



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-136/2012

Dated 13.11.2012

BETWEEN :

M/s.Channeshwar Industries,
C/o T.M.Baddi,
Near S.B.I.,
Keshavapura,

HUBLI

**(Represented by Sri Tushar M.Baddi,
Authorised Representative)**

.. Appellant

Vs

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

HUBLI

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 Regulation 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the orders passed by

the Consumer Grievance Redressal Forum, Hubli (hereinafter referred to as the 2nd Respondent) vide case No. UÁÁÁ/1.ªÉ.Ú.í/11 dated 22.05.2012 in respect of the Appellant's grievance relating to refusal of 2nd Respondent to direct the 1st respondent to pay interest for the delay caused in refunding the amount as per the impugned order. Aggrieved by the 2nd Respondent's order, the Appellant has submitted his case as under:

2. The Appellant is a registered Electricity Consumer of HESCOM with a sanctioned power load of 20 HP sanctioned on 09.12.1970 and an additional power load of 30 HP sanctioned on 14.09.1992. Totally 50 HP power was sanctioned to the subject installation bearing RR NoMP.1540. From the beginning, the licensee was giving manual energy bill in which Horse Power details were not mentioned. Since the HT particulars were not mentioned in the bill, the consumer went on paying Fixed Charges for 71 HP, though the Licensee had to collect Fixed Charges for 50 HP only. Thus, the 1st Respondent collected Rs.2,100/- as excess per month in the form of Fixed Charges.

3. The Appellant applied for reduction in load from 71 HP to 30 HP in the year 2009. In the application Form and in the Revenue Details of the consumer column, sanctioned load was shown as 71 HP. The Appellant, on seeing these records, requested the Licensee to have a re-look regarding the load sanctioned. The Licensee, after verification, confirmed that there had been some mistake in the sanctioned load. However, the Licensee did not take any steps to correct the mistake. Hence, the Appellant approached the 2nd Respondent on 29.03.2010. The 2nd Respondent passed the impugned order on 11.04.2011 directing the Licensee to pay the differential amount taking the sanctioned power as 50 H.P. Since no steps were taken to refund the amount, the Appellant approached the Chief Engineer (EI) on 13.07.2001 and the Chief Engineer (EI), on this letter issued directions to the Assistant Executive Engineer(EI) to expedite the refund request on 16.08.2011.

4. In between, the Appellant also approached the Executive Engineer(EI) on 26.07.2011 seeking refund and the Executive Engineer(EI), replied that the delay had been caused by the Accounts Officer. Since the Executive Engineer (EI) pointed at the Accounts Officer, the Appellant approached the Controller, Internal Audit for refund of amount along with interest. The Controller, Internal Audit did not reply to the Appellant's letter. On 29.11.2011, the Assistant Executive Engineer (EI) sought refund application from the Appellant. Since the Appellant had already given the refund application on 21.04.2011, again, the Appellant submitted one more refund application under protest. In the refund application, the Appellant stated that he was giving refund application for the second time without prejudice to his interest. On 09.09.2011, the Controller, Internal Audit issued a letter to the Executive Engineer(EI) conveying its approval and also advised that refund application had to be collected from the Appellant before refund of amount.

5. Though the Licensee had obtained refund application from the Appellant on 20.04.2011, yet again sought refund application from the Appellant. The Licensee could have taken decision to refund the amount based on the application already filed and, instead caused inordinate delay seeking application again and again. There is no requirement under the Regulation that the consumer should give refund application. The HESCOM has brought out GRAHAKARA KAIPIDI and even in this KAIPIDI, the Licensee has not prescribed any Format for the Consumer to seek refund.

6. Since the Appellant did not receive interest on the differential amount from the Licensee, he approached the 2nd Respondent and the 2nd Respondent, in its second order dated 22.05.2012, awarded compensation of Rs.2,000/- to the Appellant. Aggrieved by the impugned order, the Appellant has filed this appeal for payment of interest.

7. The 1st Respondent's comments were called vide letter No OMB/H/G-136/2012/1032 dated 19.06.2012 and the 1st Respondent has furnished his comments vide letter No. ಹು/ನ.ಉ.ವಿ-2/ಸ.ಕಾ.ಇಂ(ವಿ)/ಸಲೆ/3122-25 **dated 20.07.2012.**

8. In his comments, the 1st Respondent has admitted that the Appellant had been sanctioned 50 HP, but charged Fixed Charges for 71 HP and formally this issue was resolved by the 2nd Respondent. In pursuance of the 2nd Respondent's order, the differential amount had been refunded to the Appellant after a lapse of 7 months. The Assistant Executive Engineer(EI) has ascribed this delay to non-availability of relevant records in the City Sub-Division, Hubli, as the relevant records had not been transferred by the Rural Sub-Division, Hubli to the City Sub-Division, Hubli, after the creation of new Sub-Division. Only on 26.11.2011, the records had been transferred to the City Sub-Division, Hubli, and, after the transfer of records, immediate action had been taken to refund the differential amount as per the 2nd Respondent's order. Secondly, the 2nd Respondent had not indicated the exact amount to be refunded to the Appellant and, hence records had to be traced to work out the differential amount and, after tracing the records, the differential amount had been worked out and amount paid to the Appellant on 20.11.2012 and, there had been no deliberate delay in refunding the amount. Hence, orders passed by the 2nd Respondent was just and there were no grounds to interfere and, hence, prayed this Authority to confirm the order passed by the 2nd Respondent and to dismiss the appeal.

9. The matter was taken up for hearing on 06.09.2012. On behalf of the Appellant, his Authorised Representative, Shri Tushar M. Baddi appeared and put forth his arguments and, on behalf the 1st Respondent, the Assistant Executive Engineer(EI), Shri Ramesh Rathod and the Assistant Executive Engineer, TA & QC, Shri Yeshawant Zalaki appeared and put forth their respective arguments. The Arguments from both sides were concluded on 11.10.2012.

10. The Authorised Representative of the Appellant reiterated the submissions made in the appeal memo and, similarly, the Assistant Executive Engineers reiterated the submissions made in their replies.

11. Both parties were informed vide letter No.OMB/H/G-136/2012/101 dated 29.08.2012 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.

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

a) Whether the Appellant had sought for payment of interest for the period of delay in refund of differential amount as per the impugned order?

b) Whether the 2nd Respondent is right in awarding compensation under Regulation 9.1(b) of KERC (CGRF and Ombudsman) Regulations, 2004 when the Appellant had sought for payment of interest?

13. In order to answer the above questions, we will have to examine the complaint filed by the Appellant before the 2nd Respondent and, from the complaint, it can be seen that the Appellant had sought **"As per Clause 29.09 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, in case the revised claims are less than the claims already made, the excess amount pointed out shall be credited to the consumer's account within one month under intimation to him. If for any reason, there is any delay in crediting to the consumer's account, interest@ 2% per month shall be paid to the consumer for the period beyond two months from the date of pointing out the revised claims"**. Further, the Appellant has specifically claimed interest from the date of the 2nd Respondent passing the order and till the amount is refunded to the Appellant. Admittedly, the 1st Respondent has taken 9 months to refund the differential amount after the 2nd Respondent had passed the order. The 1st Respondent has given reasons for the delay in refunding the amount. The 2nd Respondent, in the impugned order, has accepted the contention of the 1st Respondent that the delay has been caused due to the subjection of the transaction

to the scrutiny of the Internal Audit, but in the operative portion of the order, the 2nd Respondent has awarded compensation of Rs.2,000/- to the appellant under Regulation 9.1(b) of KERC (CGRF and Ombudsman) Regulations, 2004. Under this Regulation, if the 2nd Respondent is satisfied that any of the allegations contained in the complaint are true, then it can issue an order **“to pay such amounts as may be awarded as costs to the consumer”** In the instant case, the Appellant is found to have not made any allegations against the 1st Respondent for the 2nd Respondent to award cost. The Black’s Law Dictionary defined cost as **“cost incurred by a successful party who is entitled to an award of those costs to the party who finally prevails in a proceeding that has been returned to the lower court.”** Further, Readers Digest’s Universal Dictionary defines cost as **“the charges fixed for litigation usually payable by the losing party.”** According to Oxford Dictionary, the cost in the legal parlance is **“Legal expenses, especially those allowed in favour of the winning party or against the losing party in a suit.”**

14. From the above definitions, it is clear that the 2nd respondent can direct the 1st respondent to pay cost to the consumer. In the present case, the 2nd Respondent has not passed any order on the complaint filed by the Appellant. The Appellant is found to have sought interest on differential amount in his complaint for the period the delay has been caused by the 1st Respondent as per the 2nd Respondent’s impugned order. The 2nd Respondent should have decided the main issue first and, afterwards, it should have awarded costs, if it felt that the 1st Respondent had wilfully delayed refund of certain amounts to the Appellant. No such order is found to have been passed by the 2nd Respondent on the payment of interest as sought by the Appellant and, instead, it has directed the 1st respondent to pay Rs.2,000/- in the form of compensation. The 2nd Respondent ought to have passed order on the main issue i.e. whether the 1st Respondent is liable to pay interest or not. Awarding cost or directing the Licensee to pay compensation is secondary and primarily order should have been passed on the main issue and, in the present case, such a thing has not happened. The 2nd Respondent is found to

have brushed aside the main issue under the carpet and felt that instead of directing the 1st Respondent to pay interest, it would suffice if the 1st Respondent is directed to pay some costs or compensation. The 2nd Respondent's Order awarding compensation amounts to accepting the contentions of the Appellant that the 1st Respondent has caused delay in refunding of certain amounts to the Appellant, but still, not inclined to direct the 1st respondent to pay interest under Regulation 29.08 (a) of Condition of Supply Regulations. Regulation 9.1(b) of KERC (CGRF & Ombudsman) Regulations, 2004, does not provide for payment of compensation, but the 2nd respondent can direct the Licensee to pay the cost to the party if it felt that the 1st respondent had wilfully disobeyed its order. The 2nd respondent could not have awarded compensation under Regulation 9.1(b) of KERC (CGRF & Ombudsman) Regulations, 2004.

15. In the light of the above, it is clear that the 2nd Respondent has not passed Order in accordance with the law and, hence, it is considered necessary to remand the case to the 2nd Respondent to pass specific order on the prayer made by the Appellant viz., payment of interest.

ORDER

16. For the foregoing reasons, the impugned Order passed by the 2nd Respondent vide No. U&A/1.ªEJ, I/11 dated 22.05.2012 is set aside. The case is remanded to the 2nd Respondent to pass fresh Order in the light of the observations made above.



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Channeshwar Industries, C/o T.M.Baddi, Near S.B.I., Keshavapura, Hubli.
2. Assistant Executive Engineer, O & M City Sub-Division-2, HESCOM, 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