

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-341/2019

Dated 18/10/2019

In the matter of

Smt. M.B Rukmini
W/o Manjegowda B.P,
235/28, 2nd Main road,
Hampinagar, RPC Layout,
Bengaluru-560040.

Represented by:
Shri Krishnamurthy,
29, 6th Main, Kalikamba Road,
Kengeri Upanagara,
Bengaluru-560060. -

Appellant

Vs

1) Consumer Grievance Redressal Forum (CGRF)
Bengaluru Urban District,
BESCOM West Circle,
Basaveshwaranagar,
Bengaluru-560079.

2) The Assistant Executive Engineer (Electrical),
O & M N2 Sub-Division, BESCOM,
Vijayanagar,
Bengaluru-560079. -

Respondents

1. This Appeal/Complaint is filed before this authority by Smt. M.B Rukmini (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 in case No. CGRF 51/2018-19/20-02-2019/245 dated 24/04/2019 of CGRF, Bengaluru Urban District, BESCOM West Circle, Basaveswaranagar, Bengaluru-560079, by inter-alia seeking the following reliefs:

- a) To revoke the short claim claimed by AEE.
 - b) To cancel the prejudicial penalty.
2. Brief facts, which are relevant to the case as claimed by the Appellant/Complainant are as follows:
- a) The Appellant/Complainant has availed electricity from the Licensee through installation bearing N2EH-98873 which was serviced on 10-05-2013 with a sanctioned load of 19 KWs under LT-2(A) category, for which she is paying the bill amount regularly to the licensee.
 - b) It is further stated that there is no dispute or any discrepancy being noticed by the staff of Licensee and no notice has been served in this regard. After lapse of more than 5 years, the Meter Testing Sub-Division AEE has inspected the Meter of the Appellant/ Complainant on 04-12-2018 and reported that the Meter is in good condition but the electricity bill is being given as K=1. As per KERC Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka 2006 (COS) Clause 26.02, installations having CT connection should be visited and reading be taken atleast once in a year.
 - c) It is further stated that vide letter dated 16-01-2019, Assistant Executive Engineer (Ele.) N2 Sub-Division has informed her that on the basis of verification of the said installation by the internal audit staff there is a short claim of Rs. 4,31,721/- in the bill because the meter constant has been left out at the time of billing. She has been asked to pay the amount. Objections filed to the said letter have not been considered by

the Respondent-2/AEE, and final order has been passed on 18-02-2019. Later, on 20-02-2019, a complaint was filed before the CGRF Bengaluru Urban District, in Form 'A' under KERC (CGRF and Ombudsman) Regulations, 2004, challenging the short claim final order of the Respondent-2/AEE.

- d) It is further stated that CGRF, Bengaluru Urban District vide order dated 24-04-2019 has passed an order that the impugned order dated 18-02-2019 of the Respondent-2/AEE is in accordance with Clause 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS) and dismissed the complaint.
 - e) Aggrieved by the order passed by CGRF, Bengaluru Urban District, the Appellant/Complainant has filed this complaint before this authority.
3. Both the parties were informed vide this office letter No. OMB/B/G-341/2019/D-1289 dated 31-05-2019, 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 13/06/2019. However, they have not availed the benefit of the said provision. The case was listed for hearing on 13/06/2019, 27/06/2019, 17/07/2019, 25/07/2019 & 21/08/2019.
4. In the submission dated 10-06-2019 and parawise replies dated 13-06-2019 filed by the Respondent-2/AEE, it is stated that the installation bearing RR No. N2EH 98873 was serviced on 10-05-2013 under LT-2(A) tariff with sanctioned load of 19 KWs in the name of the Appellant/Complainant. As the sanctioned power was above 18 KWs the installation of the Appellant/Complainant was given connection with 50/5 (K=10) CT. It is further submitted that the Internal

Audit wing of the office while verifying the accounts of the installation observed that the C.T Ratio was wrongly recorded as 1 in the system instead of 10. Hence the auditor reported that there is a short claim of Rs 4,31,721/- for the period from May 2013 to November 2018. In this connection the installation was inspected by AEE (Ele.) and Meter Testing staff and confirmed that the meter constant was 10 and gave a report. In pursuance to these reports a provisional short claim notice dated 16-01-2019 for Rs 4,31,721/- was issued to the consumer as per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka 2006, (COS) Clause 29.03 duly providing an opportunity to the Appellant/Complainant to file her objections if any. It is further submitted that the Appellant/Complainant on 30-01-2019 has filed her objections by stating that the bills and bill amount from the date of service which have been issued were paid and the wrong billing has been done by the staff of the Licensee and requested to quash the short claim bill of Rs 4,31,721/-. After going through the objections filed by the Appellant/Complainant, he has passed a speaking final order on 18-02-2019 stating that the short claim bill has to be paid as it was prepared on the basis of actual usage of electricity. It is further submitted that the Appellant/Complainant aggrieved by the final order passed by the Respondent-2/AEE filed her complaint before the CGRF Bengaluru Urban District. It is further submitted that the CGRF after considering all the documents and submissions made by both the parties has passed an order dated 24-04-2019 stating that the final order dated 18-02-2019 passed by the Respondent-2/AEE is in accordance with Clause 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS), and directed to take

necessary action to recover the disputed short claim amount of Rs. 4,31,721/-. Hence, a letter dated 29-05-2019 has been issued to the Appellant/Complainant for payment of short claim amount within 7 days from the date of receipt of the letter, in case of failure to pay the short claim amount the installation will be disconnected without any further notice. As the installation is for residential lighting the installation having load of 40 HP and less have to be rated once in 5 years, as per Conditions of Supply of Electricity (COS) Clause 26.02. The electricity bill has been generated with meter constant 1 instead of 10 due to technical error. The short claim bill of Rs. 4,31,721/- is in order as per Clause 29.08 of Conditions of Supply of Electricity (COS). No penalty has been imposed in the short claim bill.

5. Perused the appeal memo filed by the Appellant/Complainant, parawise replies filed by the Respondent-2/AEE, arguments and counter arguments and documents putforth by both the contesting parties and the various court orders referred by them. It is an accepted fact that the Appellant/Complainant has availed electricity through installation bearing No. N2EH-98873 with a sanction load of 19 KWs under LT-2(A) category and the installation was serviced on 10-05-2013. As seen from the xerox copy of the photos submitted by the Appellant/Complainant at the time of hearing, in the Meter board supplied to the Appellant/Complainant it is clearly mentioned **MS N2EH-98873 K=10**. It is the case of Respondent-2/AEE that due to technical error, right from the beginning the electricity bill generated and given to the Appellant/Complainant is with Meter Constant 1 instead of 10. The internal audit wing of the office while verifying the accounts of this installation observed that CT Ratio was wrongly

recorded as 1 instead of 10 in the system. The auditor reported that there is a short claim of Rs. 4,31,721/- for the period from May 2013 to November 2018. The installation was also inspected by AEE (Ele.) and Meter Testing staff and confirmed that the Meter Constant is 10 and not 1 and accordingly gave a report. In pursuance to these reports after following due process of law the Appellant/Complainant has been asked to pay a short claim bill of Rs. 4,31,721/-. The procedure required to be followed as per Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS) for preferring supplemental claims has been followed by the Respondent-2/AEE.

6. Clause 29.08 of Conditions of Supply of Electricity (COS) deals with Adjustment of Erroneous Bills. It reads as follows:

29.08 ADJUSTMENT OF ERRONEOUS BILLS:

“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 (COS), giving provisional demand notice calling for objections within 15 days etc. have been followed. The Respondent-2/AEE has referred to Case No.

OMB/H/G-265/2016 C/W Case No. OMB/H/G-266/2016, dated 03-03-2017 wherein the Ombudsman KERC, Karnataka has upheld the short claim bill issued by the Respondent-2/AEE for a period of 4 years and 5 months.

7. The prayer of the Appellant/Complainant is to revoke the short claim bill issued by the Respondent-2/AEE as there is no fault from her side and she has been promptly paying the electricity bills given by the Licensee from the date of sanction of power. During the hearing of this case the Appellant/Complainant's representative has drawn attention to Clause 29.08(a) of Conditions of Supply of Electricity (COS) and pleaded that short claim cannot be recovered as arrears after a period of 2 years. The Appellant/Complainant has referred to an order passed by CGRF Bengaluru Urban District in Case No. ಗ್ರಾ.ಕು.ಕೊ.ನಿ.ವೇ/16/2014-15, dated 16-07-2016 where in due to erroneous billing short claim bill claimed for a period of 241 months was rejected by the CGRF.
8. Clause 26.02 of Conditions of Supply of Electricity (COS) prescribes the periodicity of testing of meters by the Licensee, it reads as follows:

26.02 Periodicity of testing of meters by the Licensee

Sl. No.	Nature of installation	Periodicity of testing
i	HT installations	Every six months
ii	LT Power installations	
	a) More than 40 HP	Once in a year
	b) 40 HP and below	Once in 2 years
iii	Other installations	Once in 5 years

1HP is equal to 0.745 KWs. Sanctioned power load of the Appellant/Complainant's installation is 19 KWs, which comes to 25.50 HP. As per the above table the installation of the

Appellant/Complainant should have been inspected by the staff of the Licensee atleast once in 2 years. In the present case this has not been followed. This is a clear case of lapse/negligence on the part of the Respondent-2/AEE and his staff. Had the inspection been done as per the above table the error would have come to the notice of the Respondent-2/AEE much earlier than now.

9. There is a negligence/lapse on the part of the functionaries of the Licensee, Meter Testing staff, the meter reader concerned and the jurisdictional AEE (Ele.), O & M Sub division not to have noticed this lapse for more than 5 years i.e., from May 2013 to November 2018. However, it is also a fact that the Appellant/Complainant has utilised the power of the Licensee all these years. The Licensee cannot be deprived of its lawful electricity charges due to fault/lapse/negligence of its employees. At the same time, the Appellant/Complainant cannot be allowed to take undue advantage because of the same reason.

10. The question arising for consideration is when the period of 2 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. The facts and circumstances in the present case are more or less similar to the facts and circumstances in the WP No. 17225 of 2007, disposed by Hon'ble High Court of Karnataka mentioned in the order of Ombudsman Karnataka in Case No. OMB/H/G-265/2016 C/W Case No. OMB/H/G-266/2016, dated 03-03-2017. The Hon'ble High Court of Karnataka in this WP 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-2/AEE has come to know of the error of CT Ratio billing on 16-01-2019, after inspection of the installation. The Respondent-2/AEE immediately issued a notice dated 16-01-2019 to the Appellant/Complainant claiming the short claim bill from May 2013 to November 2018, after noticing the short claim in the previous years. The Respondent-2/AEE has not slept over the matter and immediately taken action. In the present case, the cause of action arose when the Respondent-2/AEE came to know of the error and not when the error actually occurred. So, from the date of knowledge the Respondent-2/AEE has acted well within the time limitation of 2 year stipulated in Clause 29.08 of Conditions of Supply of Electricity of Distribution (COS).

11. Undoubtedly there has been a lapse/negligence on the part of the Respondent-2/AEE and his staff responsible for periodically inspecting the meters as per Clause 26.02 of Conditions of Electricity (COS) in not noticing the error for more than 5 years. These officials/officers of the Licensee cannot be let off the hook for all the lapses/negligence on their part in issuing the short claim bill. They have to be made

accountable. It would be in the fitness of things to order for imposing certain amount of financial burden on the officials/officers of the Licensee for their lapses/negligence for more than 5 years. This authority feels it appropriate that the Licensee company should bear 5% of the short claim bill and recover the same from the officers responsible for their negligence/lapses. This action would go a long way in keeping the officials/officers of the Licensee alert and make them accountable for their lapses in future.

12. It would certainly be a burden to the Appellant/Complainant to pay a huge sum as supplementary bill to the Respondent-2/AEE at one go. So it is felt necessary to give an opportunity to pay the short claim bill in instalments.

13. In view of the fore going paras, the following order:

No. OMB/B/G-341/2019/D-1366

Dated 18-10-2019

O R D E R

1. The Appellant/Complainant to pay to the Respondent-2/AEE 95% of the short billing claim of Rs. 4,31,721/- i.e., Rs. 4,10,134.95/- in 20 equal monthly instalments without interest.
2. The Licensee to recover the balance 5% of the short billing claim of Rs. 4,31,721/- i.e., Rs. 21,586.05/- from the Officials/Officers responsible for the negligence/lapses.

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

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Vijayanagar,
Bengaluru-560079.
- 1) PS to Hon'ble Chairman, KERC
- 2) PS to Hon'ble Member (M), KERC
- 3) PS to Hon'ble Member (R), KERC
- 4) PS to Secretary, KERC.
- 10) Chairperson of all CGRFs in the State.