

BEFORE THE ELECTRICITY OMBUDSMAN

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)
Vasanthanagar, Bengaluru-560052.

Present: S.S Pattanashetti,
Electricity Ombudsman,
Case No. OMB/B/G-364/2019
Dated 18/11/2019

In the matter of

Shri. Ravi Kumar,
#1, 28th A Cross,
Geetha Colony,
4th Block, Jayanagar,
Bengaluru – 560004.

Represented by:
Shri M.A Delvi,
Advocate,
#8, 3rd Cross, Pottery Town,
Bengaluru – 560046. -

Appellant

Vs

1) The Assistant Executive Engineer (Elec),
S-1 Sub-Division, BESCOM,
No. 209, 45th Cross, 8th Block,
Jayanagar,
Bengaluru-560082.

2) Chairman, Consumer Grievance Redressal Forum (CGRF)
Bengaluru Urban District,
West Circle Office, BESCOM,
CA Site, No. 05, West of Chord Road,
3rd Stage, Bhima Jyothi, HSBC Layout,
Next to Chord Road Hospital,
Basaveshwarnagar,
Bengaluru – 560079. -

Respondents

1) This Appeal/Complaint is filed before this Authority, by Shri Ravi Kumar, (Appellant/Complainant), under the provisions of Clause 21.2 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, in Form 'B' challenging the order No. CGRF 36/2018-19/28-11-2018/1732-36 dated 20-07-2019 of CGRF, Bengaluru Urban District, by inter-alia seeking the following reliefs:
To direct the Respondent to limit the revision to a period of two years under Section 56(2) of Electricity Act.

2) Brief facts, which are relevant to the case are as follows:

The Appellant/Complainant was supplied with 1 HP connected load on 04-12-1976 to his premises bearing RR No. SP 1411 and subsequently the consumer applied for additional loads on different occasions to meet his requirements relating to his commercial activity up to 32 HP. On 17-10-2005 the consumer submitted a representation to Respondent-1/AEE with a request to change the meter on the plea that the meter is indicating zero consumption inspite of using power supply. Based on his representation defective meter was replaced immediately on the same day. The Respondent-1/AEE was issuing electricity bills to the Appellant/Complainant with 5 digit reading of the meter. When the Appellant/Complainant applied to the Respondent-1/AEE for sanction of an additional load of 16 KWs it was detected by the Meter Testing (MT) Personnel on 18-01-2018 that the Appellant/Complainant was being issued electricity bills with 5 digit reading instead of 6 digit reading. The sanction of additional load of 16 KWs necessitated removal of the existing meter in order to install CT operated by vector meter. The revenue section of the Respondent-1/AEE found mismatch of digital number when compared to the report of the released meter

details. Released meter report indicated 6 digits whereas the digits appearing in the books of account of Respondent-1/AEE indicated 5 digits. The omission of 6th digit of the released meter highlighted the under billing of the installation for the past 13 years resulting in supplementary claim of Rs. 20,35,855/-. As per assessment, the error in short billing by taking 5 digits instead of 6 digits resulted in collection of 10% of the total energy charges consumed, causing 90% of loss to BESCOM for having missed the 6th digit each month since 17-10-2005. The Respondent-1/AEE informed the consumer through letter dated 23-03-2018 about the error inadvertently occurred ever since 17-10-2005 due to omission of 6th digit and informed the Appellant/Complainant to pay Rs. 20,35,855/- with a right to file objections if any within 15 days of the receipt of notice. The Appellant/Complainant filed his objections through representation dated 20-04-2018 to provide an opportunity to hear his plea. In response to the objections filed by the Appellant/Complainant the Respondent-1/AEE furnished parawise replies to his observations and directed him to pay the supplementary claim of Rs. 20,35,855/- terming his stand as untenable. Aggrieved by the order passed by the Respondent-1/AEE, the Appellant/Complainant filed a complaint before the CGRF Bengaluru Urban District, BESCOM, vide case No. CGRF/36/2018-19/28-11-2018. The CGRF passed an order on 20-07-2019 dismissing the complaint and directing the Respondent-1/AEE to recover the supplementary claims besides initiating disciplinary actions against the erring officials/officers on account of dereliction of their duties. Aggrieved by the order of the CGRF dated 20-07-2019 the Appellant/Complainant has filed the present appeal before this authority.

- 3) Both the parties were informed vide this office letter No. OMB/B/G-364/2019/D-1348 dated 16-08-2019 regarding availability of provision in Sub-Regulation 1 of Regulation 20 of KERC (CGRF & Ombudsman) Regulations, 2004 for settlement through conciliation and mediation and to appear before this Authority on 04-09-2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 04-09-2019, 18-09-2019 and 24-09-2019.
- 4) The Respondent-1/AEE has filed her submissions dated 30-08-2019 narrating the facts of the case. The Respondent-1/AEE has further stated that the Appellant/Complainant agitated and reagitated to send the released meter for lab test in his presence. The request was considered in order to remove the apprehensions and ambiguities of the consumer. He was allowed access to monitor the process of meter calibration in the laboratory to know as to whether the released meter had 6 digits. But the consumer did not avail this opportunity due to the death of his father-in-law as reported by him in his representation dated 17-07-2018. However, the letter issued by the MT division confirming the fact, vide their letter No. EE/AEE/2746 dated 07-09-2018 was provided to the Appellant/Complainant along with the report dated 06-09-2019 from Landys+Gyr confirming the fact of 6th digit. The Appellant/Complainant has availed power supply since October 2005 and paid only 10% of the consumption charges due to the missing of 6th digit. The consumer has utilized the power for commercial purpose and earned profit through business activities. BESCO cannot be burdened with Rs. 20,35,855/- condoning the consumer. The supplementary claim has been calculated under LT3 tariff commencing from 17-10-2005 based on applicable tariff rate revised from time to time

over a period of 13 years meticulously and ensured the accuracy of assessment keeping in mind what would have been the exact energy charges had the installation been billed on the basis of 6 digits from 17-10-2015. Now the consumer has to pay the exact outstanding supplementary claim to which BESCO is entitled for legitimately. The Appellant/Complainant while advancing his plea invokes the provision of section 56(2) of the Electricity Act 2003 and Clause 29.08 of the Conditions of Supply of Electricity (COS). The judgment of the Hon'ble Courts pronounced in respect of the word 'DUE' appearing in section 24 of Indian Electricity Act 1910 and incorrectly applying the same word First Due as appearing in Section 56(2) of the Electricity Act 2003 treating both as synonyms is the crux of the whole confusion. The petitioner has also furnished the judgments of few Hon'ble Courts in support of his prayer. These judgments of different Hon'ble Courts illustrated by the petitioner have no link with the present case. BESCO has not inflicted any financial loss to the consumer, instead BESCO has immeasurably suffered financial loss for the past 13 years due to omission of 6th digit. BESCO is not penalizing the consumer. The supplemental bill of Rs. 20,35,855/- is purely supplementary claim which the consumer is liable to pay in accordance with Clause 29.08 of Conditions of Supply of Electricity (COS) and the Appellant/Complainant is the direct beneficiary of the power supply he enjoyed since 17-10-2005. The erring officials/officers will be dealt with resolutely through befitting disciplinary actions with tough clauses and sections to teach them a lesson.

- 5) In the appeal memo the Appellant/Complainant has said that to energize the additional load sought by him the Respondent-1/AEE called the

Meter Testing Personnel to conduct the pre-commission meter testing and the same was carried out on 08-01-2018. The said personnel replaced the existing meter with the ETV meter without conducting any Mahajar or expressing any doubts on the removed meter. Although the meter was replaced on 18-10-2018, it was only on 23-03-2018 that the Respondent-1/AEE sent a demand notice citing the meter test report dated 18-01-2018 informing him that due to negligence in reporting of the number of digits to be taken for reading of the meter on 17-10-2005 the bills were rendered by taking 5 digits instead of 6 digits, resulting in short billing of the installation to an extent of 90% and demand an accumulated short billed amount of Rs. 20,35,855/-. He filed necessary objections to the supplemental claim pointing there in the incorrect depiction of short billing due to negligence into an "Audit short claim" which it was not. Since it was not a case of Audit short claim the Respondent was requested to afford a hearing to the Appellant/ Complainant to enable him to file necessary legal responses to the issue. The Respondent/AEE instead of hearing the Appellant/ Complainant sent his response to the objections, furnishing therein misinterpreted provisions of Conditions of Supply of Electricity (COS) justifying the claim. The Respondent/AEE caused a notice dated 17-11-2018 extending a threat of disconnection of the installation invoking the provision of Section 56(1) of Electricity Act 2003 demanding therein payment of short claimed amount. While invoking the provision of Section 56(1) of the Act, the Respondent/AEE has overlooked the other part of the provision Section 56(2) which subject the claim to restrict it to 2 years of the claim "First Due". He approached the CGRF by way of a complaint dated 23-11-2018 seeking a direction

to the Respondent/AEE to restrict the claim as provided in the provisions of the Act. The CGRF passed an order dated 20-07-2019 dismissing the complaint on untenable grounds. While the 2 official members proceeded to dismiss the complaint by misinterpreting the provision of Clause 29.08 of the Conditions of Supply of Electricity (COS) and very wrongly depicting the issue as Audit short claim whereas on the contrary it was a case of inefficiency and negligence on the part of the Licensee. The independent member although found fault that the plea to extend the provisions of limitation deserves consideration, he passed a dissenting order extending the facility to pay the short billed claim in 4 equal monthly installments along with the current monthly charges. The Appellant/Complainant has set out the following grounds for his appeal.

- a. The Respondent cannot take advantage of its negligence and claim a ruinous amount under the excuse of short billing by passing the provisions of limitation.
- b. The Meter Testing division is mandated to calibrate meters periodically. It has miserably failed in its duties in failing to visit a commercial complex over a period of 13 years.
- c. The Meter Testing staff carried pre-commission test to service the additional load and carried replacement of meter ought to have conducted a mahajar and put the issue of the number of digits to be taken for reading across to the consumer.
- d. The CGRF on its part has approached the issue with closed mind and failed to extend space to the Appellant/Complainant to present his case on the issue of limitation.
- e. The installation being a shopping complex with lessees' in occupation of spaces has at their convenience vacated the premises and new tenants are inducted. The action on the part of the Licensee in claiming a short billing case due to utter negligence on the part of their engineers against the Appellant/Complainant ignoring the provision of limitation will be ruinous and against the principles of natural justice.

- 6) Perused the appeal memo, submissions made by Respondent-1/AEE, the documents submitted and the arguments put forth by the contesting parties. It is an admitted fact that on 17-10-2005 on the request of the consumer the existing meter which was not recording the usage of electricity was replaced with new meter. It is the contention of Respondent-1/AEE that from that date they were issuing electricity bills to the Appellant/Complainant with 5 digit reading of the meter instead of 6 digits. It is also an admitted fact that the Appellant/Complainant applied to the Respondent-1/AEE for sanction of additional load of 16 KWs. The sanction of additional load of 16 KWs necessitated removal of the existing meter in order to install CT operated by vector meter. The revenue section of the Respondent-1/AEE found that the released meter report indicated 6 digits whereas the digits appearing in their books of account indicated 5 digits. It was on this date i.e., 18-01-2018 that the mistake which had crept in on 17-10-2005 was detected. The Respondent-1/AEE found that the omission of 6th digit of the released meter highlighted the under billing of the installation for 13 years resulting in supplementary claim of Rs. 20,35,855/-. As per their assessment the error in short billing by taking 5 digits instead of 6 digits resulted in collection of 10% of the total energy charges consumed, causing 90% loss to BESCO for having missed the 6th digit each month since 17-10-2005.
- 7) The Appellant/Complainant has objected to the claim of the Respondent-1/AEE claiming that when the existing meter was replaced with the ETV meter no Mahajar was conducted. The Appellant/Complainant requested for testing of the meter in the laboratory in his presence which was not done. The

Respondent-1/AEE has countered this, saying that the Appellant/Complainant was allowed access to monitor the process of meter calibration in the laboratory to know as to whether the released meter had 6 digits. But the consumer did not avail of this opportunity due to the death of his father-in-law as reported by him in his representation dated 17-07-2018.

- 8) The Appellant/Complainant has prayed this authority to restrict the claim of the Respondents to a period of 2 years only by applying the provisions of Limitation Act. He has mentioned Section 56(2) of Electricity Act, 2003 which reads as follows: -

“No sum, due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.

He has further taken recourse to Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, which reads as follows:

“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 the present case, all the procedural formalities required under Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka like giving provisional demand

notice, calling for objections within 15 days and passing of final orders etc., have been followed.

- 9) The question arising for consideration both in Section 56(2) of Electricity Act, 2003 and Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka is when the period of two years has to be reckoned, is it from the date of when such sum became first due or is it from the date when the Licensee noticed the mistake and tried to set it right.
- 10) The Appellant/Complainant has referred to Court rulings in the High Court of Gujarat in Special Civil Application No. 15289 of 2012 by Hon'ble Justice K.M. Thaker and M/s. Ghousia College of Engineering VS BESCO in W.A. No. 5/2009 by the Hon'ble Division Bench of the Karnataka High Court. The Respondent-1/AEE has relied upon the ruling of the Division Bench of Bombay High Court in Awadesh Pandey VS Tata Power Company Ltd and other (AIR 2007 Bombay-52), Banahatti Co-op Spinning Mill Ltd VS Karnataka Electricity Board (ICR 1990 KAR-3518), M/s. Tata Steel Ltd VS Jharkhand State Electricity Board and others (AIR 2008 Jharkhand-60) by Jharkhand High Court and Sales Tax Officer, Banaras and others VS Kanhaiyalal Mukundlal Saraf reported in AIR 1959 Supreme Court 135.
- 11) In all the above orders, there are conflicting orders by Hon'ble High Courts in the matter of interpreting the provisions of Limitation Act, Section 56(2) of Electricity Act, 2003 and Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS).

12) The facts and circumstances in the present case, are more or less similar to the facts and circumstances in the W.P No. 17225 of 2007, disposed by the Hon'ble High Court of Karnataka. The Hon'ble High Court of Karnataka has made the following observations:

“Clause 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 classifications”.

In the present case the Respondent-1/AEE has immediately taken action to bring to the notice of the Appellant/Complainant the short claim made by him from 17-10-2005 till 18-01-2018. After noticing the short claim in the previous years, the Respondent has not slept over the matter and immediately taken action on 18-01-2018 itself.

13) There is a negligence/lapse/derelection of duty on the part of the functionaries of the Licensee, meter testing staff, the meter reader concerned and the jurisdictional AEE/Electrical O & M Sub Division not to have noticed this lapse for nearly 13 years. However, it is also a fact that the Appellant/Complainant has utilized the electricity of the Licensee for these 13 years. The Appellant/Complainant has availed/supply since October 2005 and paid only 10% of the

consumption charges due to the missing of 6th digit. The consumer has utilized power for commercial purpose and earned profit through business activities. The Licensee cannot be deprived of its lawful electricity charges due to faults/lapses/negligence/derelection of duty of its employees. BESCO cannot be burdened with Rs. 20,35,855/- condoning the consumer. The Respondent-1/AEE has submitted that the erring officials/officers will be dealt with resolutely through befitting disciplinary actions with tough clauses and sections to teach them a lesson.

- 14) The Respondent cannot be let off the hook for all the lapses/negligence on their part in issuing short bills. It would be in the fitness of things to order for imposing certain amount of financial burden on the part of the officials/officers of the Licensee for their dereliction of duty/lapses/negligence for 13 years. This Authority feels it appropriate that the licensee company should bear 5% of the Supplementary bill and recover the same from the officers responsible for the negligence/lapses.
- 15) It would certainly be a burden on the part of the Appellant/Complainant to pay such huge supplementary bill to the Respondent at one go. Taking in to consideration the heavy financial burden on the Appellant/Complainant and also keeping in mind that the Licensee should also not suffer because of dereliction of duty/negligence/lapses on the part of its officers/officials it would be appropriate to order payment of back billing charges in installments.
- 16) In view of the foregoing paras, the following order:

O R D E R

1. The Appeal/Complaint is dismissed.
2. The Appellant/Complainant to pay to the Respondent 95% of the short billing claim of Rs 20,35,855/- i.e., Rs 19,34,062/- in 10 Equal Monthly Instalments without interest.
3. The Licensee to recover 5% of the short billing claim of Rs. 20,35,855/- i.e., Rs 1,01,793/- from the officers/officials for the dereliction of duty/negligence/lapses.
4. The Licensee should initiate necessary disciplinary action against the officers/officials for the dereliction of their duty/negligence/lapses.

Sd/-
(S.S Pattanashetti)
Electricity Ombudsman.

- 1) Shri. Ravi Kumar,
#1, 28th A Cross, Geetha Colony,
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- 5) PS to Hon'ble Chairman, KERC
- 6) PS to Hon'ble Member (M), KERC
- 7) PS to Hon'ble Member (R), KERC
- 8) PA to Secretary, KERC.
- 9) Chairperson of all CGRF's in the State.