

BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

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

Case No.OMB/B/G-235/2015

Dated : 28.04.2016

Bangalore Golf Club,
No.2, Sankey Rod, High Grounds,
Bangalore
By its Hon. Secretary)

... Appellant

(By Sri M.G.Prabhakar, Authorized Representative)

V/S

1. BESCO, M,
Represented by its Managing Director,
Corporate Office, K.R.Circle,
Bangalore 560 001

2. The Assistant Executive Engineer (O & M),
BESCO, W-4 sub-division,
Anand Rao Circle, Bangalore – 560 009

(R-2 by Sri K.Vinayaka, Law Officer, BESCO)

3. The Chairperson
CGRF, Bangalore Urban District,
BESCO, West circle,05,3rd stage
Bhimajyothi HBCS Layout,Bangalore
Next to Chord Hospital, Basaveshwara
Nagar, Bangalore-560079

... Respondents

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, BESCOM, Bangalore Urban District, Bangalore (herein after referred to as the 3rd Respondent) dated 06.11.2015 in regard to the complaint filed by the appellant regarding issue of supplementary bill by the 2nd Respondent for Rs. 73,32,134.00.

2. Letter dated 15.12.2015 was issued to the Assistant Executive Engineer calling for comments. The Assistant Executive Engineer, has submitted his reply vide letter dated 28.12.2015.

3. Both the parties were informed vide letter dated 08.01.2016 regarding availability of sub-regulation 20(1) of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement by conciliation and mediation which both parties have not availed. Hence, the Authority proceeds to pass the orders on merits.

4. The case of the appellant is :-

(a). The Bangalore Golf Club is a Society registered under Societies Registration Act, 1960, and is a consumer of electricity with BESCOM. The Club has two installation in RR No.P-6590 under LT-3 category with sanctioned load of 79.75 kW and 11.70 HP, which is used for office, club house, canteen and generally for the purposes of club activities.

(b). The second installation bearing RR No.W4HT-60 it is contended, was under HT-2(a) category was used for sewerage water treatment and activities incidental to the sewerage treatment like sprinklers, repair shops, which has been confirmed by a letter of the Assistant Executive Engineer

dated 03.04.2010 addressed to the Accounts Officer (Revenue Monitoring), Corporate Office. This was again reiterated by the letter dated 06.09.2010 of the Assistant Executive Engineer, and also confirmed that the details of plant & machinery, plan of the plant along with Certificate issued by Pollution Control Board.

(c). The vigilance unit inspected the unit on 29.04.2014 and submitted a report. Based on the said report a short claim of Rs.73,32,134 was raised on 12.06.2014. The Bangalore Golf Club submitted its objections. The Assistant Executive Engineer by his order dated 10.07.2014 confirmed the claim of Rs.73,32,134.00.

(d). As per the successive tariff orders, the sewerage treatment was falling under HT-2(a) tariff schedule category and at no point of time the said activity was brought under the commercial activity.

(e). Energy supplied may be utilized for all purposes associated with the working of the installations, such as office, stores, yard lighting, water supply and advertisements within the premises. Such being the case the usage of energy by the complainant for the purposes of sewerage water treatment and associated activities like usage of sprinklers, etc, were well within the approved parameters.

(f). The H.T./E.H.T. Consumer is permitted to use power within his premises for any bonafide purpose including construction works without exceeding the contract demand or permitted maximum demand/energy entitlement, as the case may be. Such usage does not amount to prejudicial

use (Clause 8.14 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka).

(g). The AEE not only failed to notice the conditions applicable to billing of HT installations but also stepped into the shoes of the Commission in assigning HT-2(b) status to the usage which is not provided for in the Tariff Schedule itself. The said action of reclassification is perverse, whimsical and arbitrary.

(h). The AEE failed to establish usage for purposes other than for which the power was sanctioned and also assumed the jurisdiction to assign a tariff category namely HT-2(b) which did not cover the usage for the purpose of sewerage treatment. On both counts the order is bad in law and liable to be set aside.

(i). Aggrieved by the said order the Appellant approached the CGRF for relief. The CGRF after considering the pleas made upheld the order of the AEE by their order dated 06.11.2015.

(j). The CGRF committed serious error in not deciding the complaint based on the material placed by the complainant but undertook the burden in culling information on behalf of respondent AEE, from a source not disclosed to the complainant.

(k). The CGRF miserably failed to appreciate the claim of the consumer but took extra-ordinary interest in rushing to the rescue of the respondent AEE/s contrary to the well established requirement of following the

principles of natural justice, where the deciding authority should shun all its proclivities to take sides of the parties to the proceedings.

(l). The CGRF totally ignored provisions of Clause 29.03 of Conditions of Supply governing the field of supplemental claims. The Forum failed to notice that this clause provides for short claims relating arising out of the Faulty Meter or erroneous billing and not re-classification resorted to by the respondent AEE by classifying the consumption by the complainant as commercial tariff under HT-2(b).

(m). Further, the whole activity of sewerage treatment is devoid of any profit motive in the activities undertaken by the complainant. In fact the complainant is spending lot of money in establishment and maintenance of Tertiary Treatment plant and the incidence of profit is totally absent. The AEE failed to bring on record any material in support of the allegation that the activity would actually a commercial activity involving profit.

5. The Assistant Executive Engineer in his reply dated 28.12.2015 justified the claim made by the BESCO and requested to dismiss the appeal. The particulars are as follows :-

(a) The installation RR No.W4HT-60 was serviced on 02.07.1999 to Bangalore Golf Club with contract demand of 222 KVA under commercial tariff HT-2(b). On request of the consumer the installations P-7516, P-4467, P-6260, P-5721, HG-1936 were merged with HT installation bearing RR No.W4HT-60. The contract demand was reduced from 222 KVA to 130 KVA under commercial tariff on 22.03.2001.

- (b) On several requests made by the consumer for refund of tariff difference charges from HT-2(b) to HT-2(a) for a period from January 2001 to October 2001 as per the tariff order 2000, the officers without noticing the classification recommended wrongly for withdrawal of demand from HT-2(b) tariff to HT-2(a) tariff for Rs.2,75,946. The installation was erroneously classified under HT-2(A) tariff. This amount was adjusted to the existing account vide OM dated 15.11.2003.
- (c) The DGM (RM) from corporate office on 03.08.210 have clarified that the energy supplied to clubs for whatever be the nature of usage has to be treated as commercial tariff i.e. HT-2b(1). Further directed to reclassify the category of installation under HT-2(b) tariff as per Section 3.04 of Conditions of Supply.
- (d) Additional load for sewage treatment plant of 120 KVA to existing 130 KVA totalling to 250 KVA under HT-2(a) was serviced on 21.04.2009.
- (e) Vigilance wing visited the premises and found that the electricity was used for various places of golf club playing areas including the LT installation in the premises.
- (f) The AEE has issued provisional demand for Rs.73,32,134 (short claim for tariff difference amount without interest from HT-2(a) to HT-2(b) from January 2001 to April as per Clause 29.03 along with recovery of excess revenue adjustment of Rs.2,75,946 extending to the consumer's RR No.W4HT-60.

- (g) The consumer submitted written statement of objections on 14.08.2014.
- (h) On 04.09.2014, the AEE has passed the order claiming Rs.73,32,134 (including excess revenue adjustment of Rs.2,75,946) under Clause 29.03 of Conditions of Supply.
- (i) The appellant approached the CGRF and CGRF dismissed the complaint.

6. Heard the Authorized Representative for the appellant and also the Law Officer for BESCO.

7. Sri M.G.Prabhakar, Authorized Representative reiterated the averments made in the appeal at the time of hearing. Further, also submitted as follows :-

- (i) Bangalore Golf Club – the Appellant, is an old Institution of the city catering the sport activity;
- (ii) The officer who conducted the inspection was not authorized, mahazar not drawn, no notice served and inspection was done under some pressure;
- (iii) CGRF took long time to pass the order. The Chairman of the CGRF who has signed the order had not heard the case. Not applied mind and there is procedural lapse on CGRF.

(iv) AEE does not have power to pass order of reclassification of category.

(v) In support of his contention he had quoted the order of Appellate Tribunal for Electricity vide Appeal No.91 of 2010 in respect of Ind Bharath Energies (Maharashtra) Ltd., - vs – Maharashtra State Electricity Distribution Co. Ltd., & others. The Hon'ble Appellate Tribunal for Electricity in their order dated 27.09.2011 have observed that “No person can take advantage of his own wrong”.

8. Sri K.Vinayaka, Law Officer, argued that even though the installation is coming under HT 2(a) category as per the tariff order 2010, majority of the activity is for club. The reclassification done is proper and the amount of Rs.73,32,134.00 is without any interest and without any penalty. He reiterated the submissions made in the written objections filed. He further argued that –

(i) Admittedly the Appellant Institution is a club catering past time services like Golf, guest house, Bar & Restaurant, etc, to the Members.

(ii) The officers of the Licensee had erroneously classified HT (2b) category to HT (2A) in the year 2010 and refunded an amount of Rs.2,75,946-00.

(iii) The said mistake was corrected by the Respondent office on the advise made by the Vigilance team; for filling the HT installation under commercial tariff.

(iv) The consumer i.e. the Appellant therefore had also come forward for changing the tariff from HT 2(A) category to HT (2B) category.

9. It is useful to extract some of the provisions of Conditions of Supply of Distribution Licensees in the State of Karnataka.

“3.04 Reclassification of consumer :

If it is found that a Consumer has been classified under a particular tariff category erroneously, the Engineer of the Licensee may reclassify such Consumer under the appropriate category after issuing notice of 15 clear days to him to execute a fresh Agreement duly observing other conditions, if required, on the basis of the altered classification.

If the Consumer ... ”

“29.03 Supplemental claims : For preferring the supplemental claims, the Licensee shall serve a provisional Assessment order with 15 days notice to the Consumer to file his objections, if any, against the provisional Assessment order on account of faulty meter or short claims caused due to erroneous billing and obtain his reply. After considering the objections of the Consumer, the Licensee shall issue the final order. The Consumer shall be intimated to make the ... ”

The HT-2(a) tariff schedule reads as follows :

“Applicable to Industries, Factories, Workshops, Universities, Educational Institutions belonging to Government, Local Bodies, Aided Institutions, Hostels of all Educational Institutions, Research & Development Centres, Industrial Estates, Milk dairies, Rice Mills, Phova Mills, Roller Flour Mills xxx nuclear Power Projects, Stadiums maintained by Government and local bodies, also Railway Traction, Effluent treatment plants and Drainage Water treatment plants owned other than by the local bodies, LPG bottling plants, petroleum pipeline projects, Piggery farms, Analytical Lab. for analysis of ore metals, saw mills, Toy/wood industries, Satellite communication

centres, and Mineral water processing plants/drinking water bottling plants”

The HT-2(b) tariff schedule reads as follows :

“Applicable to Commercial Complexes, Cinemas, Hotels, Boarding & Lodging, Amusement Parks, Telephone Exchanges, Private Hospitals & Nursing Homes, Race Course, All Clubs, T.V.Station, All India Radio, Railway Stations, Airport, KSRTC bus station, All offices, Banks, Commercial Multi-storied buildings ...”

10. The main contention of the appellant is that the installation bearing W4HT-60 under HT 2(a) was used for sewerage water treatment and activities incidental to the sewerage treatment like sprinklers, repair shops, etc, and hence the difference of demand raised by the AEE treating the installation under HT 2(b) tariff schedules requires to be set aside.

11. On the other hand, Sri K.Vinayaka, Law Officer justified the short claim raised by the Licensee contending that the sprinkling of water is not incidental to the sewerage treatment and the sprinkling of water is for the maintenance of the golf course which is a club activity used only by the members of the club.

12. As the name suggests that the appellant is a club. To maintain the golf course, the appellant is using the power for water sprinkling. Even before establishing the water treatment plant, the sprinklers for water sprinkling and other implements/tools are being in use for club activity and therefore it cannot be said that sprinklers, repair shops, etc, as activities incidental to the sewerage treatment. Further, it is not the case of the appellant also that the repair shops, etc, are established after the commissioning of the water treatment plant. Once the drainage water is

treated, the water loses its characteristics of sewage, and therefore it becomes fit for club activity and was used by the club. The golf club is in the heart of the Bengaluru City. It is exclusively used by only the members of the club for their golf play, Bar & Restaurant, etc. The precious energy was used for treating and supply of water to maintain the golf course, guest house, etc, for which the members pay the prescribed monthly charges.

12. In the light of the above, considering the submissions and arguments made by both the parties, I find no valid and strong reasons to interfere with the orders of AEE and CGRF. Hence, I proceed to pass the following order.

ORDER

The appeal is dismissed.

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

To :

1. Sri M.G.Prabhakar, No.79, 14th Cross, 2nd Phase, J.P.Nagar, Bangalore – 560 078
2. The Assistant Executive Engineer (O & M), BESCOM, W-4 sub-division, Anand Rao Circle, Bangalore – 560 009
3. Sri K.Vinayaka, Law Officer, BESCOM, Corporate office, K.R.Circle, Bangalore – 560 001
4. The Chairperson, CGRF, Bangalore Urban District, BESCOM, West circle, 05, 3rd stage, Bhimajyothi HBCS Layout, Bangalore, next to Chord Hospital, Basaveshwara Nagar, Bangalore-560079.

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
