

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

Present: B.R.Jayaramaraje Urs, IAS
Electricity Ombudsman
Case No.OMB/H/G-104/2011/10625
Dated 27.07.2011

Between

Shri M.M.Malagi,
Chairman,
Hubli Co-op Housing Society Ltd.,
Shantiniketan,
Bhairidevarakoppa,
HUBLI
(Represented by Sri Tushar M.Baddi)

.. **Complainant**

Vs

1) Asst. Executive Engineer (E)
West Sub-Division,
HESCOM
Udyamanagar,
HUBLI

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

.. **Respondents**

This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the orders passed by the 2nd Respondent Vide No. UÅ /C.Y.S-184 dated 22.12.2010 (hereinafter referred to as "Forum") in respect of the Appellant's grievance relating to raising of bill by the 1st Respondent for Rs.2,09,928/- towards short recording of 64494 units of power. The Forum declined to issue directions to HESCOM (Hubli Electricity Supply Company - herein after referred to as the 1st Respondent) to refund Rs.2,09,928/-. Being aggrieved by the Forum's order (the impugned order), the Appellant has submitted his case as under:

The Appellant is an electrical consumer and electric installation bearing R.R No M.P-9685 stands in the name of the Appellant. This installation is situated at Bhairidevarakoppa, Hubli. L.T Rating Sub-Division, at the request of the Appellant, conducted meter testing on 28th May 2005 and found that Meter Reader had recorded the units in five digits instead of six digits. The meter Reader, instead of recording 71660 units, had recorded 7166 units which resulted in short reading of 64494 units. HESCOM worked out the tariff for 64494 units and raised a supplemental bill for Rs.2,09,928/- on 22nd June 2005. HESCOM issued this bill for back period from 16.10.1999 to 28.5.2005.

Afterwards HESCOM neither contacted the Appellant nor recovered the dues. But suddenly on 24th October 2008, Appellant received a notice from HESCOM informing the Appellant that the dues Rs.2,09,928/- relating to installation No MP 9685 which stood in the name of Chairman, Hubli Co-operative Housing Society had been attached to installation No. HT 101 which stood in the name of Director, M/s. Ayesha Construction Co. Pvt. Ltd. There was no relation between these two entities and it was wrong on the part of HESCOM to attach installation No M.P 9685 to installation No H.T 101.

Further, HESCOM issued its first demand notice on 22nd June 2005 advising the Appellant to pay Rs.2,09,928/- against R.R No M.P 9685. Appellant did not make payment on account of financial difficulties. However, HESCOM issued one more Demand Notice on 24th October 2008 after a lapse of two and a half years. As per section 56(2) of the Electricity Act, 2003, **"No sum due from any consumer, under this section, shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied."** HESCOM, after 22nd June 2005, has not shown these dues in any of the bills issued in the name of the Appellant nor recovered dues within two years from the date when such sums became first due. According to HESCOM, they came to know of these dues for the first time on 22nd June 2005. This is evident from their letter addressed to the Appellant. It is clear from this letter that HESCOM had knowledge of these dues from 22nd June 2005. Even as per Court ruling, Distribution Licensee cannot claim such sums after a period of two years from the date when such sums became first due. In the present case, HESCOM has recovered Rs.2,09,928/- on 24th October 2008 after a lapse of two years which is against to the Electricity Act, 2003 and also various Court rulings. Hence, Appellant prays this authority to quash the impugned orders passed by

CGRF, Hubli vide No. UÁÁÁ/ CYS-184 dated 22nd December 2010 and to direct HESCOM to refund Rs.2,09,928/- to the Appellant.

The First Respondent furnished Para wise replies on 24th Feb 2011 to the points raised by the Appellant. He submitted that (a) Meter Testing Division, in its report vide No MRT1525 dated 28th May 2005, reported that though six digit meter was fitted to the installation, the Meter Reader had read only five digits, (b) this was conveyed to O & M Sub-Division and O & M Sub-Division checked the meter reading details with the ledger and found a difference of 64494 units between the meter reading and the figures shown in the ledger, (c) tariff on this differential units came to Rs.2,09,928/- and for this amount demand was raised against the Appellant, (d) the Appellant remitted an amount of Rs.16,000/- vide receipt No 05641 and sought 15 days time to clear the balance amount, (e) the Appellant failed to remit the balance amount within 15 days and, hence, power disconnection was effected to the installation, (f) as per Clause 4.09(v) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, arrears in any particular installation, which is under disconnection for non payment, shall be collected as arrears of any other installation except residential installation standing in the name of same consumer." Under this Clause, in order to recover the arrears relating to installation No MP 9685, liability was transferred to installation HT-101 and amount was recovered in the year 2008, (g) after clearing the arrears and, at the request of the Appellant, installation was dismantled vide work order No 423-775507/19452 dated 23rd October 2008, (h) Appellant was given a bill for Rs.2,09,928/- and the Appellant after paying Rs.16,000/- sought time to pay the balance amount within 15 days and, hence, there was a commitment on the part of the Appellant to pay the balance amount and (i) after rectifying the accounts, this amount was recovered from the Appellant and, hence, question of refund did not arise.

The matter was heard on 15th June 2011 and 23rd June 2011.

On behalf of the Appellant, his representative Shri Tushar Baddi and on behalf of Respondents, Asst Executive Engineer, O & M West Sub Division, HESCOM, Hubli appeared and put forth their respective arguments.

Appellant's Representative, reiterating the previous submissions made in the appeal memo, added that HESCOM issued a bill for Rs.2,09,928/- for back period from 16th October 1999 to 28th May 2005 on account of short recording of 64494 units. This was
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issued on 22nd June 2005. This notice signified that HESCOM had knowledge of these dues on 22nd June 2005. After issue of this letter, HESCOM had not shown the dues in the subsequent months' bills nor recovered the amount within two years. Only on 24th October 2008, after a lapse of more than two years, issued a second demand notice. As per section 56 (2) of the Electricity Act **"No sum due from any consumer, under this section shall be recoverable after the period of 2 years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied."**

Arguing further, the Representative submitted that CGRF, Hubli, in the impugned order, had taken into account the letter alleged to have been addressed by one Shri Jameel Ahmed Khaji to HESCOM having paid Rs.16,000/- and assuring to pay the balance amount within 15 days. Shri Jameel Ahmed Khaji was not known to the Appellant and, hence, purported letter was not valid in the eyes of law. Even if it was presumed that this letter was valid in the eyes of law, HESCOM, as per this letter when amount was not remitted within 15 days, should have taken steps to recover from the concerned Consumer. CGRF construed that this letter was issued by the consumer. In reality, consumer had only paid Rs.16,000/- and not issued any letter as construed by CGRF. Further, the Appellant paid Rs.29,649/- towards the energy charges and Rs.2,09,928/- towards back billing charges and totally paid Rs.2,39,577/- on 24th October, 2008.

Further the Representative argued that HESCOM had raised demand for Rs.2,09,928/- on account of wrong meter reading by Lineman. As per the code, only Meter Reader had to read the meter and not the Lineman. It was the fault of HESCOM to have entrusted the meter reading job to the lowest level functionary. After the Forum's order, Chief Engineer HESCOM had issued a letter dated 1st of January 2011 to the Superintending Engineer to find out the Meter Reader who was entrusted with the responsibility, but so far SE had not replied.

Asst Executive Engineer, O & M Sub-Division (West), HESCOM, Hubli arguing for the Respondents, submitted that L.T Rating Sub-Division when they visited the installation of the Appellant in connection with the replacement of burnt meter on 28th May 2005 took a latest meter reading, which read 071660. This was conveyed to the O & M Sub-Division and O & M Sub-Division verified the meter reading details with the ledger and found a difference of 64494 units between the meter reading details and the figures in the ledger. HESCOM

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found out that this difference was due to wrong reading of meter by the Meter Reader. As per Clause 29.04 of KERC (ES&D) Code 2000-01, HESCOM issued a supplementary Bill to the Appellant on 22nd June 2005 for Rs.2,09,928/- towards short recorded units. Consumer had not disputed this supplemental Bill and HESCOM presumed that the Appellant had no objection for the supplemental Bill.

Further, the Asst.Executive Engineer held that from the year 2004, consumers were issued with electronically-generated bills and under this system Meter Reader, after reading the meter, uploaded the stored data through the handle machine to the system which could be down loaded any time. Whenever short claims were made, the Utility issued notice along with the bill calling for objection from the concerned consumer. If objections were not received, final bill would be issued against the consumer to make payments within 30 days. In the case of the Appellant, a letter was issued giving 30 days time to make payments on 22nd June 2005 .The Appellant did not pay the short claims within 30 days nor replied to this letter till November 2005. Electrician of the Appellant approached HESCOM on 19th November 2005 and remitted Rs.16,000/ and for the balance amount, he sought 15 days time. Rs.16,000/- was paid towards the short claims of Rs.2,09,928/-.

As on November 2005, there was an opening balance of Rs.1825/- in the account of the Appellant. The short claims were shown from December 2005 to July 2006 in the regular bill. From August 2006, the dues were not shown in the bill pertaining to the Appellant on account of disconnection of supplies. The Appellant, on 24th September 2008, approached HESCOM for reconnection giving a cheque for Rs.1,09,928/- bearing No 037013580025003 dated 22nd September 2008. In that letter, the Appellant conveyed that he would file an appeal before CGRF, Hubli after making full payment to the Superintending Engineer. On 1st October 2008, a letter was received from Section Officer, Navanagar, Hubli recommending for reconnection. On receipt of this report, the Asst. Executive Engineer informed the Appellant orally regarding the amount to be paid for reconnection including up to date Fixed Charges. At this, the Appellant expressed that the amount involved was huge and it was difficult for him to pay such huge sums and, hence, his installation could be dismantled. Since HESCOM owed Rs.63,810/- to the Appellant, he requested HESCOM on 15th April 2008 to adjust the sum against installation bearing RR No. MP 9685. Finally on 24th October 2008, the Appellant paid the entire short claim and also regular bills up to July 2006. Account in respect of installation No M.P 9685 was closed. Hence, there was no outstanding against RR No. MP 9685.

The Asst. Executive Engineer further submitted that the Appellant's stand that installation No HT 101 was not standing in his name was unacceptable because in the power sanction application the Appellant had attested his signature and even power was sanctioned in his name. In this regard, relevant documents were furnished before the Ombudsman. The Appellant's stand that Shri Jameel Ahmed Khaji, who had paid Rs.16,000/- towards short claim, was not authorised nor related to him was also incorrect. As per the knowledge of HESCOM, Shri Jameel Ahmed Khaji was an Electrician working in the establishment of the Appellant. He was attending to electrical work of the Appellant.

Hence, HESCOM had not defaulted on showing the amount due in the bills relating to the Appellant for more than 2 years. There was no two-year gap. As per records, HESCOM had shown the dues in the bill up to July 2006 and for the subsequent period.

Both parties were informed vide letter No.OMB/H/G-104/2011/10209/ dated 20.05.2011 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.

Having heard the arguments of the Representative of the Appellant and the Respondents and having regard to the contentions urged by the parties, the issue that come up for our determination is:

Whether HESCOM has shown the arrears in the bills continuously for two years from the date when such sums became first due under section 56(2) of the Electricity Act, 2003? and whether recovery of Rs.2,09,928/- is justified?

It is observed from the arguments of the parties that the Meter Testing division had conducted meter testing on 28th May 2005 and found that there had been a short recording of 64494 units of power with regard to installation RR No. MP 9685. Subsequently, on 22nd June 2005, HESCOM issued a bill for Rs. 2,09,928/- for back period from 16th October 1999 to 28th May 2005 advising the Appellant to pay this amount within 30 days. According to HESCOM, the Appellant approached the Utility and paid Rs.16,000/- on 19th November 2005 and further sought time to pay the balance amount within 15 days. Short claims were shown in the bills from December 2005 to July 2006. The Asst. Executive Engineer who represented HESCOM admitted that from the verification of Ledger Report concerning the Appellant,

under the column "Meter Reading" entries "00" appeared from July 2006 onwards and entries "00" indicated that installation had been under disconnection and reading not taken from the meter. From July 2006 onwards, there was no correspondence between the Appellant and HESCOM and bills were not issued since the installation was under disconnection. He argued that, after disconnecting the installation bearing No M.P 9685, the liabilities of this installation was transferred to another installation which stood in the name of the Appellant which bore RR No HT 101. However, this is disputed by the Appellant.

Even after attaching installation No MP 9685 to HT 101 which is alleged to be standing in the name of the Appellant, we have to see whether HESCOM has shown the dues relating to R.R No MP 9685 in the bills relating to HT 101 continuously for a period of 2 years from the date when such sums became due? We will have to answer this question in the negative because HESCOM, by its own admission, has not made any correspondence with the Appellant from July 2006 till the Appellant approached HESCOM for reconnection on 24th September 2008. HESCOM failed to furnish any evidence that arrears of Rs.2,09,928/- relating to installation bearing RR No. MP 9685 is shown in the bills relating to HT 101 after July 2006 continuously for 2 years. There is a gap of more than 2 years between the first bill and the second bill. The first bill showing the dues is found to have been issued on 22nd June 2005 and subsequently HESCOM is found to have showed the dues in the bills up to July 2006 and, for subsequent period, HESCOM appears to have not shown the arrears in the bills bearing installation No. H.T 101. From the ledger, it is clear that there was no correspondence after July 2006 and till the Appellant approached HESCOM for reconnection on 24th September 2008. No demand is found to have been issued by HESCOM after July 2006. Finally, the Appellant seems to have paid the dues on 24th September 2008 on his own accord and got reconnection. The Appellant appears to have made the payments under protest and hinted that such recoveries would be challenged before the CGRF, Hubli.

From the above discussion, it is evident that HESCOM has failed to show the arrears of Rs.2,09,928/- in the bills starting from July 2006 up to September 2008. Hence, recovery of short claims after a period of 2 years from the date of knowledge of such dues pertaining to RR No. MP 9685 is unacceptable and it runs contrary to Section 56(2) of the Electricity Act, 2003. Hence, HESCOM is liable to refund Rs.2,09,928/- to the Appellant.

In the backdrop of the above, this authority proceeds to pass the following orders.

ORDER

For the reasons stated above the impugned orders of CGRF, Hubli vide No UÅÄ Å/CYS-184 passed on 22.12.2010 is set aside and, in the result, **appeal succeeds**. HESCOM is hereby directed to refund the amount of Rs.2,09,928/- to the Appellant within 30 days and submit compliance.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Sri M.M.Malagi, Chairman, Hubli Co-op Housing Society Ltd., Shantiniketan, Bhairidevarakoppa, Hubli.
2. Assistant Executive Engineer, West Sub-Division, HESCOM, Udyamanagar, 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