

BEFORE THE ELECTRICITY OMBUDSMAN

No.16 C-1, Miller Tank Bed Area,(Behind Jain Hospital),Vasanthanagar,
Bangalore-560 052

Present: B.N.Krishnaiah
Electricity Ombudsman

Case No.OMB/G/G-291/2017

Dated : 18.05.2018

Sri K. Basanagouda
S/o Mudukanagouda
S,B,C,M, Complex,Venkatarao Colony
Sindhanur, Dist: Raichur ... Appellant
**(Represented by Sri Venkanna Yenni,
Raichur R/o H.NO.M-110, Nijalingappa colony
Raichur-584101).**

V/S

1. The Assistant Executive Engineer (EI)
O & M, Sub Division,Sindhanur
GESCOM, Richuer District

2. The Chairperson
CGRF & Superintending Engineer,
O & M Circle, GESCOM,
Raichur.

... Respondents

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1. This is an appeal filed under Clause 21.02 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 against the orders of CGRF, GESCOM, Raichur, (herein after referred to as the 2nd Respondent), dated: 16/08/2017. Order of the CGRF dated 16-08-2017 is as follows:

ಆದೇಶ

“ಸ್ಥಾವರ ಸಂ:ಎಂ.ಎಸ್-21631 ಸಿಂಧನೂರು ಪಟ್ಟಣ, ವಿದ್ಯುತ್ ಬಳಕೆಯ ಶಾರ್ಟ್ ಕ್ಲೇಮ್ ಮೊತ್ತ 2.35.071=00 ಗ್ರಾಹಕರ ಗಮನಕ್ಕೆ ಸ್ಥಾವರದ ಸಂಪರ್ಕ ಸಮಯದಲ್ಲಿ ತರಲಾಗಿದ್ದು, ಗ್ರಾಹಕರಿಗೆ ನೀಡಿರುವ ಬಿಲ್ ನಿಯಮಾನುಸಾರವಾಗಿರುತ್ತದೆ”.

2. This case was taken up for hearing on 11-04-2018 and on 08-05-2018. On behalf of the Appellant, Sri Venkanna Yenni, Raichur R/o H.NO.M-110, Nijalingappa colony Raichur-584101 was present before this Authority and put forth his argument. The Respondent – 1- A.EE, O & M Sub Division, Sindhanur, appeared in person and put forth his argument.
3. The Representative of the Appellant submitted that the Respondent- served a demand notice for payment of Rs.2,35,071/- being the revised claims in respect of RR No.MS 21631 based on the omission of meter constant of 10 (TEN) instead of ZERO and the total consumption was calculated right

from the date of service to the date of calibration of the meter to arrive at Rs2,35,071/-. The appellant in his written statement filed on 8-5-2018 through his representative reads as follows:

“In respect of the above said installation bearing RR NO.MS 21631 situated at Sindhanur Town, Dist: Raichur, the local Sub Division Office, GESCOM, Sindhanur have sent a demand notice for payment of Rs, 2,35,071/-, being the revised claim in respect of the above said installation based on the rated results dated:26-5-2016 by the AEE(Ele) MT Section, Sub Division, GESCOM, Sindhanur. The basis for claim is the omission of meter constant of 10(TEN) instead of ZERO and accordingly the total units has been worked out right from the date of service to the date of calibration of the meter and directed us to pay the payment of Rs. 2,35,071/-.

In this connection, it is submitted that when the matter has come to our knowledge, we immediately filed our objection on 28-7-2016 followed by a reminder dated: 27-9-2016 and 27-2-2017 in which the claim was strongly disputed.

It can be seen from the few provisions available in ESR under Regulation No.29.03 wherein all the supplemental claims should be enforced by hearing the objection of the consumer filed against such demand and a speaking order has to be passed by the Assessing Officer, indicating therein the final assessment of the said claim duly giving his opinion on the points raised by the consumer in his objection. Only after passing final orders (it is also called as speaking order), then the claim is enforceable against the consumer. It is also clearly stated that in the said final order, the authority concerned should also intimate to the consumer about the provisions of KERC (Consumer Grievances Redressal Forum and Ombudsman) Regulation 2004. This basic

requirement which is considered as mandatory and obligatory on the part the respective enforcing officer has not been complied with and accordingly claim at this stage is not enforceable. I am not representing or pointing out the merit of the case at this stage. I am only representing the procedural lapses/irregularities committed by the local office while demanding the supplementary claim of the said installation. All the required formalities have to be complied before enforcing the recovery.

Based on the above interpretation of the ESR provisions, we actually filed an application of complaint with the CGRF at Raichur and instead of going through the subject matter carefully and the objections raised by us with reference to the provisions of ESR, the Chairman CGRF has passed one sided incomplete order without giving any importance to the procedural aspect of the said issue. The copy of the order has already been submitted when the appeal before your kind self was produced for necessary adjudication.

In this connection, I would like to enclose herewith a judgement of Ombudsman, KERC, Bangalore in case No.OMB/BG/164/2013/286 – in one case of Sri Imtiyaz Ahmed Siddiqui, Bangalore wherein respective Ombudsman has clearly upheld the contention of said complaint and quashed the supplemental claim of Rs..40,560/- in respect of particular installation. The facts of the case is quite resemblance to our case also wherein the said procedure has not been followed by the local office. In another case, the Supdt. Engineer, O&M Circle, HESCOM, Sirsi who is also appellate authority in the revenue matter, has also passed one order dated: 9-8-2017 in respect of RR No.GTP-3371, Gangavathi in which also the procedural aspects have been given good regards and quashed the BBC amount of Rs.1,81,147/- (copy of the judgment in both the cases are herein enclosed for ready reference.

In the light of the above and also the settled cases by the appellate authority of the department and also lby the Ombudsman, KERC, it is once again requested to quash the said supplemental claim of Rs.,2,31,071/- and direct the concerned authority to pass final assessment order if any after hearing our all objections filed by us as on today the claim is not enforceable as per the ESR provisions which may kindly be looked into.”

**Sd/-
K.Basanagouda**

4. The Respondent A.E.E. in his para-wise remarks sent to this office

submitted as follows:

“ ಈ ಮೇಲಿನ ವಿಷಯಕ್ಕೆ ಹಾಗೂ ಉಲ್ಲೇಖದಲ್ಲಿರುವ ಪತ್ರದಾನುಸಾರ ತಮ್ಮ ದಯಾಪರ ಮಾಹಿತಿಗೆ ಹಾಗೂ ಮುಂದಿನ ಸೂಕ್ತ ಕ್ರಮಕ್ಕೆ ತಮ್ಮಲ್ಲಿ ನನ್ನ ಕಮೆಂಟ್/ಅಭಿಪ್ರಾಯ ಈ ಕೆಳಗಿನಂತೆ ಸಲ್ಲಿಸುತ್ತಿರುವೆನು.

- ಈ ಸ್ಥಾವರವನ್ನು ದಿನಾಂಕ:25.05.2011 ರಂದು ನಮ್ಮ ಶಾಖಾಧಿಕಾರಿಗಳು ಸರ್ವೀಸ್ ಮಾಡಿ ಸಮಾಪನ ವರದಿಯಲ್ಲಿ ಕೆ-10 ಎಂದು ನಮೂದಿಸಿ ಆ ವರದಿ ಮೇಲೆ ಗ್ರಾಹಕರ ರುಜುವನ್ನು ಸಹ ಪಡೆದಿರುತ್ತಾರೆ ಇದು ಗ್ರಾಹಕರ ಗಮನಕ್ಕೂ ಇರುವುದು. ಗ್ರಾಹಕರಿಗೆ ಕೆ-1 ಎಂದು ಪರಿಗಣಿಸಿ ಮೊದಲನೆ ಬಿಲ್‌ನ್ನು ಜುಲೈ-11 ರಂದು ನೀಡಲಾಗಿದೆ.
- ಜುಲೈ-11 ರಿಂದ ಫೆಬ್ರವರಿ-16 ವರೆಗೆ ಗ್ರಾಹಕರಿಗೆ ಕೆ-1 ಎಂದು ಪರಿಗಣಿಸಿ ಬಿಲ್ ನೀಡಲಾಗಿದೆ.
- ದಿನಾಂಕ:26.05.2016 ರಂದು ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು(ವಿ) ಎಲ್.ಟಿ. ರೇಟಿಂಗ್ ಉಪ-ವಿಭಾಗ ಜೆಸ್ಕಾಂ
- ಸಿಂಧನೂರುರವರು ಸ್ಥಾವರಕ್ಕೆ ಭೇಟಿ ನೀಡಿದಾಗ ಈ ಸ್ಥಾವರಕ್ಕೆ ನೀಡುತ್ತಿರುವ ಬಿಲ್ ನಲ್ಲಿ ಆಗಿರುವ ದೋಷವನ್ನು ಕಂಡು ಕಂಪನಿಗೆ ಆಗಿರುವ ಆರ್ಥಿಕ ನಷ್ಟವನ್ನು ಸರಿಪಡಿಸಲು ಕೆ-10 ಎಂದು ಪರಿಗಣಿಸಿ ಪರಿಷ್ಕೃತ ಬಿಲ್ ತಯಾರಿಸಿ 2,35,071 ರೂ.ಗಳ ಆಡಿಟ್ ಶಾರ್ಟ್ ಕ್ಲೈಂ ಹಣ ವಿಧಿಸಿರುವರು.ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು(ವಿ) ಎಲ್.ಟಿ. ರೇಟಿಂಗ್ ಉಪ-ವಿಭಾಗ ಜೆಸ್ಕಾಂ ಸಿಂಧನೂರುರವರು ಈ ಸ್ಥಾವರಕ್ಕೆ ವಿಧಿಸಿರುವ ಆಡಿಟ್ ಶಾರ್ಟ್ ಕ್ಲೈಂ ಹಣ ನ್ಯಾಯ ಬದ್ಧವಾಗಿರುವುದರಿಂದ ಗ್ರಾಹಕರಿಗೆ ಹಣ ಪಾವತಿಸಲು ಪತ್ರ ಬರೆದು ಕೋರಲಾಯಿತು.
- ಆದರೆ ಗ್ರಾಹಕರು ಈ ಆಡಿಟ್ ಶಾರ್ಟ್ ಕ್ಲೈಂ ಗೆ ನಾವು ಜವಬ್ದಾರರಲ್ಲ ಎಂದು ಹಣ ಪಾವತಿಸದೆ ನಮಗೆ ನೀಡಿರುವ ಬಿಲ್ ತಪ್ಪು ಇದೆ ಎಂದು ಅದನ್ನು ಸರಿ ಪಡಿಸಲು ಅಧ್ಯಕ್ಷರು ಸಿಜಿಆರ್‌ಎಫ್ ರಾಯಚೂರು ರವರಿಗೆ ಮನವಿ ಸಲ್ಲಿಸುತ್ತಾರೆ.

- ಗ್ರಾಹಕರ ಮನವಿಯನ್ನು ಪುರಸ್ಕರಿಸಿ ವಿಚಾರಣೆ ಮಾಡಿ ಅಧ್ಯಕ್ಷರು ಸಿಜಿಆರ್‌ಎಫ್ ರವರು ಜೆಸ್ಕಾಂ ನಿಂದ ನೀಡಿರುವ ಬಿಲ್ ಸರಿಯಾಗಿರುವುದೆಂದು ಆದೇಶಿಸಿರುವರು.

ಆದುದರಿಂದ ನಾವು ಗ್ರಾಹಕರಿಗೆ ನೀಡಿರುವ ಬಿಲ್ ಸರಿಯಾಗಿದ್ದು ಗ್ರಾಹಕರು ಆ ಎಲ್ಲಾ ಹಣವನ್ನು ಪಾವತಿಸಬೇಕು ಎಂದು ಈ ಮೂಲಕ ತಮ್ಮಲ್ಲಿ ನನ್ನ ಕಮೆಂಟ್/ ಅಭಿಪ್ರಾಯವನ್ನು ಸಲ್ಲಿಸುತ್ತಿದ್ದೇನೆ”.

ಸಹಿ/-

ಸಹಾಯಕ ಕಾರ್ಯನಿರ್ವಾಹಕ ಅಭಿಯಂತರರು(ವಿ)
ಕಾರ್ಯ ಮತ್ತು ಪಾಲನೆ ಉಪ-ವಿಭಾಗ
ಜೆಸ್ಕಾಂ, ಸಿಂಧನೂರು.

5. The Appellant in his defence statement submitted on 08-05-2018 has said that he has filed objections on 27-9-2016 and 27-2-2017 to the demand notice dated 26-5-2016 for payment of short claims of Rs.2,35,071. But the same was not considered by the Respondent -A.E.E. Hence, there is procedural lapse in processing the case. He further submitted that AEE has not followed the provisions of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka in the disposal of his petition. The appellant also submitted that Clause 29.03 clearly indicate the procedure to be followed in respect of supplementary claims, if any.

Clause 29.03 of COS 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 payment within 15 days of the date of intimation, failing which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The Licensee shall indicate in the final order, the provisions of K.E.R.C. (Consumer Grievance Redressal Form and Ombudsman) Regulations 2004.

6. It is seen that no provisional Assessment order was made by the Respondent-AEE as provided under clause 29.03 of COS for short claims, if any. The appellant at the time of hearing submitted that the Respondent has not followed the procedure in processing the case and the objection filed by the appellant was not considered, and no speaking order was passed.

7. The Respondent AEE in his reply dated:28-09-2017 submitted that Section Officer concerned has given service to the installation of the appellant on 25-05-2011 and in the report submitted by the Section Officer, it was mentioned as K-10 and the same was countersigned by the appellant. The fault was noticed by the LT Rating Sub-Division officer, GESCOM, Sindhanur at the time of spot visit on 26-05-2016 and recommended for the revised bill amounting to Rs.2,35,071 for the period from July 2011 to Feb.2016. But there is a gap of about 5 years and reasons are not known. There is a necessity to procure the papers from the office of the AEE and examine the same by the CGRF, to arrive at a final conclusion.

8. Hence, the appeal is allowed, and the case is remanded to CGRF to decide the matter afresh as per rules within three months from the date of this order.

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

To:

1. Sri K.Basanagouda.
S/o Sri Mudukanagouda,S.B.C.M.Complex, Venkatarao Colony,
Sindhanur, Dist:Raichur (**Repreented by Sri Venkanna Yenni,
Raichur R/o H.NO.M-110, Nijalingappa colony Raichur-584101**).
2. The Assistant Executive Engineer (EI), O & M, Sub Division,Sindhanur
GESCOM, Richuer District
3. The Chairperson, CGRF & Superintending Engineer, O & M Circle, GESCOM,
Raichur.
4. The Managing Directors of All Escoms
5. The PS to Hon'ble Chairman, KERC
6. The PS to Hon'ble Member (A),KERC
7. The PS to Hon' ble Member (M),KERC
8. PS to Secretary , KERC