



**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-166/2013/338

Dated 03.04.2014

M/s.Warkin Equipments P.Ltd.,
C/o T.M.Baddi,
Near S.B.I.,
Keshavapura,

HUBLI

**(Represented by Shri Tushar M.Baddi
& Shri M.A.Delvi, Authorised Representatives)**

.. Appellant

Vs

1. Assistant Executive Engineer(EI),
O & M City Sub-Division-3,
HESCOM,
Industrial Estate, Gokul Road,

HUBLI

**(Represented by Shri Devaraj, Advocate –
Authorised Representative)**

2. The Chairperson,
Consumer Grievances Redressal Forum (C.G.R.F)
Office of the Superintending Engineer,
O & M Circle, HESCOM
Tabib Land,

HUBLI

.. Respondents

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, HESCOM, Hubli (hereinafter referred to as the 2nd Respondent) vide No. ಹುಬ್ಬಲಿ/ಗ್ರಾಹಕರೊಳಿವೇ/ಪ್ರ.ಸಂ.133/ಸಿವಾಯ್‌ಎಸ್-11 ದಿನಾಂಕ **23.08.2013** relating to the short claims raised by the 1st Respondent against the Appellant for Rs.1,03,179/- dated 18.02.2012. The 2nd Respondent has declined to grant any relief to the Appellant in the matter. Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is an Electricity Consumer of HESCOM and engaged in manufacturing of motor equipments. The Unit is located at Hubli. The Installation bearing R.R No M.P 8890 stands in the name of the Appellant. The Appellant was sanctioned 40 H.P power. Dispute arose on 18.02.2012. The 1st Respondent, based on M.T Rating Sub-Division's report dated 22.12.2003, raised a provisional bill for Rs.1,03,179/- on 18.02.2012 after a lapse of 8 years. The Appellant raised objections against this demand on 02.03.2012. The 1st Respondent did not consider the objections filed by the Appellant and raised a bill for Rs.1,28,327/-. The Appellant challenged this demand before the 2nd Respondent on 12.09.2012. The 2nd Respondent took up the case for hearing on 18.04.2013 and passed the final order on 05.09.2013, but put 23.08.2013 as the date of passing final order. The 2nd Respondent is supposed to pass order within 60 days from the date of filing the complaint, but in the present case the 2nd Respondent took nearly 10 months to pass final order.

3. Further, on 13.04.2004, the M.T Rating Sub-Division replaced old versioned energy meter with new one. As per CEA (Installation & Operation Etc) Regulations, 2006, the C.T (New version), which was introduced by the Licensee on 13.04.2004, had these reading parameters Viz., (a) CKWH i.e import and (b) CKWH-e i.e export. The M.T Rating Sub-Division, on 01.09.2003, wrote to all the Assistant Executive Engineers (EI) about the introduction of new versioned energy meter and also on how to read the new energy meter. The Assistant Executive Engineers (EI), through letters, were informed that in L&T modified version ETV meters, there were

two separate registers: one for import (CKWH) and the other for export (CKWH-e) active energy and for billing purposes both import and export cumulative energy had to be considered. This shows that the 1st Respondent was aware that he had to take cumulative energy of both import & export. Although the M.T Rating Sub-Division had issued instruction to the Assistant Executive Engineers (EI) and Section Officers on how to read the new energy meters, the concerned Section Officer failed to carry out the instructions. The Section Officer took only CKWH (Import) reading leaving the CKWH-e (Export) reading unread. The subject installation was serviced with 40 Horse Power and as per regulation, such meters have to be read by the Section Officer, but, in the present case, the Section Officer failed to read the CKWH-e register. Further, as per Clause 4(a) of KERC Code of Practice on Payment of Bills, if the Licensee, during verification of the consumer's dossier, notices any erroneous claims, the consumer is liable to pay the difference, in case the revised claims are more than the claims already made in the regular bills within 30 days from the presentation of a separate supplemental bill for the short claim. However, the Licensee shall not claim any payment towards short claim for back period beyond three years. Yet, in the present case, the 1st Respondent has made short claim for back period for more than three years which is contrary to the Regulations and, hence, prayed this Authority to quash the demand raised by the 1st Respondent and to set aside the impugned order passed by the 2nd Respondent.

4. The 1st Respondent's comments were called vide letter No OMB/H/G-166/2013/289 dated 19.09.2013. The 1st Respondent filed his statement of objections vide letter dated 27.09.2013.

5. The 1st Respondent, in his statement of objections, submitted that HESCOM had introduced new versioned ETV meter and in this meter there were two registers i.e one for import energy and another for export energy. Further, instruction had been issued to the officers on how to take the reading of both CKWH and CKWH-e meters for billing purposes. By oversight, the Section Officer omitted reading of CKWH-e register and read only CKWH register which resulted in erroneous billing. Subsequently, the MT Rating Sub-Division, in the year 2012, pointed out this error.

Further, the 1st Respondent, in order to work out differential units, requested the M.T. Rating Sub-Division to furnish the down-loaded data for the relevant period. But the M.T. Rating Sub-Division informed that they had down-loaded data only for a period of six months and, hence, suggested to take the initial and present reading of CKWH-e register and work out the differential units for billing purposes. On these lines, the Assistant Executive Engineer(EI), O & M Sub-Division issued demand notice on 18.02.2012. The Appellant did not accept this demand and filed objection on 02.03.2012 stating that he was not liable to pay the differential amount. The 1st Respondent considered the objections of the Appellant and had also held consultation with the North Karnataka Small Scale Industries Association. Since the objections were not based on any credible evidence, the 1st Respondent overruled the objections and issued a bill on 17.04.2012.

Further, the 1st Respondent added that under Clause 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka if short claims are caused due to erroneous billing, the consumer is liable to pay the difference amount. In the present case, short claims were caused due to the erroneous billing on account of failure to read the CKWH-e register by the Section Officer. Subsequently, this omission was noticed by the MT Rating Sub-Division and, based on their report, supplemental claims had been made for the differential amount.

6. The case was taken up for hearing on 21.10.2013. On behalf of the Appellant, the Authorised Representative, Shri M.A.Delvi appeared and submitted his arguments and, on behalf of the 1st Respondent, Shri Devaraj, Advocate appeared and advanced his arguments.

7. During the hearing, both the Authorised Representative and the Advocate for the 1st Respondent reiterated the submissions made in their appeal memo and statement of objections respectively.

8. Both parties were informed vide letter No.OMB/H/G-165/2013/300 dated 08.10.2013 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.

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

a) Whether the contention of the Appellant that the Licensee shall not claim any payments towards short claim for back period beyond three years under Clause 29.09 of KERC (ES & D) Code 2000-01 is valid in the light of the passing of the Electricity Act 2003 and its coming into force from 10th June, 2003.

b) Whether the 1st Respondent is right in taking both import & export cumulative energy for billing purposes?

10. The Authorised Representative of the Appellant has taken a contention that the Licensee cannot make any claims towards short claim for back period beyond three years and, in the present case, the 1st Respondent has made its claims for a period of 8 years, which is invalid. At the most, the 1st Respondent can make short claim for a back period up to three years under Clause 29.09 of KERC (ES & D) Code 00-01 and any claims made beyond three years will be in violation of the said Clause and, hence, the Appellant is not liable to pay short claims made by the 1st Respondent for 8 years. The Appellant has relied on Clause 29.09 of KERC (ES & D) Code 00-01. This was in operation between 29.03.2001 to 17.06.2006 and, in between this period, the Parliament enacted the Electricity Act, 2003 and this Act was to come into force from the date appointed by the Central Government. The Central Government issued notification on 10th June, 2003 and it said that the Act comes into force with immediate effect and, in other words, the Electricity Act, 2003 was given effect to from 10th June, 2003 and this Act extended to the whole of India except Jammu & Kashmir. In Karnataka, the Regulations in pursuance to Electricity

Act, 2003, were framed and such Regulations came into force from 17.06.2006. During the interregnum i.e. between 10th June, 2003 (The Electricity Act, 2003) and till the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka was framed (17.06.2006), KERC (ES&D) Regulations, 2000-01 were in force. These Regulations, which were in force by default during the interim period, per se will not become void unless the provisions of the ES & D Code 00-01 collide with the Electricity Act, 2003. In the instant case, Clause 29.09 of ES & D Code 00-01 is found to be inconsistent with the corresponding provision under Section 56(2) of Electricity Act, 2003 in the sense that under Regulation 29.09 the licensee cannot claim any payment towards short claim for back period beyond three years, whereas Section 56(2) of the Electricity Act, 2003 and Regulation 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka say that the Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charge of electricity supplied. As per Article 254 of the Constitution and also as per the General Clauses Act, in case of inconsistency between the new Act and corresponding old regulation, the new act will prevail over the State Regulations. In the present case, the claims of the Appellant have to be dealt under the Electricity Act, 2003 in the light of the aforesaid discussion. In the instant case, it is seen from the records that the 1st Respondent has raised demand for Rs.1,03,179/- against the Appellant on the basis of the MT Rating Sub-Division's report on 18.02.2012. As per Section 56(2) of the Electricity Act, 2003 and also as per the ruling of Hon'ble High Court in the case of Ghousia College of Engineering v/s BESCO, the 1st Respondent is found to have raised the demand within 2 years after the MT Rating Sub-Division had brought the issue to its knowledge and the period of 2 years has to be counted from the day on which HESCO came to know of such claim. In the light of these discussions, the arguments of the Appellant that the 1st Respondent cannot claim any payment towards short claim for back period beyond three years cannot be accepted and, hence, the demand raised by the 1st respondent has to be considered valid.

11. The Appellant argued that HESCOM is not justified in claiming the alleged export energy separately without clarifying whether it was already billed under CKWH reading or not. There appears to be no merit in this argument as HESCOM issued clarification on display reading after the introduction of new versioned ETV meters in 2003. There was specific instruction issued to the field officers dated 13th February, 2003 to consider both import and export cumulative energy for billing purposes and further added that in earlier case only one reading used to come which was the total of CKWH (import) and CKWH-e (export), energy, but in the reprogrammed meters both were shown separately. That means the new versioned ETV meter had two parameters namely CKWH (import) & CKWH-e (export) which registered the import & export energy separately but for billing purposes both import & export energy had to be added. Instructions issued by the Corporate Office appear to have not been followed by the Section Officer either due to negligence or lack of understanding. However, this omission is found to have been pointed out by the MT Rating Sub-Division during their inspection and, based on this report, corrective action is found to have been taken to recover such amounts from the Appellant and, hence, no illegality is found to have been committed by the 1st Respondent.

12. The Appellant cited USERS MANUAL to drive home the point that the bill earlier issued was the correct one. The 1st Respondent in their affidavit filed before this Authority rejected the arguments of the Appellant and submitted that the contents in the USERS MANUAL is not applicable to the meters under reference and applicable only to the new meters having only one CKWH register. The perusal reveals USERS MANUAL not having any date and, hence, difficult to establish that the contents in the USERS MANUAL are applicable to the installations under question and, hence, this cannot be taken as credible evidence and, therefore, rejected. Since the Appellant placed much reliance on the USERS MANUAL, he was directed to produce letter issued by L&T (Manufacturers) confirming that the contents in the USERS MANUAL are applicable to the meters in question, but the Appellant failed to produce any such letters. Failure to produce letter issued by the meter

manufacturers confirms that the Appellant has no case and the arguments are devoid of merits.

13. In the light of the above discussions, the following orders are passed:

ORDER

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



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. Warkin Equipments Pvt.Ltd., C/o T.M.Baddi, Near S.B.I., Keshavapura, Hubli (Represented by Shri T.M.Baddi and Shri M.A.Delvi- Authorised Representatives)
2. Assistant Executive Engineer, O & M City Sub-Division-3, HESCOM, Industrial Estate, Gokul Road, Hubli (Represented by Shri Devaraj, Advocate)
3. The Chairperson, Consumer Grievance Redressal Forum, Office of the Superintending Engineer, O & M Circle, HESCOM, Tabib Land, Hubli.
4. Managing Directors of all ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Hon. Member (M), KERC
7. PS to Hon. Member (A), KERC
8. PS to Secretary, KERC