

BEFORE THE ELECTRICITY OMBUDSMAN

No0.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)
Vasanthanagar, Bengaluru-560052.

Present: S.S Pattanashetti,
Electricity Ombudsman

Case No. OMB/B/G-387/2020

Dated 20/02/2020

In the matter of

M/s. Mahalakshmi Metal Industries & Rolling Mills,
#62, 1st Main, 3rd Cross,
Yeshwanthpur,
Industrial Suburb,
Bengaluru – 560022.

Represented by:

Shri Ananth Malali,
#4605, Highpoint-IV, 6th Floor,
#45, Palace Road,
Bengaluru - 560001

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Vs

Appellant

1) The Assistant Executive Engineer (Elec),
O & M N-7 Sub-Division, BESCOM,
60 Feet Road, JC Nagar,
Kurubarahalli,
Bengaluru-560086.

2) Chairperson, Consumer Grievance Redressal Forum (CGRF)
Bengaluru Urban District,
Superintending Engineer (Ele),
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.

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Respondents

1) This Appeal/Complaint is filed before this Authority, by M/s. Mahalakshmi Metal Industries & Rolling Mills, (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 58/2018-19/15-03-2019/2219-26 dated 16-08-2019 of CGRF, Bengaluru District, by inter-alia seeking the following reliefs:

Refund of ECS penalties levied.

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

3) The Appellant/Complainant is a HT Consumer of the Licensee with RR No. N7HT44. The installation was serviced on 03-09-2007 with a contract demand of 250 KVA. Power has been sanctioned under HT-2B Tariff. The consumer has been paying electricity bills through ECS every month. But during April 2017, May 2017, July 2018 and December 2018 the Appellant/Complainant failed to maintain sufficient funds in their bank account. The bill amount was sent to the bank for payment which was rejected by the bank due to insufficient funds. The Appellant/Complainant has been charged ECS failure and insufficient funds penalties totaling Rs. 32,994.54/-. However, the Appellant/Complainant has made payments through bank transfers and cleared the bills. The Appellant/Complainant further requested CGRF Bengaluru Urban District for refund of the penalties by filing a complaint on 15-03-2019. The CGRF Bengaluru Urban District in their order dated 16-08-2019 came to a conclusion that penalties claimed by the Respondent-1/AEE for insufficient balance is in order and dismissed the complaint of the Appellant/Complainant. The Appellant/Complainant had requested a refund on the ground that they

had made payments without much delay which is the crux of the matter omitted by the CGRF. Aggrieved by the order of the CGRF Bengaluru Urban District the Appellant/Complainant has filed the present appeal/complaint before this authority. Though the order of the CGRF is dated 16-08-2019 but copy of the order was received by the Appellant/Complainant on 13-12-2019. They have requested to condone the delay and admit the appeal.

- 4) Both the parties were informed vide this office letter No. OMB/B/G-387/2020/D-1418 dated 14-01-2020, 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 28-01-2020. However, they have not availed the benefit of the said provision. The case was listed for hearing on 28-01-2020 and 05-02-2020.
- 5) The Respondent-1/AEE has filed his parawise replies/comments on 28-01-2020 at the time of hearing of the case. The Respondent-1/AEE has stated that the Appellant/Complainant is a consumer of his sub division with respect to RR No. N7HT44. The installation was serviced on 03-09-2007 with a contract demand of 250 KVA. Power has been sanctioned to the Appellant/Complainant under HT-2B Tariff. Consumer is paying his electricity bills through ECS every month. But during April 2017, May 2017, July 2018 and December 2018, the Appellant/Complainant failed to maintain sufficient funds in their bank account. When the bill amount was sent to the bank for payment, it was rejected by the bank due to insufficient funds. Hence the penalties have been generated in billing software automatically as per KERC existing Tariff order. The consumer has agreed in his representation dated

15-03-2019 that there was insufficient funds at the time of ECS execution and is also paid insufficient funds penalty of Rs. 32,995/- in subsequent payments along with regular bill amount. The CGRF has stated in their order that the penalties claimed by the sub division for insufficient funds in the account of the Appellant/Complainant is in order and as per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka – 2006 and dismissed the consumer complaint vide order No. 2219-26 dated 16-08-2019. It is requested to not consider the consumer's complaint.

- 6) The Appellant/Complainant in their response to the parawise comments filed by the Respondent-1/AEE have filed their submission on 05-02-2020 at the time of hearing, wherein they have stated that they are not disputing that there was insufficient funds in their bank account for the month of April 2017, May 2017 and July 2018. They have however made payment on the same day it has failed. There may have been delay of a day or two for the processing of the banking instrument. The licensee has submitted the Tariff Order which shows that there is a penalty on non-realization of cheque. It does not however cover anything regarding ECS payment failure due to insufficient funds. They were not aware of the 2% penalty regarding this, as this is not mentioned anywhere in the ECS mandate form that BESCO had provided while opting for the ECS service. This heavy penalty amount is unfair as per their view and requested to direct the licensee to refund the amount. They have always been a prompt payer since they availed electricity facility from the Licensee for more than 8 years. Along with their submission the Appellant/Complainant has enclosed a copy of procedure for enrolment under ECS.

- 7) The CGRF Bengaluru Urban District has passed its order on 16-08-2019. The Appellant/Complainant has filed his appeal/complaint before this authority on 13-01-2020. As per Clause 21.2 of KERC (CGRF and Ombudsman) Regulations 2004, any complainant, who is aggrieved by the non-redressal of his grievances by the CGRF may himself or through his representative make a representation to the Ombudsman exercising jurisdiction over the Licensee within 30 days from the date of receipt of the order of the CGRF. Provided that the Ombudsman may entertain a representation after the expiry of the said period of 30 days, if he is satisfied that there was sufficient cause for not filing it within the said period. In the present case Appellant/Complainant has filed the appeal/complaint beyond 30 days from the date of the CGRF order. In the appeal memo the Appellant/Complainant has requested for condonation of delay in filing the appeal as order copy of the CGRF was received by them only on 13-12-2019, and further requested to admit the appeal. In view of the submission made by the Appellant/Complainant for condonation of delay in filing the appeal, the delay is condoned.
- 8) Perused the appeal memo, submissions made by Respondent-1/AEE and also further submissions made by the Appellant/Complainant as well as the documents filed and the arguments putforth by the contesting parties. It is an admitted fact that the Appellant/Complainant is a HT Consumer of the Licensee with RR No. N7HT44 with a contract demand of 250 KVA serviced on 03-09-2007. It is also an admitted fact that the Appellant/Complainant has been paying electricity bills through ECS every month. But during April 2017, May 2017, July 2018 and December 2018 the Appellant/Complainant failed to maintain

sufficient funds in their bank account as a result of which the payment due to the Licensee was rejected by the bank due to insufficient funds. The Licensee has charged ECS failure and insufficient funds charges totalling Rs. 32,994.54/- against the Appellant/Complainant. The Appellant/Complainant has made payments through bank transfers and cleared the bills later.

The contention of the Appellant/Complainant is that they have made payments without much delay. They say that they are not disputing that there was insufficient funds in their bank account for the month of April 2017, May 2017 and July 2018. They have however, made payment on the same day it had failed. There may have been delay of a day or two for the processing of the banking instrument. The heavy penalty amount imposed on them is unfair as per their view.

The Respondent-1/AEE's stand is that the penalties on the Appellant/Complainant have been generated in billing software automatically as per KERC existing Tariff Order. They have requested not to consider the consumer's complaint. The Respondent-1/AEE has filed along with his parawise comments a copy of the Electricity Tariff 2019 approved by KERC in their order dated 14-05-2018 for BESCOM. Para 12 of the order is reproduced here below: -

“12. The Licensee will levy the following charges for non-realization of each Cheque.

1	Cheque amount upto Rs. 10,000/-	5% of the amount subject to a minimum of Rs.100/-
2	Cheque amount of Rs. 10,001/- and upto Rs. 1,00,000/-	3% of the amount subject to a minimum of Rs.500/-
3	Cheque amount above Rs. 1 Lakh	2% of the amount subject to a minimum of Rs.3000/-”

The contention of the Appellant/Complainant to this argument of the Respondent-1/AEE is that the penalty mentioned in the Tariff Order is for non-realization of cheques and no mention is made about payment through ECS. They were also not aware of the 2% penalty regarding this, as this is not mentioned anywhere in the ECS mandate form provided by BESCO while opting for the ECS service. ECS mandate given to a bank by a customer for payment to a person/entity is as good as a cheque. It is the responsibility of the customer who has given the ECS mandate to see that sufficient funds are made available in his account on the date of payment. The effect and implication of dishonouring of ECS mandate is as good as non-realization of cheque, even though it is not specifically mentioned in the Tariff Order. The Respondent-1/AEE has levied the charges for dishonouring of ECS mandate as per the Tariff Order of KERC for 2019. He has equated dishonouring of ECS mandate to non-realization of cheque mentioned in the Electricity Tariff 2019. No fault can be found with the action of the Respondent-1/AEE for imposition of charges for rejection of payment due to them by the bank.

9) In view of the foregoing paras the following order: -

No. OMB/B/G-387/2020/D-1435

Dated 20-02-2020

O R D E R

1. The charges claimed by Respondent-1/AEE for non-realization of their dues is as per the Electricity Tariff Order 2019 issued by the

KERC dated 14-05-2018. Hence, the same is in order. The Appeal/Complaint filed by the Appellant/Complainant is dismissed.

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

- 1) M/s. Mahalakshmi Metal Industries & Rolling Mills,
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Yeshwanthpur,
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Next to Chord Road Hospital,
Basaveshwarnagar,
Bengaluru – 560079.
- 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.