



**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-192/2014/445
Dated 27.11.2014**

Smt. Nagarathna,
Railway Parallel Road,
Angadi Compound,
RANEBENNUR-585115
(Represented by Sri K.C.Naikwadi, Advocate,
Authorised Representative)

.. **Appellant**

Vs

1. Assistant Executive Engineer(EI),
O&M Sub-Division-1,
HESCOM, P.B.Road,
RANEBENNUR-581 115.
2. Consumer Grievances Redressal Forum (C.G.R.F)
Office of the Superintending Engineer,
O & M Circle, HESCOM,
HAVERI.

.. **Respondents**

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, HESCOM, Haveri District, Haveri (here in after referred to as the 2nd Respondent) vide No CGRF/Pra Sam-02/2014-15/CYS-216 dated 26.07.2014 in

respect of the Appellant's grievance relating to the classification of her building under M.S.Category and levying of infrastructure charges of Rs.20,800/- by the Assistant Executive Engineer (EI), L & M Sub Division-1, P.B.Road, Ranebennur (here in after referred to as the 1st Respondent). The 2nd Respondent declined to grant any relief to the Appellant. Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted her case as under:

2. The Appellant, a resident of Ranebenur, having a single owner ship building with a total built up area of 176 sq meters applied to HESCOM for supply of 4 kW power. She paid Rs.50/- towards registration fee vide Receipt No 6599344124 dated 17.09.2013. The Assistant Executive Engineer(EI), O&M Sub-Division-1, Ranebennur, after inspecting the building, submitted a report to the Executive Engineer(EI) Haveri to treat the subject building as an attached building having a common passage. However, the Superintending Engineer (EI) Haveri personally inspected the subject building and after inspection sanctioned 4 kW power concurring with the report submitted by the 1st Respondent subject to the Appellant paying Rs.20,800/- towards cost of electric line and Rs.1420/- towards Initial Security Deposit vide his letter No SEE/HVR/EE(o)/AEE(O)/AE(T)13-14/4772-76 dated 09.01.2014. This sanction had a 3 months validity and, since sanction validity had expired, the 1st Respondent again on the advice of the Executive Engineer (EI) sent a fresh proposal to the Superintending Engineer(EI) for issue of fresh sanction order. The Superintending Engineer(EI) issued power sanction order dated 26.08.2014 advising the Appellant to pay Rs.22,670/- being the cost of electric line and Initial Security Deposit. The Superintending Engineer(EI), based on wrong assumptions, came to the conclusion that the subject building is attached to other buildings and shared a common passage when in reality, the subject building is not attached to any other building nor shared a common passage. Therefore, the Appellant is not liable to pay infrastructure charges of Rs.20,800/- as claimed by the 1st Respondent. However, aggrieved by this decision, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, after hearing the parties, passed the impugned order rejecting the pleas of the Appellant. Hence, submitted this appeal praying to

set aside the order passed by the 2nd Respondent and to issue directions to the 1st Respondent to refund the excess infrastructure charges collected from the Appellant.

3. The 1st Respondent's comments were called vide letter No OMB/H/G-192/2014/410 dated 15.09.2014.

4. The 1st Respondent, in his statement of objections, submitted that the Appellant had applied for sanction of 4 kW power to her residential building paying the required charges. On payment of the required charges, the 1st Respondent inspected the building and sent a report to the Superintending Engineer (EI) to treat the building as M.S Building and to sanction 4 kW power to the Appellant. Further, the 1st Block has a total built up area of 1068.54 sq.meters with a common passage and built up area of each house is given in Form 1. Blocks 1 to 8 have common passage and, thus, the consumer of Block No.8 (Appellant) shared a common passage. Hence, Block Nos. 1 to 8 were considered under Note 4 of Clause 3.1.5 of KERC (Recovery Of Expenditure for Supply of Electricity) Regulations 2004. Further, Block 1 to 8 have Survey Nos.430D, 430C, 430C, 430B, 430E, 430E, 430E and 430G respectively. The technical report also said that there were buildings which do not come under Note 4 of Clause 3.1.5 of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 and such blocks were shown separately in sketch No-2. As shown in Sketch No-2, block Nos. 1, 2 and 3 have a common passage leading to Station Road and A,B,C,D blocks each have a separate gate leading to the main road and, hence, these blocks were not considered under Note 4 of Clause 3.1.5 of KERC (Recovery Of Expenditure for Supply of Electricity) Regulations,2004. The Appellant had been sanctioned power from the year 1974 up to 2005 by applying the relevant regulations prevailing during the relevant period and there had been no illegality and, hence, prayed this Authority to dismiss the appeal and to confirm the order passed by the 2nd Respondent.

5. The case was taken up for hearing on 12.11.2014. On behalf of the Appellant, Advocate Shri K.C Naikwadi, Advocate appeared and put forth his arguments and on

behalf of the 1st Respondent, Shri Devaraj, Advocate appeared and advanced his arguments.

6. The Advocate for the Appellant, Shri K.C.Naikwadi argued that Shri B.N.Katakol, Chairperson, CGRF, earlier in the capacity of the Superintending Engineer(EI) had sanctioned power to the subject house applying MS Building norms based on the input provided by his staff and, subsequently the same person sat in judgement over the Appellant's complaint in respect of the subject house which is against law. A person should not sit in judgement over his own order. Hence, the 2nd Respondent's order is legally invalid and liable to be quashed.

7. Further, he submitted that for any house, if M.S Building Regulation is to be made applicable, the floor area should be more than 500 Sq. Meters and the requisitioned load should be more than 25 kW. In the present case, the floor area of the subject house is only 176 Sq. Metres and requisitioned load is 4 kW and, hence, MS Building Regulations are not applicable to the present case and, therefore, the 2nd Resondent's order is liable to be set aside.

8. The Advocate for the Appellant added that if MS Building Regulations are to be applied, there should be a common roof, but in the present case, the Appellant's house is independent without any common roof and, hence, MS Building Regulations are not applicable and, hence, the 2nd Respondent's order is liable to be quashed.

9. The Advocate for the Appellant argued that HESCOM in the same area in similar cases has sanctioned power without applying MS Building Regulations: (a) R.M. Pattana Shetty in the year 2000 (b) A.B Angadi in the year 2002 (c) S.B Angadi in the year 1999 and (d) M.B Angadi in 2003. Hence, levying of infrastructure charges only on the subject house is discriminatory and liable to be set aside.

10. Concluding his arguments, the Authorised Representative submitted that the subject house is not attached to any other building, there is no entrance or common

passage or way from one building to another inside the building and the subject house has a separate entrance from the road side and, hence, the house under question cannot be clubbed with other independent buildings to calculate built up area and, therefore, the subject house shall be treated as an independent house. As per Regulations, houses can be clubbed to calculate the built up area only when there are houses within the house and having a common roof and a common passage. In the present case, HESCOM instead has taken the road that exist between two opposite row of houses as common passage and, come to the conclusion that subject house shares a common passage. Therefore, prayed this Authority to set aside the impugned order passed by the 2nd Respondent and to direct the 1st Respondent to refund the infrastructure charges wrongly collected from the Appellant.

11. The 1st Respondent during the hearing reiterated the submissions made in the statement of objections.

12. Both parties were informed vide letter No.OMB/H/G-192/2014/430 dated 27.10.2014 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.

13. Having regard to the contending positions of the parties, the issues that arise for our consideration are:

a) What is passage means?

b) Whether the road coming between two opposite row of houses within a compound can be defined as a common passage? and whether the subject house which is an independent house sharing the road can be said that it shares a common passage under Note 4 of Clause 3.1.5 of the KERC (Recovery of Expenditure for Supply

of Electricity) Regulations, 2004 and, hence, liable to pay infrastructure fee of Rs.20,800/-?

14. In the instant case, the 1st Respondent has levied Rs.20,800/- infrastructure charges on the Appellant under Note (4) of Clause 3.1.5 of the KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 which states "In case the sanctioned plan indicates two or more buildings in the same premises or if the sanctioned plans are separate and in different names but the buildings are attached and / or share a common passage or staircase, they shall be clubbed together to calculate built up area."

15. The 1st Respondent appears to have taken decision to levy infrastructure charges of Rs.20,800/- on the premise that the subject building shares a common passage and, hence, building is liable to be attached for the purposes of calculating the built up area. In order to understand whether the subject building shares a common passage, we will have to first understand what is "passage" means and also the meaning of the word "common passage."

16. Oxford Dictionary defines passage as "**a long narrow areas with wall on either side that connects one room or place with another.**" In other words, passage (a) will have wall on either side (b) it is a narrow area (c) and connects one room to another. International Webster Dictionary defines passage as "**Any corridor hall or gallery affording communication between apartments in a building.**" Seen in this context, passage is possible only within the building. Hence, interpretation of the 1st Respondent that even the road that exist between two opposite row of houses also comes under the definition of passage is incorrect and cannot be accepted and, hence, rejected.

17. In the light of the definitions cited supra, mere existence of road alongside the subject house does not mean the subject house shares a common passage

with other houses in the vicinity. When the public road cannot mean passage, 1st Respondent's interpretation that the subject house shares a common passage (public road) and, hence, should be construed as an attached house defy all reasoning and logic and, hence, deserves to be rejected. In the present case, the 1st Respondent has not clubbed the subject building with other building for the calculation of total built up area, nor arrived at the total built up area of all the houses located in the area nor distributed the infrastructure charges equally to other buildings but found to have levied the entire infrastructure charges of Rs.20,800/- only on the Appellant's house which amounts to bias against the Appellant and discrimination. The 1st Respondent admitted during the course of hearing that the subject house does not come under the layout area. When the subject house is not coming under the purview of any layout area, then the only course open to the 1st Respondent is to consider the subject house under Clause 3.1.1 (A) of the KERC (Recovery of Expenditure for Supply of Electricity) Regulations 2004 and recover the amount. Clause 3.1.1(A) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 states under the caption "**Provision for Low Tension supply except for layouts:**

"For providing power supply to the applicant under the LT category, for all the installation(s) clubbed together in a premises standing in the name of one or more persons, the Distribution Licensee shall recover the expenditure towards the cost of electric line/plant up to point of connections as follows from the applicant:

(Note: For the purposes of Clause 3.1.1, the point of connection means a terminal pole carrying LT/HT line and is situated within 30 meters outside the premises of the applicant).

- A) For loads less than 25 kW in respect of domestic, commercial and mixed load installations

Requisitioned load	Recoverable amount
Up to and inclusive of 3 kW	NIL
Above 3 kW up to and inclusive of 15 kW	Rs.650 per kW for loads above 3 kW
Above 15 kW and less than 25 kW	Rs.7800 plus Rs.1300 per kW for loads above 15 kW

”

18. In the present case, the Appellant has applied for 4 kW of power and as per the table supra, the Appellant is not liable to pay any amount up to 3 kW of power and exceeding 3 kW, per each kW the Appellant is liable to pay Rs.650/-. Thus, in the instant case, the Appellant is liable to pay Rs.650/- besides Meter and Security Deposits.

Thus, the 1st Respondent is found to have collected Rs.20,150/- in excess than what is allowed under the Regulations. Hence, the 1st Respondent is considered liable to refund Rs.20,150/- collected in excess to the Appellant. Hence, the following order:

ORDER

19. For the foregoing reasons, the impugned orders passed by the 2nd Respondent is set aside and the 1st Respondent is hereby directed to refund Rs.20,150/- excess amount collected in the form of infrastructure charges to the Appellant. The 1st Respondent is instructed to refund the amount within one month from the date of passing of this order. In the result, **the appeal succeeds.**


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Smt.Nagarathna, Railway Parallel Road, Angadi Compound, Ranebennur-581115.
2. Assistant Executive Engineer (EI), O & M Sub-Division-1, HESCOM, P.B.Road, Ranebennur-581 115.
3. Consumer Grievance Redressal Forum, HESCOM, Haveri.
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