

**Before the Electricity Ombudsman**  
**9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G.Road,**  
**Bangalore**  
**Present: B.R.Jayaramaraje Urs, IAS**  
**Electricity Ombudsman**  
**Case No.OMB/H/G-107/2011/10686**  
**Dated 04.08.2011**

**Between**

Shri S.Y.Pujari,  
M/s.Gokula Oxygen Industries,  
No.409/b, No.274/1,  
Tarihala Road,  
**HUBLI**  
(Represented by Shri Tushar M.Baddi)

.. **Complainant**

**Vs**

1. Asst. Executive Engineer,  
O & M West Sub-Division,  
HESCOM,  
Udyamanagar,  
**HUBLI.**
2. Consumer Grievance Redressal Forum (CGRF)  
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 & Ombudsman) Regulations,2004 against the orders passed by the 2<sup>nd</sup> Respondent Vide No. UÁÄÄÄ/CYS-186 ÇÉÄÄÄÄ 28.12.2010 (hereinafter referred to as "Forum") in respect of the Appellant's grievance relating to levying of Power Factor Surcharge by HESCOM without issuing mandatory 3 months notice. The Forum granted partial relief and declined to issue direction to HESCOM (Hubli Electricity Supply Company - herein after referred to as the 1<sup>st</sup> Respondent) to grant full relief against levying Power Factor Surcharge. Being aggrieved by the Forum's order (the impugned order) the appellant has submitted his case as under:

The Appellant is a consumer of electricity. Installation bearing R.R.No. HT 185 is located at Tarihal, Hubli and stands in the name of the Appellant. This installation is serviced by Asst. Executive Engineer, West Sub-Division, Hubli (HESCOM). This installation with a

sanctioned capacity of 250 K.V.A was serviced on 30<sup>th</sup> August, 2006. Power is availed for running oxygen plant.

Asst. Executive Engineer West Sub-Division Hubli (HESCOM) levied Rs.24,725/-Power Factor Surcharge for the months commencing from December 2006 up to December 2009 without giving three months' mandatory notice to the Appellant to improve the Power Factor. In the present case, the 1<sup>st</sup> Respondent levied Power Factor Surcharge for some months and not levied for some months. As per clause 22.02 (a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, HESCOM has to give 3 months' notice to the Consumer to correct the power lag and if Consumer fails to correct the power lag within 3 months, then the Licensee can levy Power Factor Surcharge. The Forum which has passed the impugned order has erroneously come to the conclusion that the installation in question which is fitted with Electronic Trivector meter shows the Power Factor during monthly meter reading and this reading is reflected in the monthly bill. Power lag status is also reflected in the Trivector Meter on daily basis and hence single notice is sufficient to levy Power Factor Surcharge. Just because it is shown in the bill, it cannot be said that the Licensee can dispense with issuing notice. Licensee has to obtain acknowledgment for having issued intimation. In the present case, the Licensee has no proof that such an intimation has been given to the consumer. Section 171 of Electricity Act, 2003 requires Licensee to obtain acknowledgement whenever intimation is sent to any person. In the present case, Licensee has not issued any notice and no proof for having issued such notice is produced and, hence, the Appellant seeks directions to refund the amount collected in the form of Power Factor Surcharge.

The 1<sup>st</sup> Respondent furnished Para wise replies on 22<sup>nd</sup> February 2011 to the points raised by the Appellant. He submitted that (a) installation No H.T-185 was serviced on 30<sup>th</sup> August 2006 and that power factor details from September 2006 to December 2009 had been furnished in the replies. The installation though recorded Power Factor less than 0.90 during the first three months, Power Factor Surcharge had not been levied as it is covered under grace period under Clause 22.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Further, from September 2006 to November 2006 though power factor had been less than 0.90, Power Factor Surcharge had not been levied. During December 2006 and January 2007 power factor was less than 0.90 and hence a notice was issued vide office No HBL/WSD/AEEE/AAO/2006-2007/6795-6802 dated 5<sup>th</sup> January 2007 advising the appellant to improve the power factor within three months under

Clause 22.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, but the Appellant failed to comply with the directions nor submitted compliance in writing. Again, between April 2008 to December 2008, two notices were issued to the Appellant to improve the power factor vide letter Nos (a) HBL/WSD/AEEE/AAO/2007-2008 dated 5<sup>th</sup> of April 2008, (b) HBL/WSD/AEEE/AAO/SA-1/2008-20009/2110 dated 5<sup>th</sup> December 2008 along with the monthly bills, but the Appellant failed to carry out the instructions and had not sent any compliance in writing to the Licensee regarding the action taken. Since the Appellant failed to improve the Power Factor as directed, the Licensee levied Power Factor Surcharge without 3 months notice for the months in which power lag was noticed. However, on the basis of Forum's impugned Order, Power Factor Surcharge levied for the months of January 2007 and February 2007 which came to Rs.5,092/- and Rs.2,098/- respectively had been withdrawn and adjusted against the subsequent months' bills. Hence, 1<sup>st</sup> Respondent requested this Authority to reject the prayer of the Appellant and to uphold the orders of the Forum.

The matter was heard on 6<sup>th</sup> July 2011.

On behalf of the Appellant, his Representative Shri Tushar M. Baddi and, on behalf of the Respondents, Asst. Executive Engineer, West Sub-Division, HESCOM, Hubli appeared and putforth their respective arguments.

Shri Tushar M. Baddi, Representative of the Appellant, reiterated the submissions made in the appeal memo and added that the Asst. Executive Engineer, West Sub-Division, HESCOM, Hubli had deposed before the Forum that he had given three months' time to the Consumer through his letter vide No. HBL/WSD/AEEE/AAO/2006-2007/6795-6802 dated 5<sup>th</sup> January 2007, but such a letter had not been received by the Appellant. He challenged the 1<sup>st</sup> Respondent to produce proof and alleged that such alleged letter is imaginary and not true.

The Asst. Executive Engineer made a submission that the Appellant had been issued with several intimation to improve the Power Factor and to install power capacitors and the Appellant had not co-operated with the Utility and unreasonably claiming refund of Power Factor Surcharge and, hence, prayed this Authority to reject the Appellant's claims and to confirm the orders passed by the Forum.

Both parties were informed vide letter No.OMB/H/G-107/2011/10385 dated 20.06.2011 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 1<sup>st</sup> Respondent and having regard to the contentions urged by the parties, issues that emerge for our determination are:

- (a) Whether the 1<sup>st</sup> Respondent has levied Power Factor Surcharge without issuing three months' notice?
- (b) Whether levying of Power Factor Surcharge is as per Clause 22.02 (a) & (b) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka?
- (c) Whether the 1<sup>st</sup> Respondent has followed the procedure laid down under Section 171 of the Electricity Act 2003 while issuing notice to the Appellant to improve the Power Factor?

To answer these questions, we have to first examine Clause 22.01 (a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which reads "the Consumer shall maintain an average Power Factor of not less than 0.90 lag. In case this is not maintained, surcharge shall be payable as specified under Tariff Schedule from time to time."

Further clause 22.02 (a) stipulates the procedure for levying Power Factor Surcharge. It reads "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."

"(b) In respect of H.T installations with L.T metering without L.T Trivector meter, if during any periodical or other testing/rating by the Licensee, the Power Factor of the

installation is found to be less than 0.90, the Consumer shall install additional Power Factor correction apparatus as may be necessary to bring the power factor to not less than 0.90 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.”

Clause 22.04 reads “notwithstanding the above provisions, power factor surcharge shall not be leviable in a H.T installation for the first three billing months from the date of service. In case the power factor continues to be less than 0.90 even beyond the first three billing months, power factor surcharge shall be leviable.”

From the appeal memo and the written replies of the 1<sup>st</sup> Respondent, it is evident that the installation No H.T 185 stands in the name of the Appellant and power was first sanctioned on 30<sup>th</sup> August 2006. For the first time, 1<sup>st</sup> Respondent issued a bill in the month of September 2006 to the appellant showing power lag of 0.26. According to the 1<sup>st</sup> Respondent, Power Factor Surcharge was not levied because under Clause 22.04 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, “Power Factor Surcharge shall not be leviable in a H.T installation for the first three billing months from the date of service.”

Second time, the 1<sup>st</sup> Respondent noticed power lag in the month of January 2007 and levied surcharge of Rs.5092/- and this was reflected in the monthly bill and a separate notice appears to have been issued but found to have not obtained acknowledgement under Section 171 of the Electricity Act 2003 for having issued the intimation. Similarly, the 1<sup>st</sup> Respondent noticed power lag in the month of February 2007 and levied Rs.2,998/- Power Factor Surcharge by following the procedure as he did in January 2007. However, levying of surcharge for January 2007 and February 2007 has been disallowed by the Forum on the ground that 3 months’ mandatory notice had not been issued to the Appellant before levying Power Factor Surcharge.

Again, the 1<sup>st</sup> Respondent noticed power lag in the month of August 2007 and, according to 1<sup>st</sup> Respondent, Rs.3,000/- Surcharge was levied and collected without three months’ notice to improve the Power Factor.

Fourth time, the 1<sup>st</sup> Respondent noticed power lag in the month of November 2007, but not levied any surcharge.

The 1<sup>st</sup> Respondent for the fifth time noticed power lag in the month of February 2008 and collected Rs.114/- as Power Factor Surcharge without issuing any notice.

Further, the 1<sup>st</sup> Respondent for the sixth time noticed power lag in the month of April 2008 and according to the 1<sup>st</sup> Respondent notice had been sent to the Appellant along with the monthly bill, but has not obtained any acknowledgement.

Again, the 1<sup>st</sup> Respondent noticed power lag between May 2008 to December 2008 (excepting in the months of September and October) and levied Power Factor Surcharge. The Appellant has paid the Power Factor Surcharge and, hence, the 1<sup>st</sup> Respondent did not see any reason to issue notice.

Finally, during the year 2009, the 1<sup>st</sup> Respondent noticed power lag for the months of July, August & September and collected Power Factor Surcharge without issuing any notice. According to the 1<sup>st</sup> Respondent, for this period, no separate notice had been issued since the Appellant had not responded to the earlier notice.

The 1<sup>st</sup> Respondent, in his arguments, admitted that he had not levied any surcharge for the month of September 2006 because it was a grace period.

Though surcharge was levied by the 1<sup>st</sup> Respondent for the months of January 2007 and February 2007, the Forum has set aside such levying of surcharge on the ground that three months' notice had not been given to correct the Power Factor.

Concerning August 2007, the 1<sup>st</sup> Respondent admitted to have collected Rs.3,000/- Power Factor Surcharge without issuing three months notice. Similarly, for the month of February 2008, the 1<sup>st</sup> Respondent has levied Rs.114/- Power Factor Surcharge without any notice and the 1<sup>st</sup> Respondent admitted to have collected this amount without issuing three months notice. Again, in the month of April 2008, the 1<sup>st</sup> Respondent has levied surcharge and claims to have issued notice but has not obtained any acknowledgement. Finally, the 1<sup>st</sup> Respondent is found to have levied surcharge for the period commencing from May 2008 to December 2008 excluding for the months of September and October and claims to have issued notices along with the monthly bills, but has not obtained acknowledgement. The 1<sup>st</sup>

Respondent argued that for this period (May 2008 to December 2008) he had not issued notice because the Appellant had paid the surcharges without raising any objection. Similarly, for the months of July 2009, August 2009 and September 2009, the 1<sup>st</sup> Respondent claims that he has collected Power Factor Surcharge without notice since the Appellant had not responded to the earlier notice.

The 1<sup>st</sup> Respondent's claims that he has issued notice along with the monthly bills, but not obtained acknowledgement shows that he has clearly violated Section 171 of Electricity Act 2003 and also Clause 22.02 (a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Under Section 171 of the Electricity Act, 2003 "Every notice, order or document by or under this Act is required, or authorised to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt therefor or by registered post or such means of delivery as may be prescribed."

Further, under Clause 22.02 (a) of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, 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. If Consumer fails to install apparatus, then the Licensee can levy Power Factor Surcharge as specified under Tariff Schedule. In the present case, the 1<sup>st</sup> Respondent, by his own admission, has failed to give three months' mandatory notice to the Consumer to improve the Power Factor and found to have collected Power Factor Surcharge in violation of Clause 22.02(a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.

In the light of the above and to meet the ends of justice, the collecting Rs.24,725/- by the 1<sup>st</sup> Respondent has to be disallowed and directions are required to be issued to the 1<sup>st</sup> Respondent to refund Rs.24,725/- to the Appellant. Hence, this order.

## **ORDER**

For the foregoing reasons, the impugned orders of the Forum vide No. UÁÄÄ/CYS-186 ÇÉÄÄÄÄ 28.12.2010 is partly upheld as regards setting aside levying of Power Factor Surcharge for the months of January 2007 and February 2007.

Further, the Forum's order upholding levying of Power Factor Surcharge for the other months is hereby set aside.

Out of total claims of Rs.24,725/- made against the 1<sup>st</sup> Respondent, the Forum vide its order No. UÁÄÄ/CYS-186 ÇÉÁÄÄÄ 28.12.2010 has allowed Rs.8090/-. Hence, 1<sup>st</sup> Respondent is directed to refund the balance amount of Rs.16,635/- or adjust against the Appellant's future electricity bills. The 1<sup>st</sup> Respondent to send compliance in 30 days.

**In the result, the appeal succeeds**

(B.R.Jayaramaraje Urs)  
Electricity Ombudsman

1. Sri S.Y.Pujari, Gokula Oxygen Industries, 409/b, No.274/1, Tarihal Road, 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