

## Before the Electricity Ombudsman

(Appointed by the Joint Electricity Regulatory Commission  
for the State of Goa and UTs, under Section 42 (6) of the Electricity Act, 2003)  
Second Floor, HSIIDC Office Complex, Vanijya Nikunj, Udyog Vihar, Phase-V, Gurgaon (Haryana)  
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**Appeal/ Representation No. 15/2012**

**Appeal/ Representation Before the Electricity Ombudsman for JERC for the State of Goa and UTs against the order dated 04.01.2013 (Consumer Complaint dated 21.11.2012) passed by the Consumer Grievance Redressal Forum (CGRF), Goa by M/s Ferrao Ice Factory, represented by its proprietor Mrs. Maria Fatima Ferrao, Mazilwaddo, Deussua, Chinchinim, Salcete Goa (LTP Installation No. 14908, Consumer No. RUL/20C/420-2LTP), on the matter of inordinate delay in replacement of defective meter.**

M/s Ferrao Ice Factory,  
Mazilwaddo, Deussua,  
Chinchinim, Salcete Goa  
Through its Proprietor  
Mrs. Maria Fatima Ferrao

**Appellant**

V/s

The Chief Electrical Engineer,  
Electricity Department,  
Govt. of Goa, Vidyut Bhawan,  
Panaji, Goa- 403001.

The Executive Engineer,  
Division XVI, Electricity Department,  
Vidyut bhavan, Aquem, Margao, Goa

The Assistant Engineer,  
Electricity Dept., Sub Div of Division XVI,  
Aquem, Margao, Goa

**Respondent**  
Licensee/Electricity  
Department

**Hearing on Friday, the 27<sup>th</sup> June, 2013**

**Present:** Mr. R. K. Kaul, Electricity Ombudsman for JERC for Goa and UTS.

**On behalf of the Appellant:**

1. Mrs. Maria Fatima Ferrao  
Chinchinim, Salcete Goa.
2. Rosario Albuquerque  
Chinchinim, Salcete Goa.
3. Leslie Ferrao  
Chinchinim, Salcete Goa.

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**On behalf of the Respondent:**  
(Electricity Department,  
Government of Goa)

1. V. P. Singh Akela  
Executive Engineer, Div XIII, Margao
2. Partilo John <sup>Yegao</sup>  
Assitant Engineer (Commercial)  
S/D-IV
3. Leelesh G. Gaude  
J.E, O/o the Executive Engineer  
Electricity Div-XVI, Margoa

(No one represented the Chief Electrical Engineer)

Date 02.07.2013

**ORDER**

1. The appeal/ representation cited above received in the Office of Electricity Ombudsman for the State of Goa and UTs was admitted on 6<sup>th</sup> June, 2013. A copy of the same was forwarded to the Respondent on the same very day with the direction to submit their remarks/ counterstatement on each of the points relating to the matter of this representation supported by copies of relevant documents latest by 16<sup>th</sup> June, 2013, with a copy also to the Appellant. The point wise reply of the Respondent has been received in the office of Ombudsman on 17<sup>th</sup> June, 2013. Hearing in the matter was held at 11:00 AM on 28.06.2013 in Goa.

**Brief Facts of the Case**

2. The Appellant M/s Ferrao Ice Factory was issued **electricity connection** to her unit under Consumer No. RUL/20C/420-2, installation No. 14908 under LTP category on 04/11/1997.
3. The Appellant submitted a written complaint/ report dated 31<sup>st</sup> Dec, 2003 to the licensee stating:
  - a) The complainant doubt that the billing units in the electricity bills are more than the actual consumption.
  - b) The complainant paid in full their electricity bill for the period from 18.11.2003 to 17.12.2003 for Rs. 87,557/- " under Protest"
  - c) That the meter at the connection be checked/verified/replaced.

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4. The Licensee/ Respondent received the letter dated 31.12.2003 from the complainant.
5. The complainant, at own cost, installed "check Meter" at their connection on 24<sup>th</sup> Feb, 2009. The MRT (Div VIII) of the Licensee tested the "check Meter" and gave test report to the complainant on 24.02.2009, who vide his letter dated 18.05.2009 furnished the data/readings to the Licensee/ Respondent no. 2 stating that the 'check Meter' readings are observed to be less than the Licensee's meter readings at the 'Connection'.
6. The complainant did not receive any response from the Licensee on their letter dated 18.05.2009. Accordingly the complainant through their letter dated 04.12.2009 requested the Licensee/Respondent No. 3 to test the regular meter provided by the Licensee at the connection in the light of variation/difference observed in the quantity of electricity consumption shown by the Licensee's regular meter vis-à-vis the check meter installed by the complainant. The complainant deposited the meter testing fee of Rupees Forty on 4<sup>th</sup> Dec, 2009.
7. It was after prolonged correspondence with the Respondent Department that the defective meter was finally replaced effective from 10<sup>th</sup> May, 2012.
8. Licensee/ Respondent No. 2 vide their letter dated 12.07.2012 addressed to the Respondent No. 3/ copy to Executive Engineer, div- VIII (MRT) as well as Assistant Engineer, S.D I (MRT), Margoa directed Respondent No. 3 that "the bills issued to the consumer (complainant) for the period from 11.05.2009 upto the replacement of meter may be revised by correcting the consumption with (-) 2.6 % error in the reading. This is issued in view of the reading error reported by the Assistant Engineer S/D -1 (MRT) vide No. AE/SD-1/MRT/Tech-19(2)/61/12-13 dated 12.06.2012 and by considering the absolute error of the meter and the CT.
9. Licensee/ Respondent no. 3 based on the direction's from Respondent No. 2 carried out the revision of bills for period 06.05.2009 to 10.05.2012 with details as under:
  - a) Date of replacement of meter 10.05.2012
  - b) The total amount paid by the consumer (complainant) from 11.05.2009 to 20.05.2012 Rs. 3057328/-.
  - c) Actual amount to be paid by the consumer (complainant) by considering the 2.6% error in the meter reading as per letter No. EE-IV/O&M/ Tech-40 (IV)/2478 dated 12.07.2012 Rs. 2977841/-

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- d) The amount to be given credit to the consumer (complainant) as per the above letter dated 12.07.2012 Rs. 79487/-
10. Being aggrieved by the action of the Licensee, the complainant (consumer) vide their complaint No. CGRF/15/2012 requested the forum:
- a) That the complainant (consumer) should be given credit @5.6% from 31.12.2003 on ground as per the report date 12.06.2012 that the existing meter is faulty & recording 5.6% more.
  - b) Any other order be passed as deemed necessary in the circumstances of this case.
11. The CGRF, Goa passed the order on 04.01.2013 with the direction to the Electricity Department to give credit to the consumer to the extent of 5.6% w.e.f 11.05.2009 upto the date of replacement of meter within 45 days of the receipt of the above order. The order also included dissenting views by one of the member stating that:
- a) The Electricity bills from the period 31.12.2003 to 09.05.2012 be revised for correction at 5.6% based on MRT Report No. AE/SD-1/MRT/ Tech-19(2)/61/12-13 dated 12.06.2012.
  - b) The Licensee (Electricity Department), to pay departmentally statutory compensation @ Rs. 25/- per day stipulated under Schedule III Para 9.IV of No. JERC 06/2009 (Standard of Performance Regulations, 2009) to the complainant (consumer) for flat period from 18<sup>th</sup> Dec, 2009 to 09<sup>th</sup> May, 2012 (both days inclusive), which the period in the effective jurisdiction of the said Regulations in force/ delay in replacement of defective meter at the connection. The compensation amount be paid within 45 days from the dated of the order 04.01.2013, which this stipulation of scaled down period of Forty Five Days considering duly that the complainant (consumer) already suffered ill effects of protracted delay in the cause matter of the complaint in issue.
12. Aggrieved and not satisfied with the above order of the CGRF, the Appellant filed this appeal/ representation before the Electricity Ombudsman for JERC for the State of Goa and UTs, with the following prayer.

**Prayer**

- a) Records and proceedings in complaint/ representation no. 15/2012 be called for;
- b) The impugned order be quashed and set aside
- c) Any other order as deemed fit and proper be passed considering the circumstance of the case.

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**Settlement by Agreement**

13. Both the parties under this appeal/ representation, were informed on 18.06.2013 to appear before the Ombudsman for the hearing in Goa on 28.06.2013 at 11:00 AM in the conference room of Electricity Department, Goa. It was indicated to them to put forth and explain their position in person or by an authorised representative to answer all material questions (1 to 8) and produce documentary evidence relating to all the points on the matter of this representation. It was also informed through the notice that the Ombudsman's efforts, in the first instance, during the hearing would be to facilitate settlement through mediation and conciliation.
14. Both the parties appeared before the Ombudsman as scheduled and were heard. The point wise reply to the representation dated 29.05.2013 filed by the Respondent was looked into and considered. Efforts were made to reach an agreement between the parties through the process of conciliation and mediation. However, no settlement mutually agreeable could be reached. The hearing, therefore, continued to provide reasonable opportunity to both the parties to put forth their pleadings on the matter.

**Issues**

- i. Why did it take such a long period to replace the defective energy meter at the Appellant installation.
- ii. Implication of such an inordinate delay and to supply of Electricity without installation of a correct meter particularly, when the Electricity Act, 2003 was in force at the time of defect in the meter and subsequently, even the JERC Standard of Performance Regulations dated 18<sup>th</sup> Dec, 2009 had come into force from 18.06.2010 for the State of Goa and the JERC Supply Code Regulations w.e.f. 18<sup>th</sup> May, 2010.

**Pleading by the parties and Responses to the Issues**

**The Appellant**

15. The Appellant represented by Mr. Rosario Albuquerque reiterated the points as detailed in their representation (Point No.1 to Point No. 8) through various correspondences from 13.12.2003 till 23.01.2012. They requested the Respondents to look into the same and replace the same but it had no effect on the Respondent. In the normal course, the meter should have been tested within 30 days from the date the defect was observed / representation was made and thereafter replaced within 15 days if needed. In this regard there was gross contravention and violation of the provision of Electricity Act, 2003 and JERC Standard of Performance and supply Code Regulations.

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16. The Appellant further states that finally the Respondent had taken the said meter for testing and issued a report dated 12.06.2012 stating that the existing meter is faulty and recording 5.6% more consumption but credit was given to the Appellant from 06.05.2009 @ 2.6% considering the C.T and meter errors.

#### The Respondent

17. Responding to the above, the authorised representative of the Respondent, present during the hearing, referring to their written reply dated 29.305.2013 stated that consumer was found allegedly indulging in manipulation of metering by the Assistant Engineer (RT) in Feb, 2002 and again by the Assistant Engineer (MRT) on 25.11.2002. When asked if the department did not take suitable action in 2002, the reply was that the matter was got settled then. Therefore, at this juncture, there was no use taking up the grievances of the department pertaining to the year 2002 while this very representation pertained to the year 2003 onwards.
18. The Respondent further says that the already existing L&T make meter No. 04179266 has not been declared faulty as per Test Certificate No. 1359 dated 24.05.2012. When a query was raised by the Ombudsman that if the already existing meter was not faulty, then why was this not installed back even after a gap of 13 months. The Respondent was not sure which meter existed at the installation i.e. the defective L&T meter or the secure meter which was deemed to be replaced w.e.f. 10.05.2012. On raising a query by the Ombudsman that if the testing report dated 24.05.2012 was OK, why was this point not put forth to the CGRF by the Respondent. Even the appellant was not knowing about this report as the same was neither witnessed by him nor a copy of this was ever sent to him. The Respondent had no answer to any of the queries. He, however, agreed that vide letter No. AE/SD-I (MRT)/Tech- 19(2)/81/12-13 dated 12.06.2012, it was confirmed by the Department that the existing meter was reading 5.6% more than the actual energy recorded by the series meter, which was put for testing purpose.
19. The Respondent also stated that the Appellant was not eligible for credit in the bills @5.6% as during 2003, the Regulations on Standard of Performance & Regulations on Supply Code were not in force.

#### Findings

20. The very matter of the dispute in the representation is an inordinate delay in replacement of defective meter. **They, however, took a period of about 3053 days and replaced the meter only on 10.05.2012. This reflects very poorly about the distribution functioning of the Respondent's Department.**

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21. The Respondent's stand that the JERC-11/2010 Regulations on Supply Code and the JERC-06/2009 Regulations on Standard of Performance were not in force at the time of defect in energy meter, appeared to be their search for another escape route to hide the deficiencies of their distribution functions and evade responsibility of extending atleast a reasonable level of efficiency of services to their consumers.

22. The Electricity Act, 2003, which extends to whole of India, w.e.f 10.06.2003 was already in place at the time of malfunctioning of meter. Section 55 (under the head, 'Use etc. of meters') of the Act, provides as under :

*"(1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this behalf by the Authority:*

*Provided .....*

*Provided Further that .....*

*(2) For proper accounting and audit.....*

*(3) If a person makes a default in complying with the provisions contained in this section or the regulation made under sub-section (1), the Appropriate Commission may make such order as it thinks fit for requiring the default to be made good by the generating company or licensee or any officers of the company or other association or any other person who is responsible for its default."*

23. JERC- 11/2010 Regulations on Electricity Supply Code which extend to the whole State of Goa and UTs came into force w.e.f 19.05.2010. At this time, the matter of malfunctioning of energy meter was underway.

Sub-regulation 7.6 (2) of these Regulations, provides as under:

*"If during periodic or other inspection by the licensee, any meter is found to be not recording or a consumer makes a complaint in this regard, the licensee shall arrange to test the meter, within the time specified in the Standard of Performance of Distribution Licensee Regulations. The meter should be repaired/ replaced within the time specified in the Standard of Performance of Distribution Licensee Regulations."*

**Even at this stage the Respondent failed to act and appeared to have vehemently avoided compliance of the provisions of JERC Regulations on Electricity Supply Code.**

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24. JERC- 06/2009 Regulations on Standard of Performance which are applicable to whole State of Goa and UTs came into force from the date of their publication in the official Gazette i.e. 18<sup>th</sup> December, 2009.

As per sub-regulation 6 (4) of these Regulations, the Standards of Performance shall be enforced within 6 months for the State of Goa. Hence, these Regulations on SOP were effective for the State of Goa from 18<sup>th</sup> June, 2010.

According to sub-regulation 7.3 under Schedule-I of these Regulations, the licensee shall test the meter within 30 days and if needed replace the meter within 15 days thereafter.

Sub-regulation 9(IV) under Schedule-III (Guaranteed Standards of Performance and Compensation to Consumers in case of Default) of JERC-06/2009 Regulations on SOP, provides that compensation of Rs. 25 for each day of default is payable by the licensee to the complainant consumer.

Even counting from the date these Regulations on SOP came into operation for the State of Goa, the Respondent defaulted in replacement of meter by **692 days** from 18.06.2010 (the date SOP came into force for the State of Goa) to 09.05.2012 (the deemed date for replacement of meter being 10.05.2012)

**Given the above, it is concluded that the Respondent is liable to pay a compensation of the sum of Rs. 17300 (692 days × Rs. 25) to the Appellant for default on their part to replace the defective meter at the installation of the Appellant.**

25. On the matter of compensation, the Respondent has taken the shelter of CGRF's order which concluded that "in view of any specific prayer and in view of explicit provisions contained in Section 57 of the Act, majority view holds that it is for the Appropriate Commission to take a view regarding payment of compensation".

26. To clear the ground here and to adjudge as to whether CGRF has interpreted the provision of Section 57 of the Act and the Regulations framed there under and notified by JERC on Standards of Performance, correctly and in proper perspective, it would be logical to reproduce here below the provisions of Section 57 of the Act on Standards of performance of licensee and the JERC Regulations on the subject.

*\*Section 57*

*(1) The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.*

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- (2) *If a licensee fails to meet the standards specified under sub-section (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by Appropriate Commission.*

*PROVIDED that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard.*

- (3) *The compensation determined under sub-section (2) shall be paid by the concerned licensee within ninety days of such determination."*

JERC-06/2009 Regulations on Standards of Performance framed as per the provisions of Section 57 of the Act, prescribe (i) the Guaranteed Standards of Performance under Schedule-I (sub-regulation 7) as mandated under sub-section 57(1), and (ii) determine the compensation to be paid to the effective persons in case of default by the licensee under Schedule-III (sub- regulation 9) as mandated under sub-section 57(2) of the Act.

Further, sub-regulation 10 (3) of these Regulations of JERC contained a provision which is reproduced here under:

*"All payments of compensation shall be made by way of adjustment against current/or future bills for supply of electricity, but by not later than 90 days from the date of violation of a Guaranteed Standard unless demanded by the consumer as a direct payment. If the Licensee, however, fails to dispense the compensation amount as laid down in Regulation (9) above the aggrieved consumer(s) can approach the respective Consumer Grievance Redressal Forum for redressal of grievances of consumers to seek such compensation. In such event, additional penalty may be levied on licensee for not faithfully implementing the regulations on case-to-case basis."*

**From the reading of Section 57 of the Act together with the JERC Regulations on SOP, it is quite clear that where the licensee fails to dispense the compensation amount as laid down in sub-regulation 9, the aggrieved consumer has the right to approach the respective CGRF for redressal of grievance and seek such compensation.**

There has been no application of mind by CGRF, Goa in taking a majority decision on this matter. The majority decision, on the matter of payment of compensation, for whatever the reasons, ignored and overlooked the provision of sub-regulation 10(3) of JERC Regulations on SOP. CGRF, Goa thus evaded their role and responsibility.

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ORDER

27. Based on the above, the representation/ appeal of the Appellant is disposed off with the following orders:

- (1) Electricity Bills for the period from 31 December 2003 to 09<sup>th</sup> May 2012 be revised for correction at 5.6% (Five point Six percent/ Fixed Value) based on MRT Report No. AE/SD-I MRT/ Tech-19(2)/61/12-13 dated 12.06.2012.
- (2) The Licensee (Electricity Department), to pay departmentally statutory compensation @Rs. 25/- per day stipulated under SCHEDULE III para 9.IV of No. JERC 06/2009 (Standard of Performance Regulations, 2009) to the Complainant (Consumer) for flat period from 18<sup>th</sup> June 2010 to 09 May 2012 (both days inclusive), which the period in the effective jurisdiction of the said Regulations in force/ delay in replacement of defective meter at the 'Connection'.

In accordance with the Regulations, all payments of compensation shall be made by way of adjustment against current and/or future bills for supply of electricity, but not later than 90 days from the date of violation of Guaranteed Standards unless demanded by the consumer as direct payment. Since in this case, the maximum period of 90 days within which the payment of compensation is to be made elapsed long ago, it is ordered that the Respondent shall pay the compensation of Rs. 17300/- to the Appellant straightaway as direct payment.

- (3) The Respondent shall ensure that all cases of defective/ non-functional/ stuck/ stopped/ burnt meter in the State of Goa are identified and thereafter complete action to test and repair/replace the meters within the period of time limit specified in the JERC-06/2009 Regulations on Standards of Performance be taken .

Dated the 2<sup>nd</sup> of July, 2013



(R. K. Kaul)  
Electricity Ombudsman for JERC  
for the State of Goa and UTS  
Mob: 9871588333

Ref. No. 1/24/2012-EO

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Forwarded to:

1. M/s Ferrao Ice Factory,  
Mazilwaddo, Deussua,  
Chinchinim, Salcete Goa  
Through its Proprietor  
Mrs. Maria Fatima Ferrao

They shall furnish to the Chief Electrical Engineer, Electricity Department, Govt. of Goa, within a period of one month from the date of this order, a letter of acceptance that the award/ order is in full and final settlement of their claim/ representation. If they do not intimate the acceptance, the order shall not be implemented by the Respondent Department.

2. The Chief Electrical Engineer,  
Electricity Department,  
Govt. of Goa, Vidyut Bhawan  
Panaji, Goa- 40300.

The Respondent shall comply with the award/ order within 15 days of the receipt of the intimation letter of acceptance from the Appellant and intimate the compliance to the Ombudsman. Non- compliance shall constitute violation of JERC Regulations and may attract remedial action under Sections 142 and 146 read with Section 149 of the Electricity Act, 2003.

Copy to:

1. The Secretary, Joint Electricity Regulatory Commission for the State of Goa and UTs.
2. The Principal Secretary (Power), Government of Goa.
3. The Chairman, CGRF, Goa.

Copy also to:

1. The Executive Engineer (Elect. Div-IV), ED, Goa.
2. The Assistant Engineer, Electricity Dept., Sub Div of Division XVI, Aquem, Margao, Goa.

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