



Before the Electricity Ombudsman

9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/B/G-194/2014/455

Dated 15.12.2014

M/s.Shree Shakthi Heat Treaters,
Spl.10, KSSIDC Industrial Area,
II Stage, Jigai Link Road,
Bommansandra,

BANGALORE-560099

**(Represented by Sri M.G.Prabhakar,
Authorised Representative)**

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
O & M Sub Division,
BESCOM,
Chandapura,

BANGALORE

**(Represented by Shri Vinayaka.K, Law Officer,
BESCOM)**

2. The Chairperson
Consumer Grievance Redressal Forum
Office of the Superintending Engineer,
BESCOM, East Circle,
No.12, Curve Road
Tasker Town,

BANGALORE-560051

.. **Respondents**

1. This is an appeal under Clause 22.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders passed by the Consumer Grievance Redressal Forum, BESCOM, Bangalore Rural District (here in after referred to as the 2nd Respondent) vide order No CGRF/03/2014 dated Nil in respect of Appellant's complaint with regard to delay in extending TOD facility by the Assistant Executive Engineer (EI), O & M Sub-Division, BESCOM, Chandapura, Bangalore (hereinafter referred to as the 1st Respondent) and refusal of the 1st Respondent to credit to the account of the Appellant with TOD benefits as claimed by him along with interest @ 2% per month . The 2nd Respondent has declined to grant any relief to the Appellant. Hence, aggrieved by the orders passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is a proprietary concern carrying business of heat treatment activity on a continuous basis. The Appellant has availed HT power supply to their installation bearing RR No CDPHT-541 with a contract demand of 350 KVA. The Appellant has been settling the electricity bills without any default.

3. The Appellant, who was eligible to get TOD facilities (Time of the Day) as per KERC Tariff Order 2010 applied for the extension of the scheme in the year 2011 vide their letter dated 09.02.2011. However, the Licensee did not extend the benefits of TOD Scheme to the Appellant from February 2011 to May 2013 under the pretext that the Appellant's meter was not TOD compliant and further the consumption below 1 lakh units did not qualify for TOD benefits. The Appellant had orally represented the matter with the 1st Respondent several times but to no avail. Finally, after series of persuasion, the scheme was extended on 18.03.2013 after replacing the existing meter with L&T meter of same model contrary to the earlier stand that the meter was not TOD compliant. This shows casualness on the part of the concerned officer in dealing with the case.

4. Later, the Appellant approached the 1st Respondent for refund of the amount collected in excess of tariff fixed by the Commission vide their letter dated

06.02.2014 along with the working sheets based on the actual TOD benefit which were being allowed in the bills of BESCO for the months after TOD scheme was extended. The 1st Respondent in his reply did not admit any delay in extending the scheme. Hence, aggrieved by the decision taken by the 1st Respondent, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, without framing the issues for its consideration, without considering whether the Appellant was eligible for TOD facility, without considering whether consumer whose monthly consumption is less than 1 lakh units per month also is eligible for TOD facility and without considering whether the Appellant was denied benefit of the scheme for which he was eligible as per the Tariff Order 2010 has passed the impugned order and, hence, the same is liable to be set aside. Therefore, prayed this Authority to set aside the impugned order and direct the 1st Respondent to credit the account of the Appellant with TOD benefit as claimed along with interest of 2%.

5. The 1st respondent's comments were called vide letter OMB/B/G/194/2014/413 dated 23.09.2014.

6. The 1st respondent in his replies vide letter No AEE/CDP/AAO/2478 dated 10/11/2014 stated that following the request from the Appellant for extension of TOD facility, the 1st Respondent addressed MT Rating Division to extend the TOD facility to the Appellant. Following this letter, the Executive Engineer(EI), MT Rating Division arranged to install TOD meter in the premises of the Appellant and the 1st Respondent had been collecting TOD tariff from the Appellant after installing the meter from 01.05.2013.

7. The case was taken up for hearing on 24.11.2014. The Authorised Representative of the Appellant, Shri M.G Prabhakar, appeared and argued the case.

On behalf of the 1st Respondent, Shri Vinayaka.K, Law Officer, BESCOM appeared and advanced his arguments.

8. The Authorised Representative of the Appellant argued that the Appellant applied for TOD facility on 09.02.2011 and got the facility on 29.01.2013 after a lapse of 23 months. As per Clause 25.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, all HT installations have to be fitted with TOD meters. Further, as per Clause 7.05 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka, TOD facility shall be extended to any consumer at his option for eligible categories. Clause 8.13 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka reiterates that TOD tariff facility shall be extended to any applicant/Consumer at his option for eligible categories. When the Appellant has applied for TOD facility, Licensee is duty bound to extend such facility without any delay and the reasons cited by the licensee that the Appellant's meter was not TOD compliant and only installations having more than 1 lakh units of consumption are eligible to be considered under TOD scheme are not in tune with the KERC Tariff Orders 2010 and, hence, liable to be rejected. Further, the stand of the 1st Respondent that the Appellant has to buy a meter at his cost is not consistent with sections 55, 46, and 47 of the Electricity Act, 2003. Sections cited above have made it incumbent on BESCOM to supply TOD meter to the Appellant.

9. The Authorised Representative of the Appellant averred that the Appellant in his TOD proposal to the Licensee indicated that he would avail 7 hours power during peak hours and 17 hours during non peak hours and, hence, Licensee should refund the amount for the usage of 17 hours power during non peak hours which is arrived at Rs 8.00 lakhs approximately.

10. Taking serious objections to 2nd Respondent bringing in certain documents in their orders not produced by the 1st Respondent, the authorised representative of the Appellant submitted that such a stance renders the whole proceedings void.

Furthermore, the 2nd Respondent has taken 5 months to pass the impugned order though Clause 7.4 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka stipulates 60 days time frame for disposal of complaints and, if there is any delay, the 2nd Respondent shall record in writing the reasons for the same. The 2nd Respondent has not recorded any reasons for delay in their order.

11. Concluding his arguments, the Authorised Representative of the Appellant submitted that KERC notification required the Licensee to extend TOD facility to any consumer at his option. Using TOD facility is not compulsory as far as the consumer is concerned but when the consumer exercises his option for TOD facility, Licensee has no option to deny this facility or delay extension of this facility. Hence, the Licensee is liable to compensate the Appellant for the period of delay.

12. The Appellant prayed this Authority to make a reference to the Commission under Section 142 of the Electricity Act, 2003 for taking action against the 1st Respondent for non-compliance of its Tariff Order. .

13. The Law officer BESCO argued that the CGRF has summoned only the 1st Respondent for hearing and not summoned the Executive Engineer (EI) who was responsible for extending TOD facility. The allegation of delay in sanctioning TOD facility could be better explained by the Executive Engineer(EI) if the case is remanded to the 2nd Respondent.

14. Arguing on the merits of the case, the Counsel for the 1st Respondent submitted that the consumer is eligible for the benefits of the TOD scheme only from the date of extending such benefits. The Appellant, in the instant case, was sanctioned TOD facility by the Executive Engineer(EI) on 29.01.2013. It was a conditional sanction subject to the replacement of the existing meter by the MT Rating Division within 60 days.

15. The Counsel for the 1st Respondent added that as per the KERC Tariff Orders 2010, TOD meter was compulsory for the consumers who are having more than 500 KVA sanctioned load and not compulsory for other categories. Admittedly, the Appellant is sanctioned 350 KVA power and, hence, he does not come under the mandatory category. TOD was a new scheme introduced in 2010 and initially sufficient number of meters were not available and, hence, BESCO concentrated on providing TOD meters to the mandatory category. The Appellant comes under the optional category and, hence, TOD facility was not provided to him immediately.

16. The Law Officer, BESCO, further contended that the Appellant availed 200 KVA power in the year 2010 and, at that time, he had not applied for extension of TOD scheme. The Appellant applied for TOD facility on 09.02.2011. Though the Appellant applied for additional 150 KVA power on 18.10.2011, he did not press for extension of TOD facility at that time. There was a short supply of TOD meters at the time of introduction of TOD scheme and later, when the supply position eased, BESCO provided TOD meter to the Appellant and hence there was no deliberate delay on the part of the Licensee. Opposing the arguments of the Authorised Representative of the Appellant that the Appellant is entitled to differentials of regular and TOD tariff, the Counsel for the 1st Respondent submitted that the Appellant cannot claim any differentials nor the Appellant can claim any amount under the KERC (Licensees' Standards of Performance) Regulations, 2004 as there is no provision to award any amount under that rules for delay in extension of TOD scheme. Mere applying for TOD facility does not confer any right on the Appellant to claim amount from the Licensee for delayed extension of the scheme and, hence, on this count alone, the appeal is liable to be dismissed. Further, if the Appellant has any grouse that he has been denied TOD facility or not extended the facility in time, he should air his grievance before the Commission under Section 142 of the Electricity Act, 2003 and cannot agitate on this issue before the CGRF or the Ombudsman as they have no jurisdiction and, therefore, on this ground also the appeal is liable for dismissal.

17. The Counsel for the 1st Respondent denied that the Appellant's meter had TOD enabling facility, but still the 1st Respondent sought the opinion of L&T in this behalf. As the L&T did not reply in the matter, the 1st Respondent replaced the existing meter with new TOD meter and, hence, there is no truth in the arguments of the Appellant that the meter had TOD enabling facility but the 1st Respondent failed to charge the facility.

18. Both parties were informed vide letter No.OMB/B/G-194/2014/435 dated 14.11.2014 regarding availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

19. Having regard to the contending positions of the parties, the issues that arise for our consideration are:

a) Whether there is a provision under KERC (Licensees' Standards of Performance) Regulations, 2004 to award amount on the Licensee for delaying extension of TOD facility to the Appellant?

b) Whether Ombudsman can make reference to the Commission under Section 142 of the Electricity Act, 2003 for Licensee's delay in extension of TOD scheme to the Appellant/Consumer?

c) Whether there is any bar on the Appellant to approach the Commission directly under Section 142 of the Electricity Act, 2003 in case of delay in implementation of Commission's TOD tariff order or for contravention of the Electricity Act and Rules?

20. In the instant case, the Appellant has sought directions from this Authority to the Licensee to refund the amount for using power 17 hours power during non-peak hours under the TOD scheme. The Appellant is claiming the amount from the licensee from the date of his applying for TOD facility and up till the installation of the TOD meter in his premises. Documents reveal the Appellant having applied for TOD facility in 2011 and the Licensee having sanctioned TOD facility in the 2013. It

looks that the Licensee has taken almost two years to sanction TOD facility in the instant case. The Licensee argued that because of shortage of meters, this facility could not be extended to the Appellant early. When the Commission has issued orders extending TOD facility in 2010, the Licensee cannot make U turn and say that it cannot implement the scheme because there is a shortage of TOD meters. If the Licensee had any difficulty in implementing the Commission's TOD order, this could have been brought to the notice of the Commission and sought time for implementation of the scheme or sought deferment of the implementation of the scheme. The Licensee seems to have done neither. Though it could be said there is inordinate delay in implementation of KERC Tariff Orders, there is no provision under the KERC (Licensees' standards of Performance) Regulations, 2004 to award compensation to the consumer for the delayed implementation of TOD scheme and, hence, this Authority cannot award amount on the Licensee. Hence, Appellant's plea for award of amount for delayed extension of TOD is rejected as there is no provisions under the said Rules. However, the Appellant has got liberty to approach the Commission seeking action against the Licensee for delayed implementation of TOD scheme under Section 142 of the Electricity Act, 2003 which states "**whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made there under, shall be punishable with imprisonment for a term which may extend to one lakh rupees or with both in respect of each offence and in the case a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence.**"

The Appellant has sought for reference from this Authority to the Commission under Section 142 of the Electricity Act, 2003 against the licensee for delay in extension of TOD scheme. In the present case, the Appellant is the aggrieved party. Further, the Appellant has argued that the Licensee has contravened the provisions

of the Electricity Act, 2003 by not complying with the Commission's Tariff Order. If what the Appellant says is true, then he has got locus standi to file a complaint before the Commission for non-compliance of its order and the Commission on complaint will decide whether there is any non-compliance of its Order and issue suitable orders. Under section 142 of the Electricity Act, anybody can file a complaint before the Commission for the contravention of the Electricity Act and Rules. Burden of proof that someone has contravened the said Act and Rules lies on the person who makes such complaint. In the instant case, the Appellant alleges that the Licensee has not complied with the Orders passed by the Commission and, hence, burden of proof that the Licensee has contravened the Act lies on the Appellant and, as such, he should file a Complaint before the Commission under Section 142 of the Electricity Act, 2003 and, therefore, his plea to this Authority for making reference to the Commission under Section 142 is untenable and beyond the scope of this Authority and, hence, rejected. This Authority can make a complaint to the Commission if its directions are contravened by any person/company. In the instant case, this Authority has not passed any orders nor issued any directions and, hence, question of any person contravening the specific directions or orders of this Authority does not arise. Section 146 of the Electricity Act, 2003 states under the caption ***"Viz punishment for non- compliance of orders or directions - by the Appropriate Commission.- in case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made there under or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."***

21. Above discussions make it clear that there is no bar on the Appellant to approach the Commission under section under 142 of the Electricity Act, 2003. Hence, the following order:

ORDER

- a) For the foregoing reasons, the plea of the Appellant for award of compensation under KERC (Standards' of Performance) Rules, 2004 is hereby **rejected**.
- b) The Appellant's plea to this Authority to make reference to the Commission under Section 142 of the Electricity Act, 2003 is hereby **rejected**.
- c) The Appellant is at liberty to file a complaint before the Commission under Section 142 against the Licensee for delayed extension of TOD facilities.



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. Shree Shakthi Heat Treaters, Bommasandra, Bangalore-560099.
(represented by its Authorised Representative, Sri.M.G.Prabhakar, Bangalore).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Rural District, Tasker Town, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M Sub Division, BESCO, Chandapura, Bangalore (represented by Shri Vinayaka.K., Law Officer, BESCO, Bangalore)
4. Shri Vinayaka, Law Officer, BESCO Headquarters, K.R.Circle, Bangalore-560001.
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