge had been levied, which was in order. Further, he submitted that notices had been issued to the Appellant on the following dates when P.F lag had been found less than 0.90:

- 1) Letter No.5230 dated 22.03.2007
- 2) Letter No.1786 dated 22.05.2007
- 3) Letter No 2586 dated 19.07.2007
- 4) Letter No 5131 dated 13.12.2007
- 5) Letter No 120 dated 02.04.2008
- 6) Letter No 2450 dated 05.07.2008
- 7) Letter No 8524 dated 31.03.2009
- 8) Letter No 832 dated 01.05.2009
- 9) Letter No 1737 Dated 02.06.2009
- 10) Letter No 3895 Dated 17.08.2009
- 11) Letter No 4811 Dated 22.09.2009

8. In spite of 11 notices issued on various dates, the Appellant had not responded positively and, hence, levying of Power Factor Surcharge became inevitable.

9. The matter was taken up for hearing on 20.01.2012 and on behalf of the Appellant, his authorised Representative Shri Tushar.M.Baddi appeared and put forth his arguments and, for the 1st Respondent, Shri H.V Patrot, Asst Executive Engineer

(Ele) C.S.D-1, HESCOM appeared and put forth his arguments. Arguments of both parties got over on 15.02.2012.

10. The Authorised Representative of the Appellant argued that the 1st Respondent had not levied any Power Factor Surcharge for the first three months of service. However, from February 2007 to March 2009 (excepting October, November and December, 2008) power lag had been detected but the 1st Respondent without giving 3 months time to improve the power factor collected surcharge in the subsequent monthly energy bills. The details regarding months in which power lag was detected, amount levied and months in which the amount collected is given below:

Months in which power lag was detected	Amount levied	Month in which amount collected
February 2007	Rs.3,374/-	March 2007
March 2007	Rs.2,990/-	April 2007
April 2007	Rs.3,224/-	May 2007
May 2007	Rs.2,988/-	June 2007
June 2007	Rs.3,225/-	July 2007
July 2007	Rs.3,855/-	August 2007
August 2007	Rs 2968/-	September 2007
September 2007	Rs.3,245/-	October 2007
October 2007	Rs.3,965/-	November 2007
November 2007	Rs.5,851/-	December 2007
December 2007	Rs.6,245/-	January 2008
January 2008	Rs.7,373/-	February 2008
February 2008	Rs.7,732/-	March 2008
March 2008	Rs.8,196/-	April 2008
April 2008	Rs.8,349/-	May 2008
May 2008	Rs.9,235/-	June 2008
June 2008	Rs.10,860/-	July 2008
July 2008	Rs.11,208/-	August 2008
August 2008	Rs.7,425/-	September 2008
September 2008	Rs.644/-	October 2008
October 2008	No Power Lag	-----
November 2008	No Power Lag	-----
December 2008	No Power Lag	-----
January 2009	Rs.5,283/-	February 2009
February 2009	Rs.9,109/-	March 2009
March 2009	Rs.6,224/-	April 2009
April 2009	Rs.2,750/-	May 2009
TOTAL AMOUNT PAID	Rs.1,36,318/-	

11. Continuing his arguments, the Authorised Representative of the Appellant submitted that the 2nd Respondent had directed the 1st Respondent to refund only Rs.15,851.47 Power Factor Surcharge collected for the period between February 2007 to June 2007. For subsequent months, the 2nd Respondent had not passed any order. Further, the 1st Respondent had produced certain notices before the 2nd Respondent purported to have been issued to the consumer. But these notices had been issued 3 months after the power lag had been noticed. In the mean time, 1st Respondent had collected the Power Factor Surcharge. After collecting Surcharge, the 1st Respondent had issued notices to the Appellant to cover up its omission and the 2nd Respondent had wrongly accepted such notices which had been issued 3 months after the collection of Surcharge. The 1st Respondent was legally required to give 3 months time to the Consumer to improve the power factor after it had detected power lag. In the present case, the Consumer had not received any notices demanding Surcharge nor provided three months time to improve the power factor.

12. The Authorised Representative of the Appellant further submitted that the 1st Respondent had issued a notice dated 21.12.2009 to the Consumer to improve the power factor. In that notice, the 1st Respondent had given three months time to improve the power factor and further conveyed that Power Factor Surcharge would be levied if power factor was not improved. The 1st Respondent should have followed similar procedure in all the other cases. But the 1st Respondent had not issued notices in other cases. Besides, the 2nd Respondent had passed the impugned order without hearing the Appellant. Later, the Appellant filed an application before the 2nd Respondent for review of its Order and also to hear the Appellant afresh and to pass Orders. The 2nd Respondent rejected the request of the Appellant and passed the impugned orders. Hence, the Authorised Representative of the Appellant prayed this Authority to set aside the impugned orders and to direct the 1st Respondent to refund Power Factor Surcharges collected in an unjust manner.

13. The 1st Respondent argued that installation No H.T 187 had been serviced on 30.09.2006 and, as per Clause 22.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, Power Factor Surcharge was not leviable during the first three months of servicing and, hence, Power Factor Surcharge had not been levied. From February, 2007 to April, 2007, Power Factor Surcharge had been collected. HESCOM issued notices towards power factor lag in the following months:

March 2007
May 2007
July 2007
December 2007
April 2008
June 2008
March 2009
May 2009
June 2009
August 2009
September 2009

14. The 1st Respondent, in his arguments, admitted that no time frame had been set in the notices to improve the power factor.

15. Both parties were informed vide letter No.OMB/H/G-111/2011/105 dated 12.01.2012 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.

16. From the above rival contentions, the issue that emerges for our consideration is:

Whether the licensee can levy P.F Surcharge without giving 3 months time to the consumer to improve the power Factor?

17. In order to answer this question, we will have to refer to Clause 22.02(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka

which states that **“If during any monthly reading or periodical or other testing/rating by the licensee, the power factor of the installation is found to be less than 0.90 lag, the Consumer shall install additional power factor correction apparatus as may be necessary to bring the power factor to not less than 0.90 lag within three months from the date of intimation and inform the same, in writing, to the office of issue, failing which power factor surcharge shall be leviable as specified under Tariff Schedule from time to time, from the billing month following the date of expiry of the said three months, till the P.F is brought up to 0.90.”**

18. It is clear from the above that under Clause 22.02(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka that whenever Licensee detects power factor lag less than 0.90 in respect of any installation, the Consumer has to install additional power factor correction apparatus as may be necessary to bring the power Factor to not less than 0.90 lag within three months from the date of intimation, failing which, the Consumer will be liable to pay Power Factor Surcharge. Consumer will be liable to pay surcharges **“from the billing month following the date of expiry of the said three months, till the power factor is brought up to 0.90”**

19. In the light of the above, we have to examine whether the 1st Respondent has given three months time to the Appellant to improve the power factor whenever such power lag had been detected.

20. From the records made available to this Authority, it is seen that though the 1st Respondent noticed power lag less than the prescribed limits between November 2006 to Jan 2007, no Power Factor Surcharge is found to have been levied as per Clause 22.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which states **“Power factor surcharge shall not be leviable in a H.T installation for the first three billing months from the date of service.”**

21. Surcharge levied for other months is given below: From the details, it can be seen that the Licensee has detected power lag and collected Surcharge in the subsequent monthly energy bill. The 1st Respondent is found to have not followed the procedure laid down under Clause 22.02 (a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 1st Respondent has not given three months time to improve the power factor. The 1st Respondent is found to have not adhered to the time schedule prescribed under the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and found to have collected Surcharge in the subsequent monthly energy bill after power lag had been detected in an arbitrary and undemocratic manner. As per clause 22.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the 1st Respondent without even giving three months time to improve the power factor cannot collect surcharge as soon he detects power lag. In the present case, it is established beyond doubt that the 1st Respondent has failed to provide three months time to the Appellant improve the power factor lag. Such arbitrary levying and collection are liable to be set aside and have to be declared null and void. Surcharge collected in the following months is held contrary to Clause 22.04 (a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

Sl. No.	Month	Surcharge	Month of Collection of Surcharge
1	February 2007	Rs. 3,374.00	March 2007
2	March 2007	Rs. 2,990.00	April 2007
3	April 2007	Rs. 3,224.00	May 2007
4	May 2007	Rs. 2,988.00	June 2007
5	June 2007	Rs. 3,225.00	July 2007
6	July 2007	Rs. 3,855.00	August 2007
7	August 2007	Rs. 2,968.00	September 2007
8	September 2007	Rs. 3,245.00	October 2007
9	October 2007	Rs. 3,965.00	November 2007
10	November 2007	Rs. 5,851.00	December 2007
11	December 2007	Rs. 6,245.00	January 2008
12	January 2008	Rs. 7,373.00	February 2008
13	February 2008	Rs. 7,732.00	March 2008
14	March 2008	Rs. 8,196.00	April 2008
15	April 2008	Rs. 8,349.00	May 2008
16	May 2008	Rs. 9,235.00	June 2008

17	June 2008	Rs.10,860.00	July 2008
18	July 2008	Rs.11,208.00	August 2008
19	August 2008	Rs. 7,425.00	September 2008
20	September 2008	Rs. 644.00	October 2008
21	January 2009	Rs. 5,283.00	February 2009
22	February 2009	Rs. 9,109.00	March 2009
23	March 2009	Rs. 6,224.00	April 2009
24	April 2009	Rs. 2,750.00	May 2009
	TOTAL	Rs.1,36,318.00	
	Less: Amount disallowed by the 2 nd Respondent	Rs. 15,851.47	
	Balance to be refunded	Rs.1,20,466.53	

22. The Appellant has submitted in his arguments that he had not been given opportunity to putforth his grievances before the 2nd Respondent. The impugned orders confirms that the 2nd Respondent has passed orders without issuing any notice to the Appellant. Had the 2nd Respondent given opportunity, the Appellant would have submitted his grievance in a proper manner. It is also surprising that the 2nd Respondent has restricted its decision to only 5 months and disallowed Rs.15,851.47. The 2nd Respondent has not passed any order with regard to Power Factor Surcharge levied and collected by the 1st Respondent for the remaining disputed period. Why the 2nd Respondent has restricted its order to only 5 months when the Appellant had agitated that he had been levied Power Factor Surcharge for 24 months is inexplicable. Since the Appellant has raised this issue before this Authority and also from the 2nd Respondent's order it is found that no opportunity is given to the Appellant, the issue regarding levy of Power Factor Surcharge for the remaining 19 months is considered and orders passed on merit. Hence, the following order:

ORDER

23. For the foregoing reasons, the appeal is partly allowed in terms of the following:

24. The 1st Respondent to refund **Rs.1,20,466.53** in favour of the Appellant or adjust the said amount against the Appellant's future monthly energy bills.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Sri H.T.Revankar, C/o T.M.Baddi, Near S.B.I., Keshwapur, Hubli.
2. Assistant Executive Engineer, City O & M Sub-Division-1, HESCOM, 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
9. OCA

