

**BEFORE THE ELECTRICITY OMBUDSMAN**

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)  
Vasanthanagar, Bengaluru-560052.

Present: S.S Pattanashetti,  
Electricity Ombudsman,  
**Case No. OMB/H/G-347/2019**  
**Dated 31/10/2019**

In the matter of

Sri Rajesh. S. Ircal  
R/o Bhavani Nagar,  
Hubballi,  
Dharwad District.

Represented by:  
Sri Tushar M Baddi,  
Arihant Park,  
Keshwapur,  
Hubballi.  
Dharwad District.

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Appellant

Vs

- 1) The Assistant Executive Engineer (Electrical),  
O & M City Sub-Division -4, HESCOM,  
Hubballi - 580020.
- 2) Chairman, Consumer Grievance Redressal Forum/(CGRF)  
Dharwad District,  
O & M Circle,  
HESCOM, Thabibaland,  
Hubballi-580020  
Dharwad District.

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Respondents

- 1) This Appeal/Complaint is filed before this Authority, by Sri Rajesh S Ircal, (Appellant/Complainant), under the provisions of Clause 21.2 of the KERC (Consumer Grievance Redressal Forum and Ombudsman)

Regulations 2004, in Form 'B' challenging the order No. ಅಇಂ(ಬಿ)/ ಉಲೆನಿ/ಹಿಸ-1/ಗ್ರಾಕುಂಕೊನಿವೇ/ಕಡತ-243/cys-255 dated 30-05-2019 of CGRF, Dharwad District, by inter-alia seeking the following reliefs:

- a) To call for records.
  - b) To direct the Respondent No. 1 to pay the compensation as stipulated under Sl. No. 14 of KERC (Standards of Performance) Regulations 2004.
  - c) To impose penalty on the Respondent individual for not complying with the Regulations framed by the Commission.
  - d) To award interest at bank rate from the date of payment upto 60 days from the date of claims and 2% per month after expiry of said 60 days in terms of clause 29.08 of CoS on the actual number of months delayed.
  - e) To pay interest on security deposit (IoD) of the Consumer at the Bank rate.
  - f) To pass such other further order or orders as the Hon'ble Authority may deem just, fit and proper.
- 2) Brief facts, which are relevant to the case as claimed by Appellant/Complainant are as follows:
- a. The Appellant/Complainant had filed an application for refund of his Initial Security Deposit (ISD), Additional Security Deposit (ASD) and Meter Security Deposit (MSD) paid during availment of power supply to an extent of 47.75 KWs duly paying the required deposits as follows:
    - i) Rs. 6180/- vide Rt No. 167406 dated 01-03-2004.
    - ii) Rs. 3920/- vide Rt No. 167423 dated 01-03-2004.
    - iii) Rs. 5120/- vide Rt No. 167422 dated 19-05-2010.

- iv) Rs. 64400/- vide Rt No. 930641 dated 23-04-2011.
- b. The aforesaid installation was dismantled in the month of April 2015 and the Appellant/Complainant filed a refund application claiming his deposit paid on various dates with the licensee, through refund application in duplicate along with original receipt on 17-04-2015.
- c. Aggrieved by the inordinate delay in refunding the deposit amount the Appellant/Complainant filed an application on 24-10-2018 in Form 'A' in terms of Clause 7.1 of KERC (Licensees' Standards of Performance) Regulations 2004, before the licensee claiming Rs. 50/- per day as stipulated under Sl. No. 14 of Schedule-I of KERC (Licensees' Standards of performance) Regulations 2004.
- d. As per Clause 7.2 of KERC (Licensees' Standards of performance) Regulations 2004, the licensee ought to have taken a decision on the amount of claim of the consumer and if found liable shall pay the amount to the Appellant/Complainant within 90 days from the date of receipt of application. This is not done by the licensee even after moving an application under Form 'A' in terms of Clause 7.1 of KERC (Licensees' Standards of performance) Regulations 2004.
- e. The Appellant/Complainant primarily seeks directions to Respondent-1/AEE to pay the compensation amount in terms of Sl. No. 14 of Schedule-I of KERC (Licensees' Standards of performance) Regulations 2004, from the date of filing the refund application i.e., from 17-04-2015 till the refund of ISD/ASD/MSD amount excluding 2 months (Sixty days) grace period as specified in terms of Sl. No. 14 of Schedule-I of KERC (Licensees' Standards of performance) Regulations 2004.

- f. It is further submitted that the Forum has directed the Respondent-1/AEE to refund only the deposit held with the licensee and denied to award interest without any reasoned speaking order, hence the order of the Forum passed on 30-05-2019 is not acceptable in terms of regulations framed by the KERC.
- g. The deposit kept even after termination of agreement is without the authority of law, as in this case the deposit held in respect of aforesaid installation should have been refunded because no Licensee has the right to receive or to retain any money realized from consumers without the authority of law. Consequences of denying refund of money held after termination of agreement by the Licensee is without the Authority of Law, any consideration to allow retention of illegal amount due to consumer would attract doctrine of “unjust enrichment”. In support of this contention he has relied upon the judgement of Hon’ble Supreme Court in the case of State of Maharashtra and others Vs Swaan Stone Multiplex Cinema Pvt Ltd in Civil Appeal arising out of SLP (C) No 7853/2009.
- 3) Both the parties were informed vide this office letter No. OMB/H/G-347/2019/D-1314 dated 10-07-2019, regarding availability of provision in Sub-Regulation 1 of Regulation 20 of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement through conciliation and mediation and to appear before this Authority on 25-07-2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 25-07-2019 and 21-08-2019.
- 4) The Respondent-1/AEE in his submission dated 22-07-2019 filed before this authority has stated that installation bearing No. MP401117 in the name of Sri Rajesh Irkal was commissioned on 12-03-2004 and

was dismantled on 10-08-2015. On 20-10-2018, on behalf of the consumer, Sri Tushar Baddi, applied for refund of security deposit and compensation as per KERC, Standards of Performance (SOP), Regulations 2004, to HESCOM City Sub-Division-4, Hubballi. Along with the application he had also enclosed a copy of the refund application dated 17-04-2015 submitted to Hubballi City Sub-Division No. 3. Hubballi City Sub-Division No. 4 started on 28-02-2018 was carved out of Hubballi City Sub-Division No. 3. No documents regarding refund of security deposit of the installation in question belonging to the Appellant/Complainant was handed over to his office (Sub-Division No. 4) from Sub-Division No. 3. On 29-10-2018 a letter was written to AEE, No. 3 Sub-Division requesting for transfer of documents regarding refund application of Appellant/Complainant. On 16-04-2019 mentioning the complaint filed before the CGRF, Bangalore Urban District, another letter was written to Sub-Division-3 to provide documents relating to refund of security deposit paid by the Appellant/Complainant. In reply the Assistant Executive Engineer (Ele.) No. 3 Sub-Division on 24-04-2019 wrote that after perusal of "From and To register" there is no mention of installation No. MP401117 in the register. A letter was written to the Appellant/Complainant dated 29-04-2019 stating that no records have been registered with regard to refund of application pertaining to his installation. If a separate application along with the relevant documents is submitted, action will be taken as per rules for refund of deposits. In the order of CGRF, Dharwad District, dated 30-05-2019 the application of the Appellant/Complainant has been rejected and the consumer i.e., Appellant/Complainant has been asked to submit all relevant papers

regarding refund of deposits to City Sub-Division-4, Hubballi. After collecting application and all relevant documents from the Appellant/Complainant, Rs. 79,620/- has been paid through cheque No. 598831, dated 12-07-2019. Appellant/Complainant's representative Sri. Tushar Baddi has mentioned that application for refund of deposit of the installation was submitted on 17-04-2015, after this date Sri Baddi has filed an application in the prescribed Form 'A' for compensation as per Standards of Performance (SOP) on 20-10-2018. Lack of communication over this long period of time gives a doubt regarding the action of the consumer. The security deposit paid by the Appellant/Complainant has been refunded to the Appellant/Complainant on 12-07-2019 through cheque bearing No. 598831 for an amount of Rs. 79,620/-. The Appellant/Complainant has said that he has submitted application for refund of deposit dated 17-04-2015 to the City Sub-Division No. 3 office. The City Sub-Division No. 3 does not have any proof of such an application being filed. There is no delay on the part of this sub-division i.e., is City Sub-Division No.4 regarding refund of security deposit to the Appellant/Complainant. Hence the complaint of the Appellant/Complainant may kindly be rejected.

- 5) Perused the appeal memo filed by the Appellant/Complainant, submissions made by the Respondent-1/AEE, additional memo filed by Appellant/Complainant and all the documents enclosed. Along with the Form 'B' application the Appellant/Complainant has enclosed xerox copy of Refund Form which is dated 17-04-2015. This Refund Form bears seal of Hubballi City Sub-Division No. 3 and date 17-04-2015 is stamped on this seal and initialled by the person receiving the Refund Form. This document is sufficient proof of having submitted the

Refund Form in the concerned sub-division at that point of time. In the submission made by the Respondent-1/AEE, he has stated that No. 4 City Sub-Division of which he is now the AEE concerned and to which the installation of Appellant/Complainant falls at present came into existence only on 28-02-2018. This sub-division was carved out of Hubballi City Sub-Division No. 3. As per the submission made by the Respondent-1/AEE, the AEE of Hubballi City Sub-Division No. 3 has replied to him that the Refund Form said to be submitted in Hubballi City Sub-Division No. 3 does not find a place in the “From and To register” maintained in his office at that time and there is no such document in his office. A copy of the letter of AEE, Hubballi City Sub-Division No. 3 and also extract of “From and To register” maintained in his office pertaining to period from 15-04-2015 to 18-04-2015 has also been submitted. However, neither the Respondent-1/AEE of Hubballi City Sub-Division No. 4 nor the AEE of Hubballi City Sub-Division No. 3 have challenged and refuted the Refund Form dated 17-04-2015 the seal date and signature on this Refund Form. It is possible that Refund Form submitted in the office of Hubballi City Sub-Division No. 3 might have been misplaced or lost due to negligence or oversight of the concerned staff working at that time. After receiving a fresh Refund Application Form from the Appellant/Complainant, the Respondent-1/AEE has refunded the ISD/ASD/MSD amount of Rs. 79,620/- through Cheque No. 598831, dated 12-07-2019.

- 6) The Refund Application Form was submitted in the office of the Hubballi City Sub-Division No. 3 on 17-04-2015. As per KERC (Licensees’ Standards of Performance) Regulations, 2004, Sl. No. 14 of Schedule-I, the time limit for refund of deposits to the consumer is

60 days after receipt of request. Amount payable to affected consumer after the time limit is Rs. 50/- for each day of delay. 60 days after the receipt of Refund Form will be over on 16-06-2015. From 17-06-2015 till the refund of the deposit amount i.e., 12-07-2019 the Appellant/Complainant is entitled for compensation at the rate of Rs. 50/- per day. The CGRF, Dharwad District, has failed to appreciate the fact that a Refund Form was submitted in the office of the Hubballi City Sub-Division No. 3 on 17-04-2015, proof of which was submitted by the Appellant/Complainant along with the Form 'A'. Mere claim of the concerned AEE that the Refund Form is not registered in the "From and To register" maintained in his office does not disprove the fact that the Refund Form was submitted.

- 7) In the appeal memo the Appellant/Complainant has stated that "the Security Deposit is held with the Licensee since from the date of termination of agreement/date of dismantle and even assuming that the complainant has not filed a refund application soon after dismantling the installation, the Licensee is enjoying the deposits made by the Appellant/Complainant until this date, therefore the Appellant/Complainant is bound to receive interest in terms of Clause 30.05 (c) of Conditions of Supply (COS) and Clause 3.1 of KERC (Interest on Security Deposit) Regulations, 2005, on Security Deposit paid by him at the bank rate prevailing as on 1<sup>st</sup> April of the financial year".

Every Consumer is entitled to receive interest on the deposits paid by him as long as his installation is operative and active. On termination of the agreement this payment of interest on the deposits of the consumer automatically stops. In the present case the Appellant/Complainant stopped receiving interest on his deposits on termination



of the agreement and dismantling of the installation. The date of termination of agreement is evident from the Official Memorandum dated 10-08-2015 issued by the Assistant Executive Engineer (Ele) which is submitted by Respondent-1/AEE at the time of hearing. From 11-08-2015 till the refund of deposit i.e., 12-07-2019 the Security Deposit paid by the Appellant/Complainant is lying idle with the Licensee without the benefit of interest to the Appellant/Complainant. Hence, this authority is of the view that the Appellant/Complainant is entitled for award of interest on the deposits from 11-08-2015 to 12-07-2019 in terms of Clause 30.05 (c) of Conditions of Supply (COS) and Clause 3.1 of KERC (Interest on Security Deposit) Regulations, 2005, at the bank rate prevailing on 1<sup>st</sup> April of each financial year.

8) The Appellant/Complainant has prayed for awarding interest in terms of Clause 29.08 of Conditions of Supply (COS) on the actual months delayed. Clause 29.08 of Conditions of Supply (COS) pertains to adjustment of erroneous bills. It applies to refund of excess amount claimed by the Licensee in the past. This Clause is not applicable to the case on hand. Hence this prayer is rejected.

9) In view of the foregoing paras the following order:

**No. OMB/H/G-347/2019/D-1373**

**Dated 31-10-2019**

**O R D E R**

1. The CGRF order bearing No.ಅಇಂ(ವಿ)/ಉಲೆನಿ/ಹಿಸ-1/ಗ್ರಾಕುಂಕೊನಿವೇ/ಕಡತ-243/cys-255 dated 30-05-2019, as far as it pertains to the Appellant/Complainant's complaint regarding award of compensation as stipulated under Sl. No. 14 of Schedule-I of KERC (Licensees' Standards of Performance) Regulations 2004, is set aside.

2. The Appellant/Complainant is awarded compensation of Rs. 50/- per day from 17-06-2015 to 12-07-2019 for delay caused in refund of security deposit paid by the Appellant/Complainant, in terms of Sl. No. 14 of Schedule-I of KERC (Licensees' Standards of Performance) Regulations, 2004. The Licensee should pay the compensation to the Appellant/Complainant within 90 days from the date of this order and later recover the same from the Officers/Officials responsible for the delay.
3. The Appellant/Complainant is also awarded interest on the total deposits kept with the Licensee in terms of Clause 30.05 (c) of Conditions of Supply of Electricity of Distribution Licensees' in the State of Karnataka (COS) and Clause 3.1 of KERC (Interest on Security Deposit) Regulations, 2005, from 11-08-2015 to 12-07-2019 at the bank rate prevailing as on 1<sup>st</sup> April of each financial year. The Licensee should pay the interest to the Appellant/Complainant within 90 days from the date of this order and later recover the same from the Officers/Officials responsible for the delay.
4. The Appellant/Complainant's prayer for award of interest in terms of Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees' in the State of Karnataka (COS) is rejected.

Sd/-  
(S.S Pattanashetti)  
Electricity Ombudsman.

- 1) Sri Rajesh S Ikkal  
R/o Bhavani Nagar,  
Hubballi,  
Dharwad District.
- 2) Sri Tushar M Baddi,  
Arihant Park,  
Keshwapur,  
Hubballi.  
Dharwad District.
- 3) The Assistant Executive Engineer (Electrical),  
O & M City Sub-Division -4, HESCOM,  
Hubballi - 580020.
- 4) Chairman, Consumer Grievance Redressal Forum/(CGRF)  
O & M Circle,  
HESCOM, Thabibaland,  
Hubballi-580020  
Dharwad District.
- 5) PS to Hon'ble Chairman, KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Hon'ble Member (R), KERC
- 8) PA to Secretary, KERC.
- 9) Chairperson of all CGRF's in the State.