

D-704

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-251/2016

Dated : 03.06.2016

Shakeel Ahmed Khan,
112/120, 3rd Cross,
MICO Layout,
Arakere, Bengaluru – 560 079

... Appellant

(By Sri M.A.Delvi, Advocate)

V/S

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

2. The Assistant Executive Engineer (O & M),
BESCOM, S-12 sub-division,
113/B, 1st Stage,
Mehta Jewellery & Complex,
J.P.Nagar, 7th Phase, Gowaunagar,
Bengaluru – 560 078

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

... Respondents

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by CGRF, BESCO, Bangalore Urban District, Bangalore, dated 23.02.2016 with regard to the complaint filed by the appellant regarding issue of demand made at Rs.46,080-00 for unauthorised use of power

2. Letter dated 09.03.2016 was issued to the Assistant Executive Engineer calling for comments. The Assistant Executive Engineer, has submitted his reply vide letter dated 29.04.2016.

3. Both the parties were informed vide letter dated 26.04.2016 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 appellant for the purposes of putting up a new construction of residential premises availed 1 KW of power under LT-7 tariff schedule (temporary service). The installation was serviced on 07.11.2012 by assigning RR No.S-12TP 3621.

(b) The subject installation was renewed periodically up to April 2013 as the construction work was almost over and steps were initiated to avail a permanent supply. The respondent AEE did not remove the meter nor were any steps taken to read the meter.

(c) There was supposed to have been a visit by the staff of vigilance on 07.06.2013 (the report was given to the appellant/complainant) on 06.05.2015 i.e. after about 2 years of the event).

(d) In the said report the vigilance has furnished the following details of the load provided in the residence.

- (i) Fans 10 x 60 watts
- (ii) TV 2 x 150 watts
- (iii) Fridge 2 x 250 watts
- (iv) Oven 2 KW
- (v) Geyzer 2 KW x 4
- (vi) Water pump ½ HP
- (vii) CFL 8 x 20 watts

In the report 3 items relating to construction has been mentioned. The respondent sub-division took their own time to process the application. Meanwhile during August 2013 the final bill was claimed and the residential installations were serviced on 08.11.2013. The AEE at the time of permanent service did not inform the appellant of any pending back bill or mentioned the report by the vigilance.

(e) It was only during May 2015 that the appellant came to know about the back bill in respect of temporary installation and on approaching, the respondent office, a back bill dated 20.09.2013 for Rs.46,080/- was handed over. The back bill has ben prepared for misuse of electricity under Clause 42.02 of Conditions of Supply. But very surprisingly the back bill has been worked out on twice the normal rate of temporary tariff. Although there being no provision to back bill a temporary installation.

(f) The respondent AEE exerted utmost coercive methods to make the appellant pay the illegal claims. To avoid disconnection, the appellant deposited a sum of Rs.20,000/- and thereafter filed a complaint before the CGRF on 29.07.2015. The Forum admitted the complaint and conducted proceedings and the appellant furnished all the relevant facts.

5. The AEE 1st respondent vide letter dated 29.04.2016 has furnished the reply as follows:

(a) The appellant was sanctioned with a 1 KW under LT-7 for his temporary installation S12 TP 3621 on 17.11.2012 for construction purposes.

(b) The installation was disconnected on 04.05.2013 as the appellant failed to renew the temporary connection and the final reading of the meter as per the report of Junior Engineer was 2512. Based on this report a bill was raised for Rs.7,810/- and after adjusting Rs.2,900/- which was kept as security deposit, the appellant has paid Rs.4,910/- on 14.08.2013 vide Receipt No.728312634234.

(c) On 07.06.2013 the Vigilance squad inspected the premises and reported that the appellant had used 16 KW power unauthorisedly for construction purposes and the mahazar, prepared was also attested by the appellant.

(d) Based on the report dated 15.09.2013 of the vigilance which was received by the AEE on 20.09.2013, the appellant was back billed for Rs.46,080-00 from 04.05.2013 to 07.06.2013 for unauthorised use of power to the extent of 16 KW.

(e) The consumer did not raise any objection to the said back billing and hence a final order dated 08.10.2013 was issued to the appellant calling him to pay the amount of Rs.46,080-00.

(f) Meanwhile, with effect from 28.06.2013 the Infosys had introduced a new technology in the sub-division, accordingly the back billed amount with respect to S-12 TP 3621 was transferred to permanent installation S-12 EH 12313 on 09.04.2015.

(g) The appellant had also represented on 27.06.2015 to the Superintending Engineer (Electrical), South Circle. As per the oral instructions of the Superintending Engineer, the appellant represented on 29.06.2015 saying that he would pay the amount (BBC) in two instalments. In pursuance of the same, made a payment of Rs.20,000-00 on 29.06.2015 vide receipt number 30074.

(h) As the appellant consumer had defaulted in payment of ASD from 08.12.2013, in respect of installation numbers in RR Nos.S12 EH 12314, S12 EH 12315, S12 EH 12316 for Rs.1,040-00, Rs.2,640-00, Rs.2,060-00 totally Rs.5,740-00 , electricity was disconnected. later the electricity was restored after the consumer paid the amount on 28.10.2015.

6. Sri M.A.Delvi, the learned Advocate for the appellant reiterated the averments made in the appeal memo and also submitted as follows :

(a) The case does not fall within the ambit of any of the provisions falling under Regulation 42 of the Conditions of Supply of Electricity by Distribution Licensees in the State of Karnataka (prejudicial use or misuse).

(b) The case falls under the exceptions to Regulation 42.02 (b) and (c).

b. The tariff applicable on the proportionate consumption LT-2(a) residential

c. If any energy is used for a purpose which attracts lower tariff such use does not amount to prejudicial use and no revision of bill shall be made.

7. Sri M.A.Delvi, the learned Advocate for the appellant also pointed the violations, negligence and acts of omissions and commissions by the respondents.

(a) The temporary installation S-12 TP 3621 was served on 07.11.2012 with 1 KW sanctioned load for construction purposes;

(b) The installation was subject to periodic renewal. In the event an installation is not renewed the installation is liable to be disconnected forthwith;

(c) The installation was not renewed subsequent to April 2013 as the construction work was over. The respondent did not remove the meter;

(d) Three permanent residential installations were serviced on 08.11.2013;

(e) The appellant came to know of an inspection by the vigilance and subsequent back bill generated by the sub-division only during May 2015 when action was taken to enforce payment of the back bill it was sent for disconnection;

(f) The inspection report dated 07.06.2013 and the back bill dated 20.09.2013 were received on 06.05.2015;

(g) The report dated 07.06.2013 by the vigilance is violation of norms. It does not have a backing of a mahazar furnishing the required details.

They have failed to record the load shown in the meter on the day of their visit;

- (h) The Assessing Officer has not acted in accordance with Section 126(3) of the Electricity Act;
- (i) The back bill has not been confirmed through a final order to make it operational;
- (j) The back bill is opposed to the provisions of Conditions of Supply of Electricity and Tariff Order and hence liable to be set aside.

8. Sri M.A.Delvi also submitted a Memo dated 19.05.2016 stating that signature appearing on the final order dated 08.10.2013 is a forged one. The learned Counsel further submitted that the mahazar filed by AEE purportedly drawn by the vigilance dated 07.06.2013 is forged one. The signature of the appellant affixed on both mahazar report and inspection report are forged ones.

9. The Counsel for the appellant has further argued that the maahzar was given to the appellant on 06.05.2015. The appellant came to know about the back bill in the month of May 2015 in respect of temporary installation and an approaching the respondent office a back bill dated 20.09.2013 for Rs.46,080/- was handed over to the appellant. The AEE has not informed of any back bill when the permanent service was given on 08.11.2013. The Counsel further contended that there is no provision to back bill the temporary installation and he has cited upon the Judgement of the Kerala High Court in W.P. (C) No.10841 of 2012 in support of his argument, wherein it is held "*... Therefore, penalisation on the basis of charges leviable for temporary extension was held to be unsustainable. ... Therefore it is evident that the levy of charges under LT VIII Tariff in case of unauthorised extension is not*

sustainable". Further, the Counsel argued that as the Department adopted coercive steps and fearing disconnection, the appellant had no other option but to deposit Rs.20,000-00. Further, the Counsel, after the hearing of the case, has submitted a Memo stating that the present AEE Sri Dhananjay has prepared the final order dated 08.10.2013 purported to have been signed by Sri V.Prashanth Kumar, AEE. Further, the Counsel has also contended that signature of the appellant on the mahazar is forged, and requested to take action on the AEE.

10. It is seen from the reply of the AEE that the electricity was disconnected to the temporary installation on 04.05.2013. It is alleged that the appellant has used 16 KW of power unauthorisedly. Based on the report of the vigilance and mahazar, the back bill for the entire period from 04.05.2013 to 07.06.2013 has been raised. Further, the appellant has contended that he has not received the provisional bill nor the final order in 2013. There appears to be contradiction on the dates and back billing. This Authority finds that proper and legible appreciation of facts is not done in the instant case. Hence, I proceed to pass the following order.

ORDER

The appeal is allowed. The order dated 23.02.2016 of the CGRF and the final order dated 08.10.2013 of the AEE are hereby set aside. The matter is remanded to the AEE to hear the appellant and pass a speaking order as per law at the earliest.

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

To :

1. Sri M.A.Delvi, Advocate, No.8, 3rd Cross, Pottery Town, Bengaluru – 560 046
2. The Assistant Executive Engineer (O & M), BESCO, S-12 sub-division, 113/B, 1st Stage, Mehta Jewellery & Complex, J.P.Nagar, 7th Phase, Gowaunagar, Bengaluru – 560 078
3. Sri K.Vinayaka, Law Officer, BESCO, Corporate office, K.R.Circle, Bangalore – 560 001
4. The Chairperson, CGRF, Bangalore Urban District, BESCO, 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
