

D-847

# BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G Road, Bengaluru – 560 001

**Present: B.N.Krishnaiah  
Electricity Ombudsman**

**Case No.OMB/H/G-265/2016**

**C/w**

**Case No.OMB/H/G-266/2016**

**Dated 3<sup>rd</sup> March 2017**

**Between :**

Case No.OMB/H/G-265/2016

Sri Sameer M.Haji,  
C/o Tushar M.Baddi  
Near SBI, Keshwapur,  
Hubballi

Case No.OMB/H/G-266/2016

Sri M.M.Govankoppa,  
C/o Tushar M.Baddi  
Near SBI, Keshwapur,  
Hubballi

... Appellants

(By Sri Tushar M.Baddi, Authorised Representative)

1. The Assistant Executive Engineer (EI)  
O & M sub-division, HESCOM  
Navalgund,  
Dharwad District.

2. The Chairperson, CGRF,  
Dharwar District, HESCOM,  
Office of the Superintending Engineer,

O&M Circle, Shivaganga Layout,  
Kusugal Road, Hubballi

... Respondents

(R-1 by Sri H.V.Devaraj, Advocate).

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1. The above said appeals are filed under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders dated 18.06.2016 in respect of both the appeals passed by CGRF, Hubballi, (hereinafter referred to as the 2nd Respondent). Since the facts are similar, both are clubbed, heard together, and disposed off by this common order. Sri Tushar Baddi has appeared as representative for appellants in both the appeals. Sri H.V.Devaraj, Advocate appeared in both the cases for the respondent AEE, Navalgund.

2. Comments were called vide letter dated 06.07.2016 from the respondent AEE. He has submitted the reply on 18.07.2016 in respect of both the cases.

3. The case of the appellants is as follows :

(a) RR No.NVLMP-33846 is in the name of the appellant Sri Sameer M.Haji and it was sanctioned with a load of 22 KW and charged under LT-5 category on 17.01.2011 for manufacture of bakery products. RR No.NVLMP-33847 is in the name of the appellant Sri M.MGovankoppa and it was sanctioned with a load of 15 KW and charged under LT-5 category on 17.01.2011 for manufacture of bakery products;

(b) After a lapse of four years the AEE issued a notice separately to both the appellants saying that in the meter fixed in the intallations the

meter constant is taken as 1 instead of 10 and for the gap of 4 years he has raised a bill for Rs.5,01,522 and Rs.3,15,863 in respect of the insallations respectively. Their contention is that price of the bakery products is fixed taking into consideration the cost of raw materials, electricity charges and labour charges. Raising a back bill of such large amounts all of a sudden has put the appellants to financial hardship;

- (c) Bills are required to be issued by the authority after examining the first calibration report. If the meters are showing abnormal reading then it is the duty of the meter reader to bring the same to the knowledge of the AEE at the first instance. Instead they have kept quite and after a lapse of 4 years they observe and assess;
- (d) There is dereliction of duty on the part of the meter readers and also the AEE;
- (e) The installations RR No.NVLMP-33846 and NVLMP-33847 LT-5 tariff are CTO operated and it is not known how many times the internal auditor has examined the revenue register in these four years;
- (f) The installations are CT operated and all the details of the metre is to be noted in the register and the bill is to be issued after following all the stipulated parameters;
- (g) The appellants filed their objections on 17.08.2015 and 28.09.2015 respectively. Without considering the same the AEE has issued the orders dated 08.09.2015 wherein, the procedure laid down in condition 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is not followed;

4. In response to the appeals, the AEE has submitted his reply on 18.07.2016 as under:

(a) The installation bearing NVLMP-33846 (Sameer M.Haji) sanctioned power of 22 KW and was charged under LT-5(B) category. The installation bearing NVLMP-33847 (M.M.Govankoppa) sanctioned power of 15 KW and was charged under LT5(B0 category;

(b) By oversight the meter constant has been taken as 1 instead of 10;

(c) The premises of M.M.Govankoppa was visited by the vigilance on 30.04.2015, mahazar was drawn and as per the report dated 30.04.2015 the team noticed power consumption of 63387 units which was left out. Hence arrived at the back bill at Rs.3,04,123-00 and raised a provisional bill dated 03.08.2015;

(d) The premises of Sameer M.Haji was visited by the vigilance on 28.07.2015, mahazar was drawn and given to the consumer and as per the report dated 28.07.2015, the team noticed that for the period from February 2011 to July 2015 power consumption of 101896 units which was left out and hence arrived at the back bill at Rs.5,13,046-00 and raised a provisional bill dated 01.08.2015.

(e) After considering the provisional bill, and after confirming that the meter constant was left out, the said appellants were asked to pay the back billing amount arrived at Rs.5,01,522-00 (Sameer M.Haji) and Rs.3,04,123-00 (M.M.Govankoppa) within 15 days respectfully;

- (f) As the bill amount was not paid within 15 days, one more letter was issued on 08.09.2015 and 01.10.2015 to both the appellants respectively and advised to pay the amount;
- (g) Since they failed to pay the charges, the installations were disconnected on 22.09.2015;
- (h) After negotiations by the appellant Sri Sameer.M.Haji, on 28.09.2015 an amount of Rs.40,000-00 was paid through demand draft and power supply was restored. Further, the appellant Sri M.M.Govankopa also paid Rs.26,322-00 on 05.10.2015 and power supply was restored;
- (i) Both the consumers i.e. Sri Sameer M.Haji paid Rs.5,04,000-00 commencing from October 2015 to June 2016 and Sri M.M.Govankoppa also paid Rs. 3,04,123-00 starting from October 2015 to April 2016 in instalments;

5. The appellants have contended that as per norms the back billing can be raised only for a period of two years. In support of this, the representative of the appellants has cited following Judgements and hence sought reliefs made in the appeal memo.

- (i). Hemeshbhai J Patel Vs. Deputy Engineer, Madhya Gujarat Vij Company Ltd passed by Electricity Ombudsman, Gujarat State;
- (ii). Shivala Bagh Bhaian Trust Vs. Punjab State Electricity Board passed by State Consumer Dispute Redressal Commission, Punjab;
- (iii). Shri Jaykumar P Lalwani Vs. Executive Engineer, Dakshin Gujarat Vij Company Ltd., passed by Electricity Ombudsman, Gujarat State;

- (iv). President, GIDC Industrial Association Vs. Deputy Engineer, Uttar Gujarat Vij Company Ltd., passed by Electricity Ombudsman;
- (v). Uttar Gujarat Vij Company Ltd., Vs. GIDC Industrial Association passed by the Hon'ble High Court of Gujarat, Ahmedabad.
- (vi). Tagore Public School Vs. Punjab State Electricity Board and another passed by the Hon'ble High Court of Punjab & Haryana;
- (vii). Surinder Kumar Vs. Ombudsman Electricity, Punjab & others passed by the Hon'ble High Court of Punjab & Haryana.

He submitted and argued that in all the above said Judgements the Hon'ble Courts have it clear that the authorities should stick to norm of 2 years as laid down in Section 56(2) of the Indian Electricity Act, 2003. He also highlighted that there is failure on the part of authority who are scheduled to inspect and test the meter as required under clause 26.02 of the Conditions of Supply

6. However, the learned Advocate for the respondent has defended the action taken by the respondent in raising the back billing charges. He has stated that the vigilance squad noticed the wrong calculation made by oversight in the instant case during their inspection on 30.04.2015 and 28.07.2015. By oversight the metre constant was taken as 1 instead of 10. This has resulted in a big loss to the Licensee. Hence, he argued that the action taken by AEE in raising the back billing charges is in order. Moreover he has submitted that the appellant has understood the technical flaw which was noticed by the vigilance squad and hence resorted to pay the instalments in dues. Hence the action of the AEE is as per procedure laid down in under Regulation 29.03 of Conditions of Supply which is fully complied with. In addition to the above, he has pleaded that the action taken by the AEE is in conformity with the Judgement of the Hon'ble High Court of Karnataka in

W.P.17225 of 2005 in respect of BESCO – v s- Ghousia College of Engineering.

7. On perusal and consideration of both the oral and written submissions made by both the parties it clearly establishes the fact that the proceedings initiated and order passed by AEE appears to be in order.

8. It is seen that the AEE has raised the bill immediately on receipt of the report of the vigilance squad and no delay is made. The technical flaw erupted in reading of the meter had not come to notice of the AEE till 2015.

9. Immediately on receipt of the report from vigilance the AEE has issued notice and acted as per procedure laid down under Regulation 29.03. After negotiation the appellants have paid the dues in instalments. The consumer has not disputed regarding the consumption of power during the period in question. Thus, the action of the AEE in raising the bill appears to be in conformity with the observations made and orders passed by the Hon'ble High Court of Karnataka in W.P.17225/2007 pertaining to Ramanagar.

10. The relevant portion of the Judgement of the Hon'ble High Court of Karnataka in W.P.17225/2007 in Bangalore Electricity Supply Company – vs – Ghousia College of Engineering of Ramanagar states as follows : (para 12).

*“12. Clause 29.08 (a) reads as hereunder :*

*“At any time during verification of the consumer's account, if any short claims caused by erroneous billing are noticed, the Consumer is liable to pay the difference. The Licensee shall follow the procedure laid*

*down under Clause 29.03 in such cases for preferring the supplemental claims.*

*However, the Licensee shall not recover any arrears after a period of 2 years from the date when such sum became first due, unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied.*

*In case of verification of the consumer's account, shows excess claims made in the past, the excess amount shall be credited to the consumer's account from the date of payment up to the date of credit. This shall be done within one month from the pointing out the excess claims. If for any reason there is delay in crediting the amount to the consumer's account, interest at 2% per month shall be paid to the consumer for the period beyond two months.*

*Middle paragraph of Cl.29.08 (a) deals with the period of limitation of 2 years. According to Mr.Gupta two years period has to be reckoned on which date short claim was noticed by the petitioner and even after noticing such short claim if the petitioner had slept over the matter for more than two years, in such circumstances, period of 2 years has to be restricted only from the date of demand and so far as the present case is concerned, immediately after noticing short claim based on the audit report, demand is raised as per Annexure-a dated 23.06.2007. Therefore, he contends that petitioner came to know of such short claim and within 2 years from that date billing has been raised, therefore order passed by R-2 has to be quashed. Per contra, Mr.Reddy contends that the same paragraph has to be read holding that two years period has to be reckoned only in respect of the short claim for a period of 2 years from the date of issuance of demand and*



*not earlier to that. If the contention of R-1 is accepted in Cl. 29.03 itself, there would not have been restriction in regard to the demand of a short claim. Cl. 29.08 has to be considered for the purpose of calculation of period of 2 years only from the date of knowledge and not from the date on which the first sum became due. It is not in dispute that the short claim was made known to the petitioner only when it received the audit report. The same date has to be considered as the date on which such sum became first due. There was no occasion for the petitioner to raise a bill prior to the receipt of the audit report. Therefore, this Court is of the opinion that the period of two years has to be counted from the day on which petitioner-company has come to know of such short claim. This paragraph has to be interpreted to restrict the period of two years if the petitioner-company has slept over the matter even after two years after noticing short claim or wrong classification. Therefore, point No.1 has to be answered in favour of the petitioner.*

*In the result, this petitioner is allowed. Order passed by R-2 as per Annexure-F is hereby quashed”.*

This order of the Hon’ble High Court was challenged by Ghousia College of Engineering before the Division Bench of the Karnataka High Court in W.A. 5 of 2009 (GM-KEB) and the Division Bench by its order dated 09.09.2015 has dismissed the appeal.

11. Further, the text of the Judgement of the Hon’ble High Court of Jharkhand cited by the learned Advocate comes to the aid of the action of the AEE in the instant case. The Judgement was reported in AIR 2016

Jharkhand in Sheo Shakti Cement Industries – vs – Jharkhand Urja Vikas Nigam Limited. The Judgement reads as follows :

*“Error in raising correct bills occurred due to difference in Multiplying Factor in the old CTPT Metering Unit which was removed and the new CTPT Metering Unit which was installed on 27.01.2011. The contention that the bill for the period between 29.01.2011 to 31.03.2014 were paid by the petitioner and thus, supplementary bill dated 04.06.2014 is barred under Section 56 (2) of the Electricity Act, 2003 cannot be accepted. The fact that petitioner had consumed electricity supplied by respondent Nigam is not disputed. The Installation Report dated 27.01.2011 discloses the particulars of the CTPT Metering Unit which was installed on 2.01.2011 and those particulars are corroborated by the Installation Report dated 31.01.2014 and therefore, the petitioner cannot avoid payment for the electricity consumed by it. The supplementary bill dated 13.05.2014 as corrected by bill dated 04.06.2014 raised on account of less Multiplying Factor is not barred under Section 56(2) of the Electricity Act, 2003 (para 7)”*

12. In the light of the above decisions of the Hon’ble High Courts and after considering both oral and written submissions made by both the parties it is seen that there are no vital and proper reasons to interfere with the order of the CGRF and the proceedings of the AEE. The proceedings of the AEE is in order. Therefore the appeals are dismissed.

13. However, the personnel connected with inspection and audit of the meter have failed to discharge their part of work as required under Regulation

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26.02 of Conditions of Supply. The authorities concerned should initiate penal action against them for dereliction of their duties at the earliest and report to KERC.

Sd/-  
**(B.N.Krishnaiah)**  
**Electricity Ombudsman**

To

1. Sri Tushar M.Baddi, Near SBI, Keshwapur, Hubballi
2. Sri H.V.Devaraju, Advocate, No.39, Shop No.24, Mazzanine Floor, A.S.V.N.V.Bhavan, K.G.Road, Bengaluru – 560 009.
3. The Assistant Executive Engineer (EI), O & M sub-division, HESCOM Navalgund, Dharwad District.
4. The Chairperson, CGRF, Dharwar District, HESCOM, Office of the Superintending Engineer, O&M Circle, Shivaganga Layout, Kusugal Road, Hubballi
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. PS to Secretary, KERC

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