

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-115/2011/11440
Dated 19.12.2011

BETWEEN

Dr.Sri V.M.Kerudi,
 Kerudi Complex,
 Ashok Circle,
 Ranebennur-581115
 (Represented by Sri M.A.Delvi, Advocate -
 Authorised Representative)

.. **Appellant**

- Vs -

1. Assistant Executive Engineer,
 O & M Sub Division,
 HESCOM,
RANEBENNUR
2. Consumer Grievances Redressal Forum (C.G.R.F)
 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 U&A/V-CYS-3 dated 04.05.2011 in respect of the Appellant's grievance relating to excess collection of infrastructure charges and non-refunding of such charges by the AEE, HESCOM,, Hubli (hereinafter referred to as the 1st respondent).

2. The 2nd Respondent in the impugned orders declined to issue any directions to the 1st Respondent. Being aggrieved by the 2nd Respondent's order (the impugned order), the Appellant has submitted his case as under:

3. The Appellant is an electrical consumer and owns a commercial complex in Ranebennur, Haveri District. He availed electricity for commercial complex and for domestic purposes. This complex has a big compound and, inside the compound, there are five different Blocks. Each Block in itself is a premises. In this compound, 'A' Block is independent. Other Blocks namely B, C, D & E are not interconnected. There is no common entrance for these five blocks as interpreted by the 2nd Respondent. Block-wise floor details are given below.

| | |
|--------------|---|
| 1) 'A' Block | Two Floors (Ground & 1 st Floor) |
| 2) 'B' Block | Two Floors (Ground & 1 st Floor) |
| 3) 'C' Block | Four Floors (Ground, 1 st , 2 nd & 3 rd Floor) |
| 4) 'D' Block | -Ditto- |
| 5) 'E' Block | Three Floors (Ground, 1 st & 2 nd Floor) |

4. The Appellant who is the owner of 'D' Block applied jointly for sanction of 2 kW power in his name and 4 kW in the name of Sri V.M Kerudi.

5. As per Board Notification dated 18th November, 1998, infrastructure charges shall be collected in the following manner.

a) If the specified load is less than 25 kW:

- | | |
|--|--|
| (i) Up to and inclusive of 7.5 K.Ws (10 HP) | - No Charges |
| (ii) Above 7.5 kW and up to & inclusive of 15 kW | - Rs.500/- per kW for the loads above 7.5 kW. |
| (iii) Above 15 kW & Up to 25 kW | - Rs.3750/- plus Rs.1000/- per kW for the loads above 15 kW. |

In the case of Sri S.V Kerudi, 14 kW of power was sanctioned. As per Regulation 9(6)(a) of Electricity Supply Regulations, the following charges have to be collected.

| | |
|--|------------|
| 1) 0 to 7.5 kW | Nil |
| 2) 7.5 kW to 15 kW @ Rs.500/- per kW - | Rs.3,750/- |

6. In the case of Dr V.M Kerudi, 21 kW power was sanctioned and the following charges have to be collected as per the above Regulations.

| | |
|--------------------------------------|-------------------|
| 1) 0 to 7.5 kW | No charges |
| 2) 7.5 kW to 15 kW @ Rs.500/- per kW | Rs.3750/- |
| 3) 15 kW to 21 kW @ Rs.1000/- per kW | Rs. 6000/- |
| | ----- |
| Total | Rs. 9750/- |

7. HESCOM, instead of collecting Rs.3,250 + Rs.9,750 = Rs.13,000/-, has calculated the amount payable in the following manner.

| | |
|---------------------------------------|--------------------|
| 1) 0 kW to 7.5 kW | Nil |
| 2) 7.5 kW to 15 kW @ Rs.500/- per kW | Rs 3,750/- |
| 3) 15 kW to 25 kW @ Rs.1000/- per K.W | Rs.10,000/- |
| 4) 25 kW to 28 kW | Rs.15,000/- |
| | ----- |
| Total | Rs.28,750/- |

Thus, HESCOM has collected Rs.15,750/- excess amount from the Appellant.

8. In the year 2008, Sri S.V. Kerudi applied for sanction of 18 kW of additional power. Existing and additional sanction came to 24 kW. And as per clause 3.1.7 (C)(D) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 - *"In case of buildings serviced earlier to 25th August, 2005, if the additional load for*

existing installations under common mains is sought and if the total load inclusive of such additional load sought is within the specified load already sanctioned as per ES&D Code 2000-01 for which the applicant has already remitted the cost towards service line at the rate prevailing on that date, then in such cases(1) providing space, transformer, switch gear and associated equipment by the consumer shall not be applicable(2). No service line cost shall be collected for the additional load."

9. As per the above provision, the 1st Respondent ought to have serviced 18 kW of additional load without collecting any charges whatsoever at all. But on the contrary, the 1st Respondent applied provision 3.1.7 (a)(ii) of KERC (Recovery of Expenditure for supply of Electricity) Regulations, 2004 and arbitrarily collected a sum of Rs 1,17,000/-.

10. Further, in the year 2009, the Appellant applied for additional 10 kW of power. Under Clause 3.1.7(a)(ii) (i) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 where the requisitioned load exceeds 25 kW the consumer is required to pay Rs.6,500/ per kW and for 10 kW the 1st Respondent should have collected Rs.65,000/-. Instead, the 1st Respondent has collected Rs.1,17,000/- which resulted in excess collection of Rs.52,000/- and, hence, prayed this authority to direct the 1st Respondent to refund the excess amount.

11. The 1st Respondent's comments were called vide No OMB/H/G-115/2011/10240 dated 27.05.2011 and the 1st Respondent furnished his comments on 6th June, 2011.

12. In his comments, the 1st Respondent submitted that there are five Blocks in Kerudi Complex, Ranebennur and, out of five Blocks, B, C & D are interconnected and A & E Blocks are separate units and all the Blocks have a common entrance & exit. Dr.Sri V.M.Kerudi and Sri S.V Kerudi applied for sanction of 3+1 K.W power in the year 2000 and the Superintending Engineer, Davanagere in his letter SEE/DVG/EE(O)AE(T) 2438-40 dated 25th October, 2000 conveyed sanction of 14 kW power. Sanction details are as below.

a) Total built up area of the Building

| | |
|--------------|-------------------------|
| Existing | 185.39 Sq Meters |
| Additional | 270.43 Sq Meters |
| Total | 455.82 Sq Meters |

b) Sanctioned Power

| | |
|--------------|---------------|
| Existing | 1.5 kW |
| Additional | 4.0 kW |
| Total | 5.5 kW |

c) Specified Power

| | |
|--------------|----------------|
| Existing | 14 K.Ws |
| Additional | 14 K.ws |
| Total | 28 K.Ws |

13. The Superintending Engineer, Davanagere in his letter dated 25th October, 2000 addressed to the Appellant mentioned that the Appellant had paid infrastructure charges of Rs.28,750/- vide Receipt No – 00135 dated 24th October, 2000.

14. The 1st Respondent further added that the Appellant applied for 6 kW load in the year 2005 for D Block (Installation No 8650). The Superintending Engineer in his letter dated 25th May, 2005 conveyed sanction of 6 kW of additional load fixing total built up area of D Block at 1956.44 Sq Meters and specified load at 58 kW and sanctioned load at 42 kW (35.96 kW existing and additional 6 kW) and further mentioned in his letter that the Appellant had already paid Rs.28750/- towards infrastructure charges as per Clause 9.08(2) of E S & D Code, 2000-01 and, hence, the Appellant was not required to pay any infrastructure charges.

15. Further, the 1st Respondent submitted that the Superintending Engineer in his letter addressed to the Appellant dated 29th May, 2006 mentioned that the Appellant had requested for sanction of 4 kW of power to installation No 11550 and the Appellant had already been sanctioned specified load of 58 kW vide Letter No. DEA/P&JA(«)/P&JA-2/2709-12 dated 29th May, 2006 and, since the additional sanctioned load was coming within the specified load, the Appellant was not required to pay any infrastructure charges. Further, the 1st Respondent clarified that the Appellant had initially paid the infrastructure charges of Rs.28,750/- when specified load of 28 kW had been sanctioned. Subsequently, when specified load had been enhanced to 58 kW, no infrastructure charges had been collected from the Appellant and the Superintending Engineer in his sanction letters dated 25th May, 2005 and 29th May, 2006 had mentioned that the Appellant had already paid the infrastructure charges and in reality the Appellant had not paid the additional infrastructure charges for sanction of 58 kW specified load.

16. In the year 2008, the Appellant applied for sanction of additional load of 18 kW and the Superintending Engineer, Davanagere took the plinth area of the building and fixed total built up area at 2450 Sq. Meters (Existing 1956.44 Sq. Meters and additional 465 Sq. Meters) and sanctioned 64 kW of power (45.96 kW existing and additional 18 kW).

17. The Superintending Engineer, HESCOM, Hubli, in his letter No. «P&CE«-1/P&EA(«)/P&EA-1/4264-67 dated 21.7.2008 conveyed sanction of 18 kW additional load subject to the Appellant paying Rs.78,000/- at Rs.13,000/ - per kW for 6 kW of additional load.

18. The 1st Respondent further submitted that the Appellant not satisfied with the decision of the Superintending Engineer approached M.D., HESCOM, Hubli and M.D HESCOM, after verifying the claims of the Appellant, conveyed to the Superintending Engineer that D Block should be treated separately and infrastructure charges should

be collected only for 18 kW @ Rs.6,500/- per kW as per Regulation 3.1.7(a) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 and totally an amount of Rs.1,17,000/- should be collected from the Appellant. As per the directions, Rs.1,17,000/- had been collected and installation serviced.

19. In the year 2009, the Appellant applied for 10 K.W additional load and the Superintending Engineer considered the following:

| | |
|-------------------------------|-------------------|
| a) Total Built Up area | 2765.74 Sq Meters |
| b) Sanctioned load (Existing) | 63.96 kW |
| c) Additional load | 9.0 kW |

Total 73 K.Ws

20. The Superintending Engineer, as per clause 3.1.7 (a)(ii) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004, sanctioned 9 kW of power and levied Rs.13000/- per kW and for 13 kW levied Rs.1,17,000/-.

21. The matter was taken up for hearing on 27th July, 2011 and, for the Appellant, Advocate, Sri M.A.Dalvi appeared and put forth his arguments and for the 1st Respondent, Asst Executive Engineer(Electrical) No 1 Sub-Division Ranebennur and Sri Omkarappa, Superintending Engineer, MESCOM, Shimoga appeared and advanced their arguments. After several hearings, arguments got concluded on 10th November, 2011.

22. The Advocate for the Appellant in his arguments reiterated the submissions made in the appeal memo and written arguments filed before this authority dated 17th November, 2011.

23. The 1st Respondent argued that the Appellant initially applied for 5 kW of power in favour of the following persons.

| | | |
|------------------|---|------|
| a) Dr.V.M.Kerudi | : | 2 kW |
|------------------|---|------|

- b) Sri S.V.Kerudi : 2 kWs
 c) Sri S.V.Kerudi : 1 Kw

24. As per Board's Notification No K.E.B/ B11/B-10/6948/1990-91 dated 4.11.1998 *"In case the sanctioned plan indicates two or more multi-storeyed buildings in the same premises, they shall be clubbed together to assess the specified load"*. In the present case all the five Blocks excepting Block No A are interconnected and these Blocks have a common staircase, common exit and entry and, hence, HESCOM clubbed together all the buildings to calculate the built up area levied charges after taking into account the total Built-up area of the Building. The total Built-up area of the Buildings in this case had come to 455 Sq. Meters and at 25 watt power per Sq. Meter total specified load came to 28 kWs. As per Notification dated 4th November 1998, the infrastructure charges shall have to be collected in the following manner

a) If the specified load is less than 25 kWs:

- i) Up to & inclusive of 7.5 kWs - No charges
 ii) Above 7.5 kW & up to & inclusive of 15 K.Ws - Rs500/-per K.W for the loads above 7.5 K.Ws
 iii) Above 15 K.Ws & up to 25 K.Ws - Rs3750/- plus Rs 1000/- per K.W for the loads above 15 K.Ws.

25. As per the above slab, infrastructure charges for 28 kW had come to Rs.28,750/- and, hence, there had been no excess collection as alleged by the Appellant.

26. The 1st Respondent added that the Appellant applied for sanction of 18 kW additional load in the year 2008 for 2nd Floor 'D' Block. HESCOM sanctioned 18 kW power. On account of this additional sanction of 18 kW power, the sanctioned load had come to 64 kW (46 kW + 18 kW). Specified load at this point stood at 58 kW. Since the sanctioned load exceeded by 6 KWs, infrastructure charges had

been levied at Rs.13,000/- per kW. Totally, an amount of Rs.78,000/- had been levied by the Superintending Engineer Davanagere. The Appellant objected to clubbing of all the Blocks and arriving at total built up area and insisted that `D' Block should be considered separately. This objection had been forwarded to the General Manager, HESCOM and the General Manager HESCOM in his letter dated 3rd December, 2008 conveyed that D Block should be considered separately and Rs.1,17,000/- to be collected @ Rs.6,500/- per kW under Clause 3.1.7. **Note** (A)(a) of KERC (Recovery Of Expenditure for Supply of Electricity) Regulations, 2004. The Superintending Engineer carried out the directions and serviced the installation and, hence, there had been no violation of any Regulations.

27. The 1st Respondent added that in the year 2009, the Appellant and two others applied for 10 kW of additional load and sought reduction of load in respect of installation No.11550 and thus the Appellant's request had been reduced to 9 kW. HESCOM advised the Appellant to pay an amount of Rs.1,17,000/ as per Clause 3.1.7 (a)(ii) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 and after payment of the said charges, installations had been serviced and, hence, there had been no illegality in levy of these charges and prayed for dismissal of the appeal.

28. From the contentions made above, the issue that emerges for consideration is:

“Whether the 1st Respondent has levied and collected excess amount from the Appellant while sanctioning power at various points of time”?

29. In the first instance, the Appellant has questioned clubbing of the Blocks and charging Rs.28,750/- against sanction of 28 kW of specific load. The Appellant argued that there are two brothers in the family, namely, (1) Sri V.M Kerudi and (2) Sri S.V.Kerudi and the buildings to which power has been sanctioned stand in the name of different individuals and, hence, the 1st Respondent ought to have levied

infrastructure charges separately and If charges had been calculated treating the buildings separately, total charges would have come to Rs.13,000/- and Sri S.V Kerudi would have had to pay Rs.3,750/- and Dr V.M.Kerudi would have had to pay Rs.9,750/-.

30. The 1st Respondent quoting Note 4 of clause 9.02 of KERC (E S & D) Code, 2000-01 which says *"in case the sanctioned plan indicates two or more buildings in the same premises, they shall be clubbed together to assess the specified load"* argued that in the present case, the 1st Respondent, after satisfying that the buildings in question are indicated in the sanctioned plan and that they are located in the same premises, clubbed together all the buildings and assessed the total built-up area at 455.8259 Sq. Meters and specified load at 28 kW.

31. From the above, the 1st Respondent is found to have followed the Regulations. Further, the Regulation mandates clubbing together of the buildings if such buildings are located in the same premises and if these buildings are shown located in the same premises in the sanctioned plan for the purposes of calculating the built-up area and levying of infrastructure charges. Hence, levying of Rs.28,750/- is found to be in order.

32. The Appellant has questioned levying of Rs.1,17,000/- towards supply of 18 kW additional load during the year 2008. According to the Appellant as per Regulation 3.1.7(C)(D) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 *"In case of Buildings serviced earlier to 25th August, 2005, if the additional load for existing installations under common main is sought and if the total load is inclusive of such additional load is sought within the specified load already sanctioned as per ES&D Code 2000-01 for which the applicant has already remitted the cost towards service line at the rate prevailing on that date, then in such cases (1) providing space, transformer, switch gear and associated equipment*

by the consumer shall not be applicable(2) No service line cost shall be collected for the additional load". As per the above Clause, the 1st Respondent ought to have supplied 18 kW of additional load without collecting any charges whatsoever at all.

33. Before we decide on the said contention of the Appellant, we have to examine the developments which took place between the year 2000 to 2008. HESCOM is found to have sanctioned 6 kW of additional load for 'D' Block (installation No.8650) in the year 2005. This time HESCOM is found to have assessed built-up area at 1956.44 Sq. Meters and found to have enhanced the specified load from 57.37 kW to 58 kW and sanctioned load from 35.96 kW to 42 kW. The Superintending Engineer issued order dated 25th May, 2005 and in this order he mentioned that the Appellant had already paid Rs.28,750/- and, hence, the Appellant was not required to pay the infrastructure charges towards sanction of additional power. As a matter of fact, the Superintendent Engineer should have demanded additional charges as per Clause 3.1.7 (D) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 which says "*In case of Buildings serviced earlier to 25th August,2005,if the additional load for existing installation or additional installations under common main is sought (with or without additional built up area and if the total load inclusive of such additional load is more than the specified load already sanctioned as per E S & D Code, 2000-01, then in such cases the Licensee shall recover the expenditure towards the cost of electric line/ plant for such additional loads only as stated below at appropriate slab rate:-*

ii) In other places:-

(i) Rs.6,500/- per kW of additional load up to a total load (Existing+ Additional load).

(ii) Rs.13,000/ per kW of additional load for the total load (Existing + Additional load) exceeding 50 kW

34. It is clear from the above, though the Superintending Engineer enhanced the specified load from 28 kW to 58 kW, he failed to recover the expenditure

as per the above slab, as and when the specified load was enhanced from 28 kW to 58 kW. Instead, the Superintending Engineer mentioned in his letter dated 25th May, 2005 that the Appellant had already paid the service line charges of Rs.28,750/-. In reality, this amount had been paid by the Appellant against sanction of 28 kW specified load and not against the enhanced specified load of 58 kW.

35. Again, the Appellant applied for 4 kW of additional power for D Block in the year 2006 in respect of installation No 11550. The Superintendent Engineer, this time, fixed specified load at 58 kW and assessed total built up area at 1956.44 Sq. meters and enhanced the sanctioned load from 42 kW to 46 kW. The Superintending Engineer in his letter DEAP/PAEA(«)/PAEA--2/2709-12 dated 29th May, 2006 addressed to the Appellant conveyed that as sanction had been accorded for 58 kW of Specified Load as per Clause 3.1.7 of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 and, since the additional sanction of power was coming within the specified load of 58 kW, the Appellant was not required to pay additional charges. However from the records, it is seen that the Superintending Engineer has not collected the additional infrastructure charges when he enhanced sanctioned load from 42 kW to 46 kW and specified load from 28 kW to 58 kW. The Superintending Engineer in his sanction letter endorsed that the Appellant had already paid the necessary charges for enhanced load, but he failed to verify whether the Appellant had already paid charges towards enhanced specified and sanctioned load.

36. The Appellant, in the year 2008, applied for 18 kW of additional power and this time the Superintending Engineer assessed the total built up area of the entire building at 2450 Sq. meters (existing 465 Sq.meters + additional 1956.44 Sq. meters) and enhanced the sanctioned power from 46 kW to 64 kW. The Superintending Engineer in his letter No OAP-1/PAEA(«)/PAEA-1/4264-67 dated 21.7.2008 conveyed sanction of 18 kW of additional power as per Regulation 3.1.7(a)(ii) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004.

37. The Appellant, aggrieved by the decision of the Superintending Engineer, approached the Managing Director, HESCOM, Hubli. The Appellant before the Managing Director, HESCOM questioned the clubbing together of buildings and calculating the built up area and levying Rs.78,000/- as infrastructure charges. The Managing Director, HESCOM considered the pleas of the Appellant as for as treating D Block as a separate entity and advised the Superintending Engineer, Davangere to treat 'D Block as a separate unit and to collect Rs.1,17,000/ at Rs.6,500/- per kW as per Regulation 3.1.7 (a)(Ii) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 and to service the installations. Actually, the said Clause is applicable to load limits up to 50 kW only (existing+ additional). In the present case, the total load had already exceeded 50 kW. In such cases, Regulations 3.1.7 (b) (II)(ii) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 is applicable which mandates levy at Rs.13,000/- per kW. On account of wrong application of slab and also non- collection of infrastructure charges on enhanced specified load, HESCOM appears to have suffered substantial revenue losses.

38. The Managing Director, HESCOM in the said letter advised the Superintending Engineer to treat D Block as a separate unit. This decision ran contrary to their earlier stand. Earlier, when the Superintending Engineer fixed specified load at 28 kW, he had treated all the building as one unit as per Note (4) of Clause 9.02 (b) of KERC (E S & D) Code 2000-01 and levied infrastructure charges. HESCOM appears to have taken this decision in an arbitrary manner without having any input from the subordinate offices. This decision also runs contrary to Note (4) of Clause 9.02(b) of KERC(E S & D) Code 2000-01.

In the light of the above, the contention of the Appellant that HESCOM should not have charged any amount towards supply of 18 kW of additional power cannot be accepted as it is not in conformity with the KERC Regulations.

The 3rd contention of the Appellant that HESCOM should not have charged Rs.1,17,000/- towards supply of 9 kW of additional power is also not acceptable

because HESCOM is found to have levied infrastructure charges as per Regulation 3.1.7(B)(ii) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004, which is in order.

39. In the light of the above discussion, it can be safely concluded that (a) in the present case the Appellant should not have any grievance against the 1st Respondent so far as levying of Rs.28750/- towards sanction of 28 kW of specified load (b) Rs.1,17,000/- towards sanction of 18 kW of power and (c) Rs.1,17,000/- towards sanction of 9 kW of additional load at various points of time. From the various sanction letters issued by the Superintending Engineer and General Manager, HESCOM, it appears that HESCOM has faulted at every stage of sanction of power and shown inconsistency in following KERC (Regulations).

From the above, we can conclude that the Appellant has not suffered any injustice in the hands of HESCOM, but certainly HESCOM has.

40. In the light of the above discussions, the three contentions raised by the Appellant do not survive and, hence, deserve to be rejected.

Hence the following order.

ORDER

For the foregoing reasons, **the appeal is hereby dismissed.**

(B.R Jayaramaraje Urs)
Electricity ombudsman

1.Dr.Sri V.M.Kerudi, Kerudi Complex, Ashok Circle, Ranebennur-581115, Haveri Dist.

2. Assistant Executive Engineer, O & M Sub-Division-1, HESCOM, Ranebennur, Haveri Dist.

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

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