



D-535

BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi chambers, M.G Road, Bangalore-560001

Present: B.R.Jayaramaraje Urs, IAS (Retd)
Electricity Ombudsman

Case No.OMB/H/G-215/2015

Dated the 14th July 2015

Sri Irfan Ahmed U Attar
c/o Tushar Baddi,
Near SBI,Keshwapura,
Hubballi

... Appellant

(By Sri Tushar M Baddi, Authorized Representative)

V/S

1. The Assistant Executive Engineer(EI)
CSD-3,HESCOM,Industrial Estate,
Gokul Road,Hubballi

(Party in person)

2. The chairperson, CGRF,
Office Of the S.E(EI) O&M Circle,
HESCOM,Tabibland Hubballi

... Respondents

1. This is an appeal under clause 22.02 of KERC(CGRF& Ombudsman) Regulations, 2004 against the orders passed by the CGRF, Dharwar District, Hubli HQ (hereinafter referred to as the 2nd respondent) vide its order No AEE(EI)DAC/HISA-1/CGRF/file-157/15833-36 dated 31/03/2015 in regard to the appellant's complaint with regard to shifting of outstanding demands to other installation belonging to the appellant and adjustment of Rs. 19,080/-.

2. CGRF declined to grant any relief in the matter. Aggrieved by the order passed by the CGRF, the appellant has submitted his case as under:

(a) Installation bearing R.R No MP 8147 stands in the name of Sri Munde. It was serviced on 13.09.1983 with a sanctioned load of 5HP under LT-5 Tariff schedule.

(b) In the year 1985, the said installation was transferred in the name of U.C. Attar and disconnected on 15.12.2003 as per letter vide No 9544 dated 24.02.2013. Reasons for disconnection is not known to the appellant.

(c) The AEE(EI) O&M Sub-Division, before the CGRF has deposed wrongly that the installation had been disconnected in 2006 though the installation had been disconnected in 2003. Further, the AEE(EI) continued to issue demand till July 2006

which is inexplicable. The AEE(EI) informed the appellant in 2013 that he owed Rs. 19,080/- to HESCOM. The appellant filed objections to the demand dated 07.01.2013. Later, the appellant did not receive any reply from HESCOM. Since there was no response from the AEE(EI), the appellant approached CGRF on 28.02.2013. The CGRF, after hearing the parties, passed final orders dismissing the complaint on 31.03.2015.

(d) As per Regulation 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, if any amount is due from the consumer, HESCOM has to show such arrears in its bills continuously as recoverable as arrears of the charges of electricity supplied. In case, HESCOM fails to show its arrears continuously in its bill for a period of 2 years from the date when such sums became first due, it becomes irrecoverable as it will be barred by limitation. In the instant case, HESCOM has not shown its arrears continuously in its bill for a period of 2 years from the date when such sum became first due and hence the appellant is not liable to pay the arrears.

(e) In 2012, HESCOM adjusted the advances of installation bearing RR No MP 407268 standing in the name of Irfan-U-Attar S/o U.C Attar against the dues of installation bearing No MP 8147 standing in the name of MUNDE and transferred in the name of U.C Attar. Installation bearing R.R no 407268 was serviced directly in the name of Irfan Attar.

(f) HESCOM issued a letter dated 11.06.2012 advising Irfan U Attar to pay the arrears of Rs. 18,087/- within 7 days failing which, power to installation No. MP 467268 would be disconnected. Fearing disconnection, the appellant paid the amount on 05.01.2013. After paying the amount, the appellant filed a complaint before the CGRF and the CGRF, after hearing the parties passed the impugned orders dismissing the complaint dated 31.03.2015.

3. The respondent's comments were called vide this office letter No. OMB/H/G-215/2015/D-505.dated 07.05.2015. In response to the letter, the AEE(EI) filed his statement of objections vide his letter AEE(EI) SALE/HISA/SHAUVI-3/KA-CGRF/1016-18512.

4. The AEE(EI), in his comments, submitted that installation bearing R.R MP 8147 existed in the name of U.C Attar for a long time and disconnected for non-payment of electricity dues. The amount stood unrecovered as the premises is an open site and the consumer's where about not known. Later, the Section Officer after making serious efforts, found out another installation standing in the name of the appellant and based on this report, AEE(EI) adjusted the advances of that installation against the outstanding dues.

5. The 1st Respondent further submitted that adjustment made against the dues is as per law and two years limitation is not applicable to the present case. There is a provision to adjust the dues

of one installation against the other installation belonging to the same consumer and hence urged this authority to dismiss the appeal and to confirm the order passed by the CGRF.

6. Both parties were informed vide letter OMB/H/G-215/2015/514 dated 03.06.2015 regarding availability of sub-regulation 20 of KERC(consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, which both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

7. The case was taken up for hearing on 23.06.2015 and hearing got concluded on 06.07.2015.

8. On behalf of the appellant, Mr. Tushar M Baddi appeared and argued the case and 1st Respondent , AEE(EI) appeared and put forth his arguments.

9. During the hearing, both appellant and 1st Respondent reiterated their submissions made in the appeal memo and statement of objections respectively.

10. Having regard to the contending positions of the parties, issue that arises for our consideration is “Whether the claims made by the 1st respondent against the appellant is barred by limitation”?

11. It is seen from the records that the 1st Respondent has disconnected power supply to the appellant's installation bearing R.R

No MP 8147 for non-payment of energy charges on 15.12.2003 as per his records vide letter No. 9544 dated 24.02.2013. The 1st respondent argued that his office discovered during the ledger verification that the appellant had not paid the arrears from August 2003 to July 2006 amounting to Rs. 18,087/- and further noticed arrears were entered in the ledger from 2003 to 2006 but not communicated to the appellant nor shown continuously in the energy bills of the consumer.

12. The 1st Respondent has admitted to have not issued three months notice calling upon the appellant to pay the amount within three months and get the power reconnected failing which the power supply agreement would be treated as terminated on the date of expiry of the said notice as per regulation 32.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence, it can be inferred that the 1st Respondent has not taken further action to dismantle the installation and to recover the amount after disconnecting power supply to the subject installation.

13. It can be seen from the records that the 1st Respondent has not shown the arrears in the bills of the appellant from 2003 to 2015 for nearly for 12 years and the 1st Respondent by his own admission discovered the dues on 04.07.2015 during the verification of the ledger. As per Regulation 32.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, the 1st Respondent is seen to have not taken action to issue three months

notice the appellant to pay the dues within three months and get the power reconnected failing which the agreement would be treated as terminated. The 1st Respondent is not seen to have taken any action to dismantle the installation after the appellant failed to pay the arrears. Further, no action is seen to have been initiated by the 1st Respondent to recover the amount. The 1st Respondent had two options – (1) to recover the amount as arrears of land Revenue under the Karnataka Land Revenue Act, (2) file Civil suit in the court for recovery of dues. The first Respondent seems to have done neither. Even this action, the first Respondent is supposed to have taken within three years from the date when such sum became first due. It is obvious that the 1st Respondent has not acted to recover the dues within the limitation period. when no legal action has been taken to recover the arrears, adjusting the security deposit of an installation belonging the appellant against the arrears of subject installation belonging to the same appellant that too after a lapse of 12 years certainly does not conform to section 56 (2) of the Electricity Act,2003 which states that *“Notwithstanding anything contained in any other law for the time being in force, 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 arrear of charges for electricity supplied”*.

14. The 1st respondent has not bothered to find out for 12 long years whether the appellant has one more installation standing in his

name and whether the security deposit of that installation could be adjusted against the outstanding dues.

15. The 1st Respondent has admitted during the hearing that the arrears relating to the subject installation is not shown in the monthly bill of other installation belonging to the appellant from the year 2003 to 2015 and hence it crystal clear that the Respondent has not shown the arrears from the date it became first due continuously in the subsequent monthly bill of other installation belonging to the appellant nor recovered the sum within two years from the date when such sum became first due. Hence, the following orders:

ORDER

For the foregoing reasons :

- (i) The impugned order of the CGRF is set aside;
- (ii) The 1st respondent adjusting security deposit of Rs.18,087/- of installation bearing RR No.MP 407268 against the dues of installation bearing No.MP 8147 is set aside as it is time barred under section 56(2) of the Electricity Act, 2003;
- (iii) Hence, the 1st respondent is hereby directed to adjust Rs. 18017/- against the future bills of the appellant.

In the result the appeal succeeds.



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

To:

1. Sri Tushar M Baddi, Authorized Representative, Near SBI, Keswapur, Hubli
2. The Assistant Executive Engineer(EI), O &M City Sub-Division-3, HESCOM, Industrial Estate, Gokul Road, Hubli.
3. The Superintending Engineer & Chairperson, CGRF, HESCOM, O&M Circle, Tabib Land, Hubli-580020
4. Managing Directors of ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon'ble Member (A), KERC
7. PS to Hon'ble Member (M), KERC
8. Secretary, KERC
