

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-114/2011/11322
Dated 01.12.2011

BETWEEN

Sri Ashok S.Habib,
 C/o T.M.Baddi,
 Near S.B.I.,
 Keshavapura,

HUBLI

(Represented by Sri Tushar M.Baddi,
 Authorised Representative)

.. Appellant**Vs**

1. Assistant Executive Engineer,
 O&M Sub Division-2
 HESCOM,
HUBLI

2. Consumer Grievances Redressal Forum (C.G.R.F)
 HESCOM
 Keshavapura, Shivaganga Layout,
 Bijapur Road,
HUBLI-25

.. Respondents

This is an appeal under the provisions of K.E.R.C (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum (hereinafter referred to as the 2nd Respondent) vide No. UÁÁÁ/1ªÉJ_i-1 dated 8th April 2011 in respect of the

Appellant's grievance relating to delay in refunding Deposit Amount by the 1st Respondent in spite of furnishing original receipt.

The 2nd Respondent in the impugned order directed HESCOM (Hubli Electricity Supply Company - hereinafter referred to as the 1st Respondent) to pay an amount of Rs.300/- at the rate of Rs.50/- per day to the Appellant. Being aggrieved by the 2nd Respondent's order (the impugned order), the Appellant has submitted his case as under:

The Appellant applied for 5 kW temporary power supply for a period of seven days for the purpose of conducting mass marriage in Hubli. The Appellant paid Advance Consumption charges of Rs.2800/- and Metre Security Deposit of Rs.3920/- on 17th December 2008 to the 1st Respondent. The electric installation was installed on 17th December, 2008 and assigned R.R. No T.L 2029. After completion of the event, the installation was disconnected on 23rd December, 2008. Later, on 26th December, 2008, the Appellant applied for refund of (a) Advance Consumption Charges (b) Meter Security Deposit with the 1st Respondent. The 1st Respondent on this refund application called for Completion Report from the Section Office. The Appellant furnished (a) Refund Application (in duplicate) (b) Completion Report (c) Original Receipt for having paid the advances to the 1st Respondent through the Section Office .

As the Appellant did not hear anything from the 1st Respondent, he wrote a letter to the Executive Engineer on 10th March 2010 and, on this letter, the Executive Engineer called for a report from the 1st Respondent. In response to this, the 1st Respondent in his letter vide No.287-88 dated 5th April 2010 addressed to the Executive Engineer confirmed having sent the refund proposals on 23rd May 2009 in respect of installation No T.L 2029 for approval. The Executive Engineer, on this letter, wrote to the 1st Respondent on 29th September, 2010 saying that he had not received any proposals as stated in the said letter and advising him to send fresh proposals. Since the Asst. Executive Engineer conveyed to the Appellant that HESCOM had misplaced the original receipts and other documents, and at the instance of HESCOM, the Appellant furnished Indemnity Bond on 4th October 2010.

The 1st Respondent transmitted the Indemnity Bond to the Executive Engineer on 5th October, 2010. This proposal was considered and finally amount was refunded to the Appellant on 10th December, 2010. Aggrieved by this inordinate delay in refunding the deposit amount, the Appellant approached the 2nd Respondent claiming amount against HESCOM as per KERC (Licensees' Standards of Performance) Regulations, 2004. The 2nd Respondent in its order instead of taking into account about 20 months' delay in refund of Deposit amount considered only six days and awarded an amount of Rs.300/- which is against to KERC (Licensees' Standards of Performance) Regulations, 2004 and, hence, he filed this appeal claiming an amount of Rs.30,000/- from the HESCOM for causing about 20 months delay in refund of deposit.

The 1st Respondent's comments were called vide letter dated 27th May, 2011. The 1st Respondent furnished his comments on 6th June, 2011. In his comments, he confirmed having supplied power to the Appellant on 17th December 2008 for a period of one week and also having received Completion Report from the Section office vide letter No HBL/SO2/F&R/486 on 23rd February, 2009 but denied Appellant having filed Refund letter on 11th March, 2009 and further observed that there were no entries in the Inward Register for having delivered the refund letter by the Appellant and this was confirmed by the statements of the Senior Assistant and the Assistant working in the office. Statements explained that the Appellant had not enclosed the original receipt.

Further, the 1st Respondent denied having misplaced the Refund letter and denied having issued any communication in this behalf to Shri Tushar Baddi, Authorised Representative of the Appellant and pointed out that the Appellant might have come to know of the loss of file through a letter issued by HESCOM to one Narayan Diwate and further the Appellant, instead of furnishing the original receipt, had furnished only Indemnity Bond executed on Rs.100/- stamp paper. In spite of this lacuna in the Refund Application, entries had been made vide No.HBL/CSDII/AEE/AAO/SA/6854 in the Inward Register and in the Refund Bill

Register on 5th October, 2010 and despatched proposals to the Executive Engineer on the same day.

The 1st Respondent brushed aside the argument of the Appellant that the file had been misplaced after the Assistant Accounts Officer had assumed charge and termed this as a figment of imagination of Shri Tushar Baddi and maintained that the refund application had been sent to the Office of the Executive Engineer on 5th October 2010.

The 1st Respondent added that the Appellant failed to produce any Refund Application dated 11.3.2009 before the 2nd Respondent in spite of granting sufficient time and expressed surprise as to how the Appellant could produce such a letter before this Authority when he had failed to produce any such letter before the 2nd Respondent. He reiterated that the Appellant had not made any mention about furnishing of refund letter dated 11th March, 2009 nor made any oral submission to this effect before the 2nd Respondent and termed the Appellant's assertions that the 2nd Respondent had not given him sufficient time to produce Refund Letter as an imagination of the Appellant and could not be accepted and, hence, prayed for the dismissal of the appeal.

The matter was taken up for hearing on 15th November, 2011. On behalf of the Appellant, his Authorised Representative, Shri Tushar Baddi appeared and argued the case. On behalf of 1st Respondent, the Assistant Executive Engineer, C.S.D- II, HESCOM, Hubli appeared and put forth his arguments.

The Authorised Representative of the Appellant argued that the Appellant, after having availed temporary supply of power for a period of one week (between 17th December 2008 to 23rd December 2008), claimed refund of Advance Consumption Charges and Meter Security Deposit from the 1st Respondent orally on 26th December, 2008. The 1st Respondent owed an amount of Rs.2575/- to the Appellant by way of refund. The 1st Respondent called for Completion Report from the Section Office on 26th December, 2008. In order to hasten the process, the Appellant himself approached the Section Office and obtained Completion Report on

23rd February 2009 and submitted Refund Application in duplicate along with the original receipts & Completion Report directly to the 1st Respondent on 11th March, 2009. Till 5th April, 2010, the Appellant did not hear anything from the 1st Respondent nor received the refund. Agitated over non-refunding of the deposit amount, the Appellant again gave a letter to the Executive Engineer, Hubli Division on 10th March, 2010. The Executive Engineer sent a reminder to the 1st Respondent. In response to this, the 1st Respondent submitted a report dated 5th, April 2010 saying that he had already sent the refund application on 23rd May, 2009 vide his letter no 287-88. Even though letter had been sent by the 1st Respondent, the Executive Engineer pointed out that he had not received any Refund Application on the purported date and had, hence, directed the 1st Respondent to submit proposals afresh on 29th September, 2010. As per the direction of the Executive Engineer, the 1st Respondent collected fresh Refund Application from the Appellant and forwarded it to the Executive Engineer on 5th October, 2010. This Refund Application dated 4th October, 2010 neither inwards in the Inward Register nor acknowledged. Similarly, the earlier Refund Application dated 11th March, 2009 had not been inwards in the Inward Register but the Appellant had obtained receipt for delivering the Refund Application on 11th March, 2009.

The Authorised Representative of the Appellant added that the Appellant had furnished all the documents in original on 11th March, 2009 and, since HESCOM informed that Receipts and other documents had been misplaced, the Appellant again, on the request of HESCOM, furnished Indemnity Bond on 4th October, 2010. This Indemnity Bond had been forwarded to the Executive Engineer on 5th October, 2010. On the basis of Indemnity Bond, the Executive Engineer issued a cheque for Rs 2575/- on 10th December, 2010. Since there had been a delay of 20 months, the Appellant filed a Complaint before the 2nd Respondent on 3rd February, 2011. The 2nd Respondent, in its order, considered the second Refund Application filed by the Appellant dated 4th October, 2010 and awarded HESCOM an amount of Rs.300/- to be paid to the Appellant as per KERC (Licensees' Standards of Performance) Regulations-2004, holding that there was only six days delay from 4th October, 2010

to 10th December, 2010 (Time limit for rendering services – i.e. within 60 days after receipt of request).

The Authorised Representative of the Appellant submitted that the Appellant had sought time from the 2nd Respondent to produce the acknowledgment but the 2nd Respondent had passed orders overlooking the Appellant's request for grant of time which amounted to denying of natural justice. The Appellant maintained that the 2nd Respondent ought to have awarded HESCOM Rs.30,000/- for causing 20 months delay in refund of deposit amount (from 11th March, 2009 to 10th December 2010) and, hence, prayed the Appellate Authority to direct the 1st Respondent to pay an amount of Rs.30,000/- for failing to achieve the Standards of Performance as per KERC (Licensees' Standards of Performance) Regulations, 2004.

The 1st Respondent argued that R.R No T.L 2029 had been installed in favour of the Appellant on 17th December, 2008. The Appellant had applied for temporary power supply on 17th December, 2008 and had paid the Advance Consumption Charges & Meter Security Deposit of Rs.2800/- and Rs.3920/- respectively. Power had been sanctioned on 17th December, 2008 and, after a week, the installation had been dismantled on 23rd December, 2008. Consumption Charges had come to Rs.4145/- and, after deducting Advance Consumption Charges of Rs.2800/- and Meter Security Deposits of Rs.3920/-, the balance refundable came to Rs.2575/-.

He further submitted that the Appellant's contention that he had made oral request for refund of deposit amount on 26th December, 2008 could not be accepted because he had not made any written application nor furnished the original receipt on 26th December, 2008. Similarly, there was no record to show that the 1st Respondent had received any oral request from the Appellant for refund of deposit nor the 1st Respondent had written to the Junior Engineer for sending Completion Report as claimed by the Appellant.

The 1st Respondent added that the Appellant's claim that he had given application on 11th March, 2009 and HESCOM had issued acknowledgment were subject to verification. The Appellant so far had not furnished any acknowledgment

to HESCOM for verification. The Appellant's claim that he had given letter to the Executive Engineer on 10th March, 2010 was not true. However, he admitted that he had written to the Executive Engineer on 5th April, 2010 that he had sent the refund application on 23rd May, 2009, though no entries were found in the Outward Register for having despatched the Refund Application. Finally, the Executive Engineer, approved for refund of deposit amount and, further, this required verification by the Account's officer, Internal Audit and, after the verification, the Accounts Officer forwarded the receipts with his certification to the Corporate Office on 21st October, 2010 for release of funds. After Corporate Office had released the funds, the Executive Engineer refunded the deposit amount on 10th December, 2010. The Executive Engineer recognised 4th October, 2010 as the date of filing Refund Application and not recognised 11th March 2009 as the date of filing Refund Application in the absence of proof.

Further, the 1st Respondent contended that the Appellant had given a refund letter on 11th March, 2009 and this had been put up to the Senior Assistant, Shri S.B.Madival and the Senior Assistant asked the consumer to furnish the original receipts along with the Refund Application Form so as to forward it to the Divisional Office and, hence, this could be construed that the complete proposal had been submitted by the Appellant only on 18th May, 2009 and such proposals had been forwarded to Divisional Office on 23rd May, 2009 by the 1st Respondent. This fact had been admitted by the Appellant during the course of hearing before this Authority.

Concluding his argument, the 1st Respondent submitted that the 1st Respondent sought Indemnity Bond from the consumer as per the advice of the Executive Engineer on 26th March, 2010 and the 1st Respondent obtained Indemnity Bond from the Appellant and forwarded it to the Divisional Office on 5th October, 2010. The Divisional Office, after receipt of Indemnity Bond, issued a cheque for Rs.2575/-. 60 days time limit is stipulated for refund of Deposit amount. As per these norms, the Divisional Office should have issued cheque on or before 4th December, 2010 but issued cheque on 10th December, 2010 causing a delay of 6

days and this delay had been allowed by the 2nd Respondent in its impugned order and, hence, prayed to dismiss the appeal.

Both parties were informed vide letter No.OMB/H/G-114/2011/10659 dated 28.07.2011 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.

From the contentions made above, the issues that come up for our consideration are:

- 1) Whether the 2nd Respondent is right in holding that the Appellant has failed to establish the exact date of filing Refund Application to HESCOM?
- 2) Whether the 2nd Respondent is right in holding that there was a delay of only six days on the part of HESCOM in refund of deposit and hence awarding an amount of Rs 300/- as per KERC (Licensees' Standards of Performance) Regulations, 2004?

The Appellant has claimed that he sought refund orally on 26th December, 2008 and the 1st Respondent sought Completion Report from the concerned Section Officer and the Section Officer had sent the Completion Report on 23rd, February, 2009 and further he claimed that he filed Refund Application enclosing the Completion Report issued by the Section Officer and original receipts on 11th, March, 2009 but still he did not receive refund till 10th December, 2010 and, hence, prayed for directions to HESCOM to pay an amount of Rs.30,000/- for delay in refund of deposits from 11th March, 2009 to 10th December 2010 as per KERC (Licensees' Standards of Performance) Regulations, 2004.

By the admission of the Appellant, it becomes clear that he had sought refund orally on 26th December 2008. Reliance cannot be placed on oral submission. However, he is found to have filed Refund Application with the 1st Respondent on 11th March 2009. Again, he is found to have given a letter to the Executive

Engineer, Hubli on 10th March 2010 seeking refund and, based on this, the Executive Engineer wrote to the 1st Respondent and the 1st Respondent, in turn, submitted to the Executive Engineer on 5th April 2010 that he had sent the Refund Application on 23rd May, 2009. Though there is a documentary evidence (Letter) to show that the 1st Respondent had sent the refund application on 23rd May 2009, the Executive Engineer pointed out that he had not received the Refund Application on the said date and, again he sought one more report from the 1st Respondent on 29th September, 2010. The Appellant has produced proof for having delivered the Refund Application to the office of the 1st Respondent on 11th March, 2009. The Refund Application bears the seal of the office of the Asst Executive Engineer, O & M Sub Division, No.2, Hubli, date and Inward Number. However, this date cannot be taken as the date of filing Refund Application because the required information had not been fully furnished on that date and it is seen that the 1st Respondent had sought some more information from the Appellant and after receipt of application on 11th March, 2009 and, after obtaining all the information, the 1st Respondent is found to have sent the Refund Application to the Executive Engineer on 23rd May 2009. This date has to be taken as the date of filing refund application because the 1st Respondent confirms in his subsequent letter addressed to the Executive Engineer that he had sent the Refund Application on 23rd May 2009 for approval.

Though the 1st Respondent clarified that he had sent the refund application to the Executive Engineer in complete form on 23rd May, 2009, the Executive Engineer denied having received the Refund Application. Hence, the Executive Engineer called for fresh proposals from the 1st Respondent and, this time, after having lost the original proposal, sought for Indemnity Bond from the Appellant to the effect that the Appellant had not received the refund amount and that he would undertake to return such amounts, if found that such amounts already paid.

The 1st Respondent admits in his arguments that his office had received the Refund Application on 11th March 2009 and, since the application had been incomplete, the application though acknowledged, had not been inwarded and, after

obtaining the required information from the Appellant, the Refund Application had been sent to the Executive Engineer on 23rd May, 2009.

This confirms that the Appellant had given his Refund Application on 11th March 2009 and the 1st respondent, after obtaining the required information from the Appellant, sent the Refund Application in complete form on 23rd May 2009 to the Executive Engineer. Subsequently where the proposals are lost is not the concern of the Appellant. Further, the correspondence between the 1st respondent and the Executive Engineer confirms HESCOM having misplaced the original proposal, and to rescue themselves from the awkward situation, again advised the Appellant to furnish Indemnity Bond. Finally, based on the Indemnity Bond, HESCOM seems to have refunded the deposit amount on 10th December, 2010 after a lapse of 18 months and 17 days. As per KERC (Licensees' Standards of Performance) Regulations, 2004, the maximum time limit for refund of deposit is 60 days and if we make 60 days allowance and calculate the delay, it comes to 565 days and at Rs.50/- per day the amount comes to Rs 28,250/-.

The above aspect seems to have been completely overlooked by the 2nd Respondent while passing orders and the 2nd Respondent is found to have taken the date of furnishing Indemnity Bond by the Appellant i.e. 4.10.2010 as the date of filing Refund Application on the ground that this had been established with documentary proof by the 1st respondent. The 2nd respondent has not accepted the written version of the 1st respondent as a valid proof of having received Refund application from the Appellant on 11.3.2009 and forwarding the proposal to the Executive Engineer for approval dated 23rd May 2009. The 2nd respondent appears to have overlooked this valid proof and came to the conclusion that the date of filing Indemnity Bond as the date of filing Refund Application.

From the arguments, it is observed that the HESCOM has misplaced the Refund Application sent by the 1st respondent on 23.5.2009 – and after misplacing the Refund application, the HESCOM is found to have sought Indemnity Bond as face-saving compromise and based only on Indemnity Bond found to have refunded

the deposit amount. Since the original receipts had been furnished to HESCOM earlier, the Appellant could not make available the originals again.

In the present case, the Appellant is made to run from pillar to post for getting his refund amount. HESCOM has caused an inordinate delay of 565 days in refund of deposit amount to the Appellant.

In the circumstances discussed above, it is established beyond doubt that the 1st Respondent has failed to meet the standards of performance specified in Schedule I of the KERC (Licensee's Standards of Performance) Regulations, 2004 in the present case and, hence, the 1st Respondent is considered liable to pay an amount of Rs.28,250/- to the Appellant for failing to achieve the standards of performance by delaying refund of deposit amount to the Appellant for 565 days (Month-wise details are given below).

Date of claiming by the Appellant	23.5.2009	
Allowing Statutory time of 2 months	23.7.2009	
Count down	24.7.2009	08
June 2009		30
July 2009		31
Aug 2009		31
Sep 2009		30
Oct 2009		31
Nov 2009		30
Dec 2009		31
Jan 2010		31
Feb 2010		28
Mar 2010		31
Apr 2010		30
May 2010		31
Jun 2010		30
July 2010		31
Aug 2010		31
Sep 2010		30
Oct 2010		31
Nov 2010		30
Dec 10 (Payment made on 10.12.2009)		09

		565 days

565 days x Rs.50 per day = Rs.28250/-

Hence the following order.

ORDER

For the reasons discussed above, the impugned orders of the 2nd Respondent is modified in terms of amount to be paid to the Appellant from Rs.300/- to Rs.28,250/-. The 1st Respondent is hereby directed to adjust Rs.28,250/- against the existing, current and/or future bills for supply of electricity in respect of the Appellant.

In the result, the appeal partly succeeds.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Sri Ashok S.Habib, C/o T.M.Baddi, Near S.B.I., Keshavapura, Hubli.
2. Assistant Executive Engineer, O & M Sub-Division-2, 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

