

Before the Ombudsman, K.E.R.C., Bangalore

Present: S.D.Ukkali

Ombudsman

Case No.OMB/B/G-51/2009/6883

Dated 30th July 2009

1. Shri Shrikar R.C.
Shrikar Engineering,
No.6A, 4th Main, 3rd Cross,
J.C.Industrial Layout,
Yelachenahalli 2nd Stage,
Kanakapura Road,
BANGALORE-560062

2. Smt.Sumangala S.Chiploonkar,
Shridurga Engineers,
No.6, 4th Main, 3rd Cross,
J.C.Industrial Layout,
Yelachenahalli 2nd Stage,
Kanakapura Road,
BANGALORE-560062

.. **Complainants**

Respondents:

1.Bangalore Electricity Supply Company Ltd.,
represented by its
Asst.Executive Engineer(Ele)
S-5 Sub Division, BESCOM
ISRO Layout,
BANGALORE-560078.

2. The Consumer Grievance Redressal Forum,
BESCOM, Central Stores Premises,
Near ESI Hospital, Rajajinagar,
BANGALORE-560010

.. **Respondents**

I. These are two identical cases remitted back to this Authority by the Hon.High Court of Karnataka, Bangalore in terms of an Order in Writ Petition No.5765/08(GM-KEB) filed by the 1st Respondent directed against the Order in case No.OMB/G/G-37/2007 and OMB/G/G-38/2007/3866 dated 14.02.2008 passed by this Authority.

II. The facts of the case in brief are as follows:

Both the Complainants 1 & 2 have availed electricity supply to their industrial installations bearing RR No. No.BS5P 3099 of 40 HP (30 kW) and RR No.BS5P 3095 of 30 HP (22.5 kW) respectively situated at No. 6A & 6, 4th Main, 3rd Cross, J.C.Industrial Layout, Yelachenahalli 2nd Stage, Kanakapura Road, Bangalore, formed during the period 1975-1978. They, after availing power supply, demanded redressal of certain grievances like the refund of excess infrastructure charges (IC for short) allegedly collected illegally without furnishing any particulars of such demand vide sanction letters dated 08.11.2005 and the refund of excess three Monthly Minimum Deposit (3 MMD for short) collected by the 1st Respondent. Non-redressal of these grievances by the 1st Respondent forced the Complainants to file complaints before the Consumer Grievance Redressal Forum (CGRF for short), Bangalore Electricity Supply Company Limited (BESCOM for short) Bangalore seeking relief on 30.06.2007 under the provisions of KERC(Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004. The CGRF passed the following Orders on 07.08.2007 in file No.CGRF/24/2007/2183.

A) 1)The infrastructure amount of Rs.92,000/- and Rs.1,20,000/- collected for R.R.Nos. BS5P 3095 and BS5P 3099 respectively is in order as per Clause 3.2.3(i)(b) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004.

2)The Respondent has to refund the excess 3 MMD held for the R.R.No. BS5P 3095 and BS5P 3099 as per KERC (ES&D Code) 30.03 (c) amended on 27.3.2003.

Not satisfied with this Order, the Complainants represented before this Authority and sought redressal of their grievances. A combined order came to be passed by this Authority as follows in Order dated 14.2.2008 in case Nos. OMB/G/G-37/2007 and OMB/G/G-38/2007/3866.

B) 13.(a) The 1st Respondent shall refund the Infrastructure charges collected from the Complainants with interest at 1% per month within 30 days of this order.

(b) The request of the Complainants to grant compensation at the rate of Rs.50/- per day in terms of KERC (Licensees Standards of Performance) Regulations 2004, for the delay in refunding the excess security deposits is rejected as there is not much delay on the part of the 1st Respondent to refund the amount.

Aggrieved by this Order, the 1st Respondent filed a Writ Petition No.5765/08 (GM-KEB) before the Hon.High Court of Karnataka alleging that this Authority has proceeded to pass the order without affording reasonable opportunity of hearing to the Petitioner. In view of not affording reasonable opportunity of hearing to the Petitioner and for non-compliance of natural justice, the Petitioner felt to present the said Writ Petition seeking appropriate reliefs. The Hon.High Court of Karnataka has remanded the matter back to this Authority :

“For reconsideration of the matter afresh and to take appropriate decision, in accordance with law, after affording reasonable opportunity to the petitioner-company and to the respondents 1 and 2 and dispose of the same, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order;

All other contentions urged by both the parties in this writ petition are left open.”

III. These directions from the Hon.High Court were brought to the notice of this Authority by filing Memos on 24.02.2009 along with Form-B, briefing the details of the complaints, making several prayers, enclosing several records by Sri Shridhar Prabhu, learned Counsel for both the Complainants and further reiterating that the representations made before this Authority dated 07.11.2007 and the statement of objections filed before the Hon. High Court of Karnataka are to be deemed as part and parcel of this Memo. Thereupon, the 1st Respondent was directed to appear before this Authority on 02.03.2009 with all the records. The 1st Respondent appeared and submitted parawise comments

by a letter marked herein as RD-1 and requested for some time for further making written submissions. Accordingly, one week's time was granted and he made further submissions by letters marked herein as RD-3 and RD-4. Copies of all these letters were made available to the Complainants for their comments.

Before proceeding with the matter on merits, efforts were made in terms of the sub-Regulation 1 of Regulation 20 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 to find out the willingness of the parties to settle the matter. The parties were not keen to settle the matter. Hence, the matter was taken up for hearing. During the course of hearing also, letters marked as OMB-7 were addressed, offering one more opportunity for a settlement. **The 1st Respondent expressed in the letter marked as RD-5 that it was not possible for him to arrive at settlement and requested this Authority to pass an Order.**

IV. The Counsel for the Complainants and the 1st Respondent were heard on 02.04.2009 and 29.05.2009 and the statements made by them were recorded. During the hearing and also by a rejoinder, the learned Counsel for the Complainants contended that The Jayanagar Cooperative Housing Society Limited, Bangalore was not the developer of the layout and that if the letter No. No.283/2008-9 dated 29.03.2009 from the Secretary of this Society addressed to the 1st Respondent was to be taken as evidence, he be allowed to cross examine the Secretary. The Counsel cross-examined him on 02.07.2009.

In the light of the directions from the Hon'ble High Court of Karnataka to afford reasonable opportunity to both the Complainants and the 1st Respondent, all the copies of letters and documents submitted by the parties were made available to other parties for comments, if any, including the copy of the layout plan of the J.C. Industrial layout, II Stage. Yelachenahalli, Kanakapura Road, Bangalore so as to afford both the parties full opportunity of hearing as well as making written submissions, thereby providing natural justice.

“The documents showing the events that occurred are marked as documents CD-1 to CD-6 from the Complainants, from the 1st Respondent as RD-1 to RD-8 and the letters from this Authority, statements during deposition and cross-examination are marked as Ombudsman documents (OMB-1 TO OMB-16)”

V. PRAYER FROM THE COMPLAINANTS

The Complainants have sought their main two grievances to be settled by issuing directions to:

- 1) Refund the excess amount collected by the 1st Respondent towards the IC;
- (2) Pay the compensation for delayed refund of excess 3 MMD at the rate of Rs.50/- for each day of delay.

After considering the submissions made by the parties and the material available on record, this Authority proceeded to analyse the grounds urged as detailed below and passes the Orders.

VI. First Grievance (Refund of IC)

Ground:1 (a) The Complainants urge that under the applicable Accounting Standards as per the Companies Act, 1956, the 1st Respondent should have reduced the contributions received from the consumers towards capital assets, proportionate to the amount of depreciation provided for such assets created against the contribution by the consumer. But in the balance sheet for the year 2006-07 was shown as liability without making any such deductions. The depreciation on the entire assets of the respondent was charged against revenue and included for tariff determination. Rs.1,20,000/- and Rs.92,000/- respectively collected from the 1st and 2nd Complainants under Consumer

Contribution head in the accounts of the 1st Respondent is an acknowledgement of debt which was liable to be refunded.

(b) Further, during the hearing on 2.4.2009, the Learned Counsel for the Complainants stated that at the time of giving connection to any consumer the actual expenditure is to be collected and other charges which are to be taken care of are **paid in terms of Fixed Charges** in the regular tariff collected. The investment programme of the Licensee every year which is filed with the tariff application is a pass-through and is taken care of as **Fixed Charge component in the tariff order issued by the Hon'ble KERC.**

A. 1st Respondent's Contention:

The 1st Respondent contends at RD-5 that the Profit and Loss Account and Balance Sheet furnished for the year 2006-07 to the Commission for tariff filing was only estimated and provisional. As per actuals of 2006-07 accounts, **BESCOM reduced the contribution received from the consumer towards capital assets, proportionate to the amount of depreciation provided to such assets, created against the contribution by the consumer.**

B. Analysis & Findings: There are specific provisions in the Electricity Act 2003 for the following two processes in Karnataka, namely,

1. Determination of tariff by the Hon'ble KERC under the provisions of Sections 61 and 62 for catering electricity to the consumers after they avail electricity connections.
2. Arranging electricity supply to the prospective applicants under the provisions of Section 43, subject to recovery of expenditure for supply of this electricity determined by the Hon'ble KERC by framing regulations under the provisions of Section 46.

Therefore, the Hon'ble KERC has carried out above mentioned process separately and these two processes are not related to each other.

Separate regulations called as KERC(Recovery of Expenditure for Supply of Electricity) Regulations, 2004 are framed. The recoveries are made towards service line charges.

The "Service Line Charges" are determined on the basis of normative expenditure to be incurred on the infrastructure which are required to be created for bringing the distribution network closer to the consumer premises.

These charges vary depending upon the load requisitioned, distance and also depending on their categorization. **These charges are naturally high for high loads and low for low loads and are determined by the KERC in the regulations. For layouts, the entire layout is considered and not the individual applicant. If these charges are included in the regular tariff, the large number of smaller consumers will have to monthly contribute towards the expenditure incurred by the Licensee to service a few big consumers.**

These issues raised have no bearing on the recovery of one-time expenditure as per specific Regulations framed by the Hon'ble KERC in addition to the regular tariff to be paid by the consumers after the electricity is extended.

Ground 2: It is stated that the Hon'ble Appellate Tribunal for Electricity, hereinafter called as Hon'ble ATE, in appeal No.22/07 dated 14.5.2007 in Maharashtra State Electricity Distribution Company Limited (MSEDCL) Vs Maharashtra Electricity Regulatory Commission (MERC) sets at rest the entire issue as the emphasis in this case is on Section 42(1) of the Electricity Act 2003. The Licensee has a binding duty imposed on it to develop and maintain an efficient, coordinated and economical distribution system in its area of supply. **The ratio of this case has direct applicability to the present cases.**

Even if it is presumed that the layout of the Complainant is abandoned layout and further that KERC Regulations stipulate some charges to be collected for such layout the same cannot be the justification for collection of such charges in the wake of the duty imposed on the licensee as per section 42(i) of the Electricity Act 2003. The regulations of KERC cannot supersede / override the law and the charges indicated in the regulations should be construed as **upper ceiling limit**.

C. 1st Respondent's Contention:

The 1st Respondent contends that under Section 86 of Electricity Act 2003, the State Commission is entitled to adjudicate upon the disputes between the licensee i.e., Generating Companies and not to deal any disputes between the Supply Company and the Consumer. The Appellate Tribunal exercises power under Section 121 of the Electricity Act, 2003, on the appeal filed against the orders of the Hon'ble Commission. The Hon'ble Appellate Tribunal has no jurisdiction to adjudicate dispute between consumer and Supply Company vide order of the Hon'ble Supreme Court in **AIR 2008 SC 976**. Hence, the order of the Hon'ble ATE is not binding on these two cases and further contends that this authority has to deal with the matter exercising powers as enumerated under Regulation 9 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulation 2004.

D. Analysis & Findings: The case quoted pertains to the appeal filed by MSEDCL on the Order passed by the Hon'ble MERC on 8.9.2006. Each of the State Regulatory Commission is framing its own regulations for its respective State as per provisions of Section 46 of the Electricity Act 2003. The Regulations framed by the MERC were challenged by the MSEDCL and the Hon. ATE has passed an order on this appeal. **This is not applicable to the State of Karnataka as the Regulations framed by the Hon'ble KERC are applicable in the State of Karnataka unless they are set aside.**

The Complainants have quoted the provisions of Section 42(i) of Electricity Act 2003 which reads that "it shall be the duty of the Distribution Licensee to develop and maintain an efficient, coordinated and economical distribution system in the area of supply and **to supply electricity in accordance with the provisions contained in this Act.**

The highlighted portion of the provision indicates that the other provisions are also to be read with this provision. Section 42(i) shall not be quoted in isolation. The other provisions such as Section 43 and Section 46 and the Regulations framed by concerned Commission as per Section 46 shall be read with the provisions of Section 42(i). The KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 framed by the Hon'ble KERC are applicable in Karnataka and these Regulations specify a definite amount and there is no scope for any lower or upper limits. **Therefore, the contention of the Complainants that IC specified in the Regulations be considered as upper limit is not tenable.**

Ground 3: The Order of the CGRF places reliance on the provisions of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 as the basis for the collection of the excessive charges. The above regulations are repealed as shown by the complainants from the Gazette publication as Annexure R1 to the Writ Petition.

E. The 1st Respondent has not commented on this issue.

F. Analysis & Findings: The provisions of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 are not repealed as per the Gazette Notification as stated by the Counsel for the Complainants annexed as R1 to the Writ Petition. **In fact a sub-Regulation 4.1.4 is added wherein certain provisions of KERC ES&D Code 2000-01 are repealed.**

Ground 4: The Counsel for the Complainants produced an Order passed by the 2nd Respondent in No.CGRF/04/2008/2903 dated 23.10.2008 in case of M/s.4 Creations (whose industry is located in this layout) wherein directions were issued to the 1st Respondent to refund the IC collected. The copy of this Order was handed over to **the 1st Respondent who later stated at letter marked as RD-4 that BESCOM has challenged this Order before the Hon'ble High Court of Karnataka in Writ Petition No.12297/2009 against the Order passed by CGRF and requested to await this judgement.** During the deposition held on 29.5.2009 the Counsel for the Complainants requested this Authority as recorded in OMB-9 that since there is no stay from the Hon'ble High Court of Karnataka, his submission was that this Authority need not await the outcome of this Writ Petition and to pass the Orders.

G. Analysis & Findings: This Authority proceeds to pass this Order as contended by the Counsel for the Complainants without waiting for the outcome of the above mentioned Writ Petition and decides not to comment on this issue as the matter is sub-judice.

Ground 5: (a) It is alleged that the licensee has not demonstrated conclusively as to how and why the layout of the Complainant is an **abandoned layout**. The licensee has extended electricity for more than 200 installations in the industrial layout. A layout comprising of more than 200 installations cannot be termed by any stretch of imagination as an **abandoned layout**.

(b) The Counsel for the Complainants in his Memo dated 14.7.2009 has requested this Authority not to admit as evidence the deposition made by Shri B.V.Gangadhar Murthy, Secretary, The Jayanagar Cooperative Housing Society, as he was not authorized and that he was not the Secretary when the layout was initially commenced. Based on the deposition of unauthorized person, no conclusion be arrived at. The fact of electrification of the layout is a complicated question of fact, which cannot be gone into in the summary

proceedings of the present nature. A full-fledged trial is to be conducted for establishing this fact.

H. 1st Respondent's contention:

About 20% of the sites are still vacant in this layout and need electricity infrastructure as and when applicants come up for availing power supply to their industries. From the plan marked as RD-7, it is clear that in the 2nd stage of this layout, there are a total of 82 sites that are formed in the layout, out of which 57 sites are occupied and electrical connection is extended to them. As on 28.11.2005, 30 Nos. of sites were vacant and now as on today 25 Nos of sites are vacant and Shri B.V.Gangadhar Murthy, the Secretary has stated in writing that no infrastructure was provided for electricity.

I. Analysis & Findings: This Authority duly applying its mind and after careful study of the records, and after visiting the spot to ascertain the facts of the case, has come to the conclusion that the developer, The Jayanagar Cooperative Housing Society, Bangalore is the developer of this layout and has not provided the electricity infrastructure including the street lights and have simply sold the sites to the beneficiaries during the period from 1975 onwards and the electricity infrastructure has been developed by the then KEB, subsequently by the KPTCL and now by the BESCO. Sri B.V.Gangadhar Murthy, Secretary, The Jayanagar Cooperative Housing Society, Bangalore in his letter marked as RD-2 has stated that this layout has been developed by this Society and the sites have been distributed to the members without electrification by this Society. The Counsel for the Complainants cross examined him on 02.07.2009. The Secretary made it clear that:

a) the Secretary was earlier working as a Clerk in the same Society and has the knowledge about this layout. He has stated that only civil works have been developed and not the electrical works by the Society.

b) he has no knowledge whether the said layout is an abandoned layout.

c) **the Society has not collected any charges towards the electrification of the layout and that the Society has collected only the cost of the site.**

He has further stated that the Society is not prepared to pay IC for this layout. He has also stated that he has no knowledge from which sub-station, the electricity is fed to this layout and pendency of the case before this Authority filed by the allottees of the layout and also the amount spent by BESCOM to provide electricity. **No provision has been made for this layout regarding any electricity supply including the street lights.** He denied that the Society and the BESCOM have joined hands to collect IC from the allottees.

Actually, the word "**Abandoned Layout**" is not used in the KERC Electricity Supply and Distribution Code 2000-01, but it is said at 10.04 that "In case developers/promotees of private layout **abandoned** the execution or abstained from executing the work etc. etc." This 10.04 is repealed and in the absence of this clause, this Authority proceeds to find out the actual regulations applicable to this layout.

On a perusal of the records on the procedure followed in arranging supply to the prospective applicants, there is a history of framing of the Regulations in the State of Karnataka even before the State Electricity Commission came into being.

Electricity Supply Regulations, 1988 framed by the KEB in exercise of its powers under Section 79(j) of the Electricity (Supply) Act 1948 were in force with the amendment by subsequent Karnataka Power Transmission Corporation Limited (KPTCL for short) from time to time.

After coming into force of the Karnataka Electricity Reforms Act 1999 (hereinafter called as KER Act 1999), the Hon'ble KERC came into being

The Hon'ble KERC, after elaborate procedure of widespread consultation with all the various Stakeholders, NGOs and KPTCL and general public after calling for suggestion and comments, framed the KERC (Electricity Supply and Distribution) Code 2000-01 and published it in Karnataka Gazette dated 29.3.2001 and from that day onwards this Code was applicable to the entire State of Karnataka.

Separate provisions came to be made for Layouts wherein the concept was for electrification of the entire layout by the developer and the developer of the layout was entirely responsible for providing infrastructure by self execution. Individual applicants were not entertained in such areas. In case where the developer abandons after doing a portion of work or is not at all providing the infrastructure, the individual beneficiaries were facing difficulties in availing electricity connection. In order to avoid hardship to individual applicants, special provisions were made for payment of cost towards service line by the individual applicant. These special provisions in the Electricity Code or Regulations were made to wriggle out the individual beneficiaries from the difficulties.

In his argument, the Counsel for the Complainants suggests that the BESCOM is not taking any action on the developer or both of them have connived in collecting the IC is not tenable as there are no provisions under any Electricity Act to take action against such developers.

After coming into force of Electricity Act 2003 from 10.6.2003, there was necessity of modifications to this Code in tune with the provisions of this Act. Section 46 of this Act empowers the State Commission to authorize by way of Regulations, a distribution licensee to charge from a person requiring supply of electricity in pursuance of Section 43, any expenses reasonably incurred in providing any electrical line or plant used for the purpose of giving that supply.

The Hon'ble KERC by virtue of the said powers read with Section 181 of Act framed the Regulations called as KERC (Recovery of Expenditure for Supply of Electricity) Regulations 2004. They came into force from 16th December, 2004, the day of publication in the Karnataka Gazette.

In order to see that there is no ambiguity in the provisions of KERC (ES &D) Code 2000-01 and the KERC (Recovery of Expenditure for Supply of Electricity) Regulations 2004, Regulation 4.1.4 was added by an amendment. These Regulations were called as the KERC (Recovery of Expenditure for Supply of Electricity)(Amended) Regulations 2005. These Regulations came into force from 12th May 2005 the day of publication in the Karnataka Gazette.

There was another amendment by Gazette Notification dated 25.8.2005 to KERC (Recovery of Expenditure for Supply of Electricity)Regulations 2005 wherein certain amendments were carried out to Sub-Regulation 3.1.1 to 3.1.7. Subsequently, the KERC (Conditions of Supply of Electricity of Distribution Licensees in State of Karnataka) Regulations was notified in Karnataka Gazette on 17.6.2006. The cases of these two complainants fall during the period between 12.5.2005 and 17.06.2006. These two complainants applied for supply of electricity on 17.5.2005 and electricity was extended to these two installations of the 1st Complainant on 26.12.2005 and 2nd Complainant on 28.11.2005 respectively. **During this period, the KERC (Recovery of Expenditure for Supply of Electricity) Regulations 2004 with its amendments published on 12.5.2005 and 25.08.2005 were in force.** The Regulations that were in force during the relevant period are as follows:

Chapter-I : General; Short Title, Commencement and Interpretation

Chapter-II: Definitions

Chapter-III:

Regulation 3.1 deals with provision for low tension supply except for layouts, these are amended by the publication of 25.8.2005.

Regulation 3.2 deals with provision for low tension supply for layouts;

Regulation 3.3 deals with provision for IP sets;

Regulation 3.4 deals with provision for LT water supply;

Regulation 3.5 deals with provision for street lights;

Regulation 3.6 deals with provision for HT/EHT supply;

Chapter-IV: Miscellaneous.

Additional Sub-Regulation 4.1.4 was added by amending vide publication dated 12.5.2005.

The question before this Authority is to determine as to which of the provisions of these Regulations are applicable to these two cases. The provisions of Regulation 3.1 deal with supply of low tension electricity except for layouts and **hence are not applicable to these two cases.**

Regulation 3.2 deals with provision for low tension supply for layouts.

Regulation 3.2.1 reads as follows:

“In case of layouts approved by competent authority, the developer shall execute at his cost the electric line/plant such as extension works including extension of 11 KV line transformer, LT lines etc. but excluding improvement/augmentation works in the station and/or works of strengthening of the distribution main subject to certain conditions.

This provision is not applicable to these two cases, as the developer has not executed the electrical infrastructure work.

Regulation 3.2.2 deals with cases of sites/houses granted to economically/ socially weaker sections under any scheme sanctioned by Government of Karnataka or Government of India, the Distribution Licensee shall recover Rs.2000/- per site from the applicant or GOK or GOI or person in charge of the scheme and arrange for power supply. Alternatively, the cost of electrification of such layouts shall be budgeted in the scheme itself and paid to the licensee.

This provision is also not applicable as these sites have not been granted under economically/socially weaker section under any scheme sanctioned by State or Central Government.

Regulation 3.2.3 deals with cases of layouts where there is a default on the part of the developer and where the developer has not laid the electric

line/plant within the layout, the Distribution Licensee shall recover expenditure towards electric line/plant in the following manner:

- i) For sites coming in the areas of Bangalore Mananagara Palike, B.D.A. and the agglomeration area and also in the areas of city corporation and its agglomeration areas of Mysore, Mangalore, Hubli, Gulbarga and Belgaum.
 - (a) For sites having dimension of 1200 sq ft & less, Rs.4,000/- per KW of requisitioned load subject to a minimum of Rs.4000/- per site.
 - (b) For sites having dimension of more than 1200 sq.ft, Rs.4000/- per KW of requisitioned load subject to a minimum of Rs.12000/- per site.
- ii) For sites coming in other urban areas within the town limits identified by local /development authority, Rs.4000/- per KW of requisitioned load per site subject to a minimum of Rs.4000/- per site.
- iii) For sites coming beyond the Town limits in the layouts other than those referred in sub-clause 3.2.3(i) and (ii), Rs.3000/- per KW of requisitioned load per site subject to a minimum of Rs.3000/- per site.

This layout, as is evident, is a layout **“where the developer has not laid electric line/plant within the layout”** and, therefore, the provisions of Sub-Regulation 3.2.3.i(b) are applicable.

Just because the 1st Respondent termed the layout as “Abandoned Layout” instead of the words mentioned above under inverted comma, the Complainants cannot escape from the obligation to pay towards recovery of expenditure as determined by the appropriate regulations cited above.

Ground 6: This Authority in OMB/B/G-31/2007/3489 (Smt.Maria Miranda Vs. the Asst.Executive Engineer) has upheld the collection of infrastructure charges at the rate of Rs.4000/- per kW as the Complainant there has challenged the very rationale and applicability of IC where as the Complainants herein have no grievance in so far as the levy of IC. The only contention of the Complainant is as regards the categorizing the industrial layout as an abandoned layout without any justifiable basis. Therefore, there is no inconsistency or conflict between

quashed order of this Authority in the present cases and orders passed in the case noted above.

J. 1st Respondent's Contention:

The 1st Respondent states at RD-5 that in the similar case of Smt.R.Karunavathi Case No.OMB/B/G-33/2007/3473, dated 15.11.2007 in Kanakanagar layout of C5 Sub Division in BESCO area and in other 3 similar cases this authority has upheld the charges collected by the BESCO at the rate of Rs.4000/- per KW and a minimum of Rs.12000/- per site as per the KERC regulation.

K. Analysis & Findings: It is true that this Authority has passed Orders in 4 cases in the area of Kanakanagar layout of C5 Sub Division including the case of Smt.Maria Miranda and Smt.R.Karunavathi and others wherein the charges of minimum of Rs.12000/- (at the rate of Rs.4000 per KW) per site collected by BESCO came to be upheld as per the provisions of Sub-Regulation 3.2.3.i(b) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004. These provisions are also applicable to these two cases of the Complainants 1 and 2 and hence, as contended by the 1st Respondent, there is inconsistency in the Orders passed by this Authority. The provisions of Sub-Regulation 3.2.3.i(b) are to be applied to these two cases also.

Ground 7: The Complainants have put forth three alternate ways of collection of IC.

(a) The 1st Complainant claimed that the amount to be collected as per the provisions of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004, amended by a Notification dated 17.8.2005 works out thus:

Charges for load above 25 KW and upto and inclusive of 50 KW	Rs.20,800.00
Plus Rs.6500/- per KW for loads above 25 KW (5 KW in this case)	Rs.32,500.00
TOTAL	Rs.53,300.00

The excess amount held was liable for a penal interest of Rs.11,399/- @ 12% from 11.11.05 to 11.4.07 for 17 month and the amount to be refunded works out thus:

a)	Excess amount paid	Rs.66,700.00
b)	Interest there on	Rs.11,339.00
	Refund due	Rs.78,099.00**

(actually works out to Rs.78,039)**

The 2nd Complainant contends that the amount to be collected as per the provisions of KERC(Recovery of Expenditure for Supply of Electricity) Regulations 2004 vide Clause No.30.06 works out thus:

Charges for load above 15 and upto and inclusive of 25 KW	Rs.6,000.00
Plus Rs.1000/- per KW for loads above 15 KW (7.5. KW in this case	Rs.7,500.00
TOTAL	RS.13,500.00

The excess amount held was liable for a penal interest of Rs.13,345/- @ 12% from 11.11.05 to 11.04.07 for 17 months and the amount to be refunded works out thus:

a)	Excess amount paid	Rs.78,500.00
b)	Interest thereon	Rs,13,345.00
	Refund due	Rs.91,845.00

(b) During the submissions by the Complainants before this authority on 7.11.2007 at para 2.12 stated that they became aware that the **correct calculation of the amounts payable to BESCO according to the regulations** in force at the time of sanction would be Rs.30,550/- and Rs.17,550/- respectively.

(c) Subsequently, they were of the view that the **actual expenditure of Rs.13,261/-** incurred by the Licensee in supplying power to the Complainants was the correct amount to be collected from them as IC.

L. 1st Respondent's Contention:

The Jayanagar Cooperative Housing Society has allotted plots in this layout without providing electricity infrastructure. This layout was formed during 1978 and KEB/KPTCL and now BESCO on the request from the individual plot owners have developed electricity infrastructure as per the prevailing rules and regulations from time to time. Earlier, **line minimum charges** were collected based on the Circular issued by KEB upto 11.09.1998 and the charges so collected were only Rs.2.25 lakhs.

As per the Circulars dated 11.9.1998 upto 19.11.2000 issued by the earlier KEB/KPTCL, the expenditure towards infrastructure were collected based on layout concept. Subsequently, the collections were as per KERC ES&D Code 2000-20001 and now it is as per KERC (Recovery of Expenditure for Supply of Electricity) Regulations 2004.

The amount collected in the said manner is amounting to Rs.6,70,600/- as IC for the period from 17.08.2005 to 19.01.2006. **The amount collected by the BESCO so far from the consumers who availed power supply in this industrial layout towards the cost of the electrical line and the equipment amounts to a total of Rs.17.78 lakhs against an investment cost of Rs.1.1 Crore.** He quoted certain cases marked at RD-5 that BESCO collected less charges than the estimated cost as per the prevailing regulations. The amount so far recovered is very less and as a local officer it was his duty to collect the charges from the prospective applicants as per the prevailing regulations of KERC and the collections of RS.1,20,000/- and Rs.92,000/- respectively 1st and 2nd Complainants are in order.

M. Analysis & Findings:

Three alternative suggestions are made by the Complainants for collection of IC as detailed below:

	1	2	3
Complainant I	Rs.53,300/-	Rs.30,550/-	13,261
Complainant II	Rs.13,500/-	Rs.17,550/-	

Actually, these are not the infrastructure charges (IC) but are the collections towards the **recovery of expenditure. It is clear that the Complainants are confused and are not definite of their grievances.** The three alternative charges claimed to be the reasonable charges quoting the Regulations to be applicable for these two cases are not actually applicable since they fall under the provisions of Regulation 3.2.3.i(b) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations,2004.

VII. CONCLUSIONS

Having regard to the above mentioned facts of the case, the prayer that the impugned order No.CGRF/24/2007/2183 dated 07.08.2007 by the CGRF, BESCOM Bangalore be squashed cannot be accepted and the 1st part of this order is upheld.

VIII. Second Grievance:

Payment of Compensation towards delayed refund of excess 3 MMD

The second grievance is to issue directions to the Respondent to pay the compensation of Rs.50/- per day of delay in refunding the excess 3 MMD, as per the provisions of KERC (Licensees Standards of Performance) Regulations, 2004.

The 1st Respondent in his letter marked as RD-8 has stated that excess 3 MMD of Rs.24,580/- and Rs.8313/- were refunded to the 1st and 2nd Complainants respectively on 18.12.2007 on the request applications dated 27.5.2007 from

them. The Respondent has not furnished any details about either interest paid or the compensation of Rs.50/- per day of delay paid.

In their representations filed before the CGRF, BESCO, Bangalore dated 13.8.2007, the Complainants claimed the refund of excess security deposit relying upon the amended version of Clause 30.03. The 2nd Respondent has ordered in the 2nd portion of the impugned Order to refund the excess 3 MMD as per KERC (ES&D) Code 30.03 (c) amended on 27.3.2003.

Aggrieved by this Order, the Complainants in their appeal complaint dated 07.11.2007 filed before this Authority have stated that the Forum failed to note that the provision for payment of interest at the rate of 2% per month to the consumer was provided under Section 30.03.(c)(i) of the Code, framed under Section 11 and Section 19 of KER Act, 1999, but compensation fixed under Schedule – I of KERC (Licensees Standard of Performance) Regulations, 2004 was in exercise of the powers of the Commission conferred under Section 57(2) of the 2003 Act and this is a later regulation than the Code, governing the same field. Section 185(3) of the 2003 Act saved only the provisions of KER Act, 1999, which were consistent with the provisions of the 2003 Act. Section 174 of the 2003 Act also provides for overriding effect to its provisions and hence the Complainants are eligible to receive Rs.50/- per each day of delay in refunding the excess 3 MMD.

This Authority rejected this request in the Order mentioned above at Para II (B). Again, the Complainants, while filing the Memo marked as CD-5, prayed for the grant of compensation of Rs.50/- per day of delay in refunding the excess 3 MMD to the Complainants.

A) The 1st Respondent has not made any comments except that the excess 3 MMD is refunded on 18.12.2007 by cheques to the Complainants.

B) Analysis & Findings: The claim is made as per the amendment published in Karnataka Gazette dated 27.03.2003 called as the KERC (ES&D)(Amendment) Code, 2003, 30.03 c(i) which states that "if the deposit held is more than 120% of three times the average monthly bill amount of the preceding calendar year, Licensee shall refund excess deposit held over 120% of three times the average monthly bill amount of the preceding calendar year to the registered consumer by cheque after the refund application is filed by the consumer, within 2 months of such application, failing which interest at 2% per month shall be payable to the consumer. The refund application shall be filed after the 1st quarter of the year." This amendment as claimed by the Complainants is framed under Section 11 and Section 19 of KER Act, 1999.

The 1st Respondent has not refunded the excess amount within 2 months of filing applications. Since there was a delay in refund, the Complainants are entitled to get 2% interest per month for the delayed period of refund. The Complainants have chosen the 1st portion of the provisions of these amendments, namely, the refund of excess 3 MMD above 120% and they are averse in choosing the second portion of the same provision, namely, the payment of 2% of interest per month for the delay in refund. Instead, they are asking for payment of Rs.50/- per day of delay as per the provisions of Schedule-1 to KERC (Licensees Standards of Performance) Regulations, 2004 citing the issue of consistency of provisions of KER Act 1999 and the Electricity Act, 2003.

Choosing the provisions in bits and pieces is not justifiable.

Since the payment of interest at 2% per month on the excess amount refunded is part and parcel of the provisions on which the Complainants have based their demand for refund of excess 3 MMD, they are eligible for receipt of interest of 2% per month for the delay and not Rs.50/- per day of delay in refund of excess 3 MMD. The grievance of the Complainants is untenable.

IX.**CONCLUSIONS**

The second part of the Order No.CGRF/24/2007/2183 dated 07.08.2007 passed by the CGRF, BESCO, Bangalore is upheld.

X. Thus having regard to the facts and the circumstances of the case, this Authority passes the following order:

ORDER

1. The collections of Rs.1,20,000/- and Rs.92,000/- made from 1st and 2nd Complainants respectively towards recovery of expenditure by the 1st Respondent as per the provisions of sub Regulation 3.2.3.i(b) of KERC (Recovery of Expenditure for Supply of Electricity) Regulations, 2004 are in order.

2. The Respondent shall pay the interest of 2% per month to both the Complainants for the period of delay in refund of excess 3 MMD as per the provisions of KERC (ES&D) Code(Amendment) Code 2003, 30.03 c(i) within 30 days from the date of this Order.

(S.D.Ukkali)
Ombudsman

1. Shri Shrikar R.C., Shrikar Engineering, No.6A, 4th Main, 3rd Cross, J.C.Industrial Layout, Yelachenahalli 2nd Stage, Kanakapura Road, Bangalore -560062.

2. Smt.Sumangala S.Chiploonkar, Shridurga Engineers, No.6, 4th Main, 3rd Cross, J.C.Industrial Layout, Yelachenahalli 2nd Stage, Kanakapura Road, Bangalore-62

3. The Chairman, CGRF, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010

4. The AEE, BESCO, S-5 Sub Division, ISRO Layout, Bangalore-560078

5.The Managing Director, BESCO, K.R.Circle, Bangalore

6. PS to Hon.Chairman/PS to Hon.Member(H)/PS to Hon.Member(S)/ PS to Secretary / Director(Tariff)/ Consultant (Legal) / OCA

