

**Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore**

**Present: S.D.Ukkali
Ombudsman**

**Case No.OMB/H/G-80/10 & OMB/H/G-81/10/8218
Dated13.05.2010**

1. Shri A.A.Kulkarni,
"Samadhan"
Vidyanagar,
HUBLI-580021

2. Smt.S.R.Kalamade,
"Samadhan"
Vidyanagar,
HUBLI-580021

(Represented by their authorized representative
Sri A.S.Kulkarni)

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Complainants

Vs

1.Hubli Electricity Supply Company, Hubli
by Executive Engineer(E)
O & M Division West,
HESCOM,
HUBLI

2. The Consumer Grievance Redressal Forum
H.E.S.C.O.M.
Keshavapur, Shivaganga Layout,
HUBLI

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Respondents

I. These are two similar appeal petitions filed by Sri A.S.Kulkarni, the representative on behalf of the above mentioned Complainants under the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 directed against the Order dated 25.01.2010 passed by the 2nd Respondent in file Nos. CGRF/Cys-149 and CGRF/Cys-150.

Since both the complaints are of similar in nature and they are represented by Sri A.S.Kulkarni who is also a relative of both the Complainants. The Respondent also is the same for both the cases, they have been heard together and a combined award is passed herewith.

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

1. The 1st Complainant has availed electricity connections bearing R.R.No.407949A and 407950A and the 2nd Complainant has availed electricity connection bearing R.R. No.407951A in the same building. It is stated that the above complainants have been utilizing the electricity by paying the bills regularly and that the Respondent Licensee offered a scheme known as Electronic Clearing System (ECS) during November, 2008. The Complainants, with a view to avoid standing in the queue each month to pay the bill, decided to adopt ESC scheme and followed the procedure to adopt the scheme by filling ECS Mandate Form prescribed by the HESCOM.

2. The scheme worked properly till the month of March 2009 and afterwards it crippled and the representative of the complainants who was in Singapore came to know of the problem when the linemen visited the premises of the Complainants for disconnection in the month of June 2009 and he sent a communication from Singapore to the EE, O&M West division, HESCOM, Hubli detailing the grievances in respect of the above 3 installations reserving his liberty to take up the matter with 2nd Respondent on his return to India.

3. When he did not receive any reply from the Respondent Licensee for his communication from Singapore, he was constrained to file a complaint before the 2nd Respondent, HESCOM, Hubli on 23.09.2009 for redressal of the grievances of the Complainants.

4. It is alleged that the 2nd Respondent passed order in favour of the licensee without the procedure laid down.

5. Aggrieved by the order passed by the 2nd Respondent, the Complainants filed this appeal petition praying for the following:

III.

PRAYER

1. Set aside the order of the 2nd Respondent.
2. Since the 2nd Respondent has not acted as per the regulations and is not working as per the purpose for which it is constituted, the 2nd Respondent needs to be reconstituted by sending a report to the KEREC to take cognizance and take such action as it deems fit on the conduct and behaviour of the 2nd Respondent and also on the lapse of the Licensee as reported in appeal No.180 of 2008 in the matter of BSES Rajdhani Private Limited Vs Delhi Electricity Regulatory commission and another before the Hon. Appellate Tribunal for Electricity decided on 30.3.2009 wherein the Hon. ATE has held that State Commission is vested with powers to award compensation in exercise of inherent powers.
3. Award the consumers an amount of Rs.5000/- being the cost towards mental agony, harassment etc. caused to the consumer.
4. Such other reliefs as the Hon. Ombudsman may feel justified in this regard.

However, he submits that the above prayer is without prejudice to his right to claim compensation under Standards of Performance regulations issued by the Hon. KEREC.

IV. Settlement by Agreement

Both the parties were informed to explore the possibilities of settlement by conciliation and mediation at the time of deposition on 06.05.2010. Since both the parties were not interested in a settlement by conciliation and mediation, this Authority decided to hear and pass an award.

V. Discussion and Analysis

A. The 1st Respondent's contentions are discussed below:

1. The 1st Respondent, in his deposition on 6.5.2010, stated that the cases pertaining to RR Nos. 407949A and 407950A belonging to Sri A.A.Kulkarni and R.R.No.407951A belonging to Smt.S.R.Kalamade respectively situated at premises called "Samadhan" Vidyanagar, Hubli were filed in 2 complaints and since the grievances were similar in these 2 complaints, he was deposing in one statement. These 3 installations were covered under the Electronic Clearing System of billing(ECS). This system was adopted in HESCOM area from November 2008. For this purpose, an agency known as M/s.M/s.Billdesk was appointed by a Company called as Indiaidea.com Ltd., Bangalore by entering into an agreement known as "Bill Presentation and Payment Services Agreement" between HESCOM and Indiaideas.Com Ltd.,

2. The consumers who were willing to adopt electronic clearing scheme had to fill up a Form called Electronic Clearing Scheme Mandate Form which had to be submitted in triplicate authorizing HESCOM to raise the debits on such electricity bills. The 1st Respondent went on to explain the salient features of the scheme which is reproduced below:

"This Mandatory Form is forwarded to the area sub division for verification of the correctness of the information furnished regarding the R.R.No., location etc. The Divisional office of the HESCOM is the nodal office for implementing this scheme. After receipt of verification from the sub divisional office, the divisional office will send the same to the .Billdesk agency through e-mail and hard copy along with connected enclosures through post. After this, the agency will scrutinize the same and intimate the divisional office duly confirming the registration of the consumer through e-mail.

After receiving the information from the Billdesk, the same will be communicated to the concerned sub division through e-mail instructing the sub division for sending the bill data. Sub divisions have maintained data of registration confirmed consumers according to meter reading datewise. Further, the sub division staff as soon as the reading dates are over, ECS adopted consumers bill data will be intimated to division through e-mail.

In the division office, the reading datewise data is consolidated and forwarded to agency. The agency then intimates the division office after processing further the pay order details and connected RR No. details through e-mail. After receiving the details like pay order on the same day the same information will be communicated to the concerned sub division duly mentioning the journal voucher No. and date for incorporating the postings of collection details against the particular consumer.”

3. The 1st Respondent stated that in case of the above 3 installations, ECS mandatory forms were received in the division office on 27.12.2008. They were submitted to sub division, HESCOM Hubli for verification and received on the same day i.e. 27.12.2008. These were sent to M/s.Billdesk agency on the same day itself. M/s.M/s.Billdesk agency confirmed the details of the 2 RR Nos.407949A and 407950A and with respect of RR No.407951A, they raised an objection on the location code.

4. The location code was corrected in the division office and sent back to the M/s.Billdesk agency on 31.1.2009. In the meanwhile, in case of RR No.407951A, there was a change of bank account on request of the consumer and this information was also sent to M/s.Billdesk agency on 10.2.2009. Finally the registration of these 3 RR Nos. under this scheme was confirmed to the West sub division on 22.2.2009. Accordingly, in March 2009, all the bill amount was received from M/s.Billdesk and noted as “collected” in the sub division office on 20.3.2009 and 24.03.2009.

5. Subsequently, in April 2009, the bill data for all the 3 installations was sent to Billdesk on 9.4.2009 but received bill amount from Billdesk with respect to RR

No.407949A and 407950A on 21.4.2009 and adjusted as collected. But in case of RR No.407951A, details from Billdesk were not received.

6. During the month of May 2009, it was informed by the West sub division that the information regarding these 3 installation were sent to the division office but there are no details available in the division office for having received the information. During May 2009, bills were not shown as collected under this ECS scheme.

7. During the month of June 2009, bill data was received on 6.6.2009 and the data was sent to Billdesk on 07.06.2009. But no details were received from Billdesk agency but by a e-mail it was intimated by the agency that due to insertion of additional comma bill amount in paisa, the bill could not be processed. The errors were rectified and intimated to the agency on the same day at 12.52 PM. The uploaded details were not received for the month of June from M/s.Billdesk. During July 2009, details pertaining to May, June and July 2009 were received from sub division office on 06.07.2009 and on the same day these details were sent to M/s.Billdesk agency and clearance from M/s.Billdesk agency regarding all these 3 installations upto July 2009 were sent on 18.7.2009 and adjusted as collected. Subsequently, from August onwards, the scheme is working properly.

8. The 1st Respondent contended that this system was newly adopted on a trial basis and because of the mistakes in the system, inconvenience to the consumers of these 3 installations had occurred. However, there was no intentional harassment to the consumer and afterwards the system is functioning properly and there is no problem created for the consumer.

9. The 1st Respondent has further informed that this system is adopted on a trial basis at the cost of HESCOM in order to facilitate the consumers for making easy payments and that it is in a nascent stage and is improving. He stated that despite convincing, the consumers chose to file a complaint before the 2nd Respondent which has rightly rejected the request and has also warned the officers/officials of the 1st Respondent office to be more careful in future to avoid such grievances. The interest

claimed in the matter has also been refunded and proper action will be taken in future to maintain the system properly.

10. Under the circumstances explained above, he has sought this Authority to reject the complainants' request.

B. Per Contra, the counter arguments of the Complainants are discussed here below:

1. The authorized representative of the Complainants alleged that the above 3 installations were on ESC scheme and that when the security deposit was held by the Respondent Licensee to take care of the arrears, it was highly improper on the part of the Respondent Licensee to send the linemen for disconnection. He stated that as per Section 56 of the Electricity Act 2003 and 4.18(j) of KERC (Supply Code) 2004, it is mandatory on the part of the Respondent Licensee to give a notice of 15 days in writing before linemen are sent for disconnection. Therefore, the Licensee authorities had no authority to send linemen for disconnection after having adopted ECS scheme, having sufficient security deposit and in the absence of issue of 15 days notice in writing. This proves the high-handedness of the Licensee which needs to be penalized.

2. The authorized representative for the Complainants has further stated that the act of the Licensee has caused a lot of agony, inconvenience and mental harassment to his clients and that, as a representative of the consumer organization, it is his duty to bring it to the notice of this Authority as otherwise the innocent poor consumers will be unnecessarily subjected to lot of harassment by the Respondent Licensee and that to avoid that, he is before this Authority.

3. The Licensee is liable to be penalized for contravention of the regulations, codes, orders and directions under Section 142 and 146 of the Electricity Act 2003 for any one or more of these violations and as per Clause 18 of Conditions of Licensee for ESCOMs 2004.

4. He also states that his relatives (Complainants) were the only victims subjected to negligence by the Respondent Licensee leading to default. The outsourcing agency, namely, Billdesk have clarified that these were the only cases of default they have come across.

5. He alleges that the 2nd Respondent did not discharge its duties in terms of the relevant regulations and acts. It ought to have followed the following procedure:

a). Clause 7.3 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 **mandates for notifying the date of hearing in writing.** This was not adhered to.

b). As per Clause 7.4, the 2nd Respondent ought to have passed an order within 60 days but in this case, the order is passed after 123 days without narrating the circumstances and reason for delay.

c). Clause 6.5 of the Regulation mandates that the 2nd Respondent should observe the rules of natural justice. This has totally not been done as they never even intimated the date of hearing and did not give opportunity of personal hearing etc. which are mandatory.

The authorized representative of the Complainants has narrated that he would rely upon the decision of Hon. Supreme Court in the case of Maneka Gandhi Vs Union of India (1978) I SCC 248 wherein the "Apex Court discussed in detail various aspects of rule of natural justice. Basically, there are two norms which the decision-making body should follow. Both are expressed in Latin maximums are in essence very simple principles; ***audi alteram partem*** which means that the person concerned must be heard before a decision is taken and the second principle is ***nemo judex in causa sua*** Which means a person will not judge a case in which he is himself interested. Recently a third principle has also been added which is in plain English because it is a more recent development. It says that the decision must give reasons."

d). As per Clause 9.1 (a) and (b) after the completion of the proceedings, if the Forum is satisfied that the allegation contained in the complaint is true, it shall issue an order directing the licensee to:

- i) redress the grievance of the complainant, and
- ii) to pay such amounts as may be awarded as costs to the consumer

e). He states that in the instant case the allegations have not been contested and the 2nd Respondent has also held that there was a lapse on the part of the Respondent Licensee and that in spite of this, the 2nd Respondent has failed to settle the grievance of the Complainants and award the cost of the complaint.

f). He has held that the opinion of the 2nd Respondent stating that the ECS concept is new in Hubli is baseless because of the case is almost 7 months old in comparison with the date of commencement of the scheme. **The findings of the 2nd Respondent that this scheme is a new one and that in the beginning problems are bound to arise is not acceptable in this age of e-mail/computer.**

g). The contention of the 2nd Respondent that they have upheld the act of the Licensee that the linemen returned without disconnection when they were told that these installations come under ECS in fact shows that the 2nd Respondent is supporting the Licensee and not the complainant thereby the basic concept of establishment of Consumer Grievance Redressal Forum (CGRF) is defeated.

h). He has alleged that the Chairman of the 2nd Respondent, he himself being the Chief Engineer, in the 3rd para of the order, orders that the Chief Engineer is instructed to take action on the concerned officials of the licensee, which is ridiculous.

i). It is further alleged that the 2nd Respondent has made irrelevant correspondence harassing the Consumer in asking to produce a copy of the pass book to show whether the amount has been debited towards bill pertaining to the above 3 installations. This was highly improper, particularly when the Complainant's grievance itself was that the

electricity bill was not debited in the pass book. As there is no further correspondence in this regard, it proves that the 2nd Respondent has admitted the stand taken by the Complainant.

j). The authorized representative of the Complainants has questioned whether this Authority considers the order passed by the 2nd Respondent as a valid one which is passed without following mandatory clauses of the regulations framed and without following the basic procedure laid down and whether the order stands to reason which neglects the rules of equity and natural justice when the facts of the case makes it clear that the consumer has in fact suffered.

VI. Findings

1. The intention of the Respondent Licensee is appreciable as it has tried to help the consumers to render hassle-free service by adopting ECS system of bill collection, so that the consumers' every month's botheration to

- 1) Receive the bill;
 - 2) Go to the cash collection center;
 - 3) Stand in the queue for long time.
- are avoided.

This is a facility extended free of cost to the consumers by spending its own money by entering into an agreement with M/s.Indiaideas.com.Limited.

The consumers need to appreciate the efforts made by the Licensee to provide this system of collection.

2. It is unfortunate that between them i.e. the Licensee and the Billdesk of the Company M/s.Indiaideas.com.Ltd., have jointly created confusion and seems to have totally forgotten the inconvenience likely to be caused to the consumers. They are

mutually bound by an agreement during 2007. It is for the Licensee to take action against the Indiaideas.com Limited if it was responsible for such default in the service.

The Complainants on the other hand have fully acted as per the provisions i.e.

- a) A filled up Electronic Clearing Scheme (ECS) Mandate form prescribed by the HESCOM is submitted in each case.
- b) The Complainants are maintaining sufficient bank balance in the concerned bank.

3. There is no lapse on the part of the complainants whatsoever whereas on the part of the Licensee the following are the lapses leading to default.

- a) There was confusion between the Licensee and M/s.Indiaideas.Com Limited, causing non-remittance of bill amount to the concerned RR Nos.
- b) The concerned Accounts Section of the Respondent Licensee should not have included these RR Nos. in the disconnection list, handed over to the linemen.
- c) The linemen should not have visited the premises for disconnection of installations covered under the ECS.

It is to be noted that there was definite lapse on the part of the Respondent Licensee. The Complainants' prayer for awarding at para 3 before this Authority an amount of Rs.5000/- being the cost towards mental agony, harassment etc. caused to the consumer, cannot be considered. This Authority is not empowered to estimate and grant the cost towards mental agony, harassment etc., caused to the Complainants. **However, this Authority is empowered to grant an amount as per the provisions of KERC (Licensees Standards of Performance) Regulations 2004. Schedule-1 of KERC (Licensees Standards of Performance) Regulations 2004**

prescribes an amount payable to the affected consumer. The amount at Serial No.11 for resolution of complaints on consumer bills is:

“Rs.50/- for each day of default after 7 days of receipt of the complaint.”

The process of restoration of system was complete during November 2009, when the interest claimed was re-adjusted.

More than two months have elapsed from 19.9.2009 after filing the complaint with the 2nd Respondent till the interest was adjusted. **Since the 1st Respondent has pleaded that this Scheme was still in the nascent state and that the service is provided free of cost and has stated that action would be taken in future to maintain the system properly, a lenient view is taken. However, in order to maintain discipline and to give relief to the Complainants, it is concluded that it is reasonable to grant an amount for 30 days.**

The representative of the Complainants is more aggrieved against the working of the 2nd Respondent than that of the Respondent Licensee. He alleges that the 2nd Respondent has not followed the correct procedure laid down in KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 as indicated at para V (B)(5) above and he has prayed for reconstituting the CGRF by submitting a report to Hon. KERC on the working of the 2nd Respondent . In response to this prayer, a separate report by this Authority would be submitted to the Hon'ble KERC shortly.

Having regard to the facts and circumstances of the case, the following order is passed:

VII.

ORDER

1. The order dated 25.01.2010 in file Nos. CGRF/Cys-149 and CGRF/Cys-150 passed by the 2nd Respondent is **set aside**.
2. An amount of Rs.1500/- per installation for these three installations bearing RR Nos. 407949A, 407950A and 407951A is granted as per Sl.No.11, Schedule-1 of KERC (Licensees Standards of Performance) 2004 at the rate of Rs.50/- per day for 30 days to be paid by the Respondent Licensee.
3. The 1st Respondent is directed to adjust this amount for each installation against future electricity bills of these three installations. He should also ensure that no default occurs in future.

(S.D.Ukkali)
Ombudsman

1. Shri A.A.Kulkarni and Smt.S.R.Kalamade, "Samadhan ", Vidyanagar, Hubli-580021.
2. The Consumer Grievance Redressal Forum, HESCOM, Keshavapur, Shivaganga Layout, Hubli.
3. The.Executive Engineer(Ele), O & M Division West, HESCOM, Hubli
4. The Managing Director, HESCOM Corporate Office, P.B. Road, Navanagar, Hubli-25.
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. Director (Tariff)
10. Deputy Director(Legal)
11. O.C.A.

