



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-193/2014/460
Dated 24.12.2014

Smt.Uma Reddy,
M/s.Kaveri Industrial Complex,
Flat NO.31-36, 1st Main Road,
2nd Stage, Arakere MICO Layout,
Bannerghatta Road,
BANGALORE-560076
(Represented by Sri M.Nagaraju, Advocate,
Authorised Representative)

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
O & M S-12 Sub Division,
BESCOM,
Gowrav Nagar,
BANGALORE-560078
(Represented by Sri Vinayaka.K,
Law Officer, BESCOM, Bangalore)

2. The Chairperson
Consumer Grievance Redressal Forum
Office of the Superintending Engineer,
BESCOM, West Circle,
05, 3rd Stage,
Bhimajothi HBCS Layout,

Basaveshwarnagar,
BANGALORE-560079

.. **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, BESCO, Bangalore Urban District (here in after referred to as the 2nd Respondent) vide order No. CGRF/232/2013-2014/20.05.2013 dated 28th, May, 2014 in respect of the Appellant's grievance relating to issue of back billing charges for Rs.12,31,410/- by the Assistant Executive Engineer (EI), O & M S-12 Sub-Division, Gowrav Nagar, Bangalore (here in after referred to as the 1st Respondent) on the ground of misusing power. The Appellant's complaint filed before the 2nd Respondent has been dismissed. Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is an electricity consumer of BESCO and the installation bearing R.R No BGP-120 stands in the name of the Appellant. The installation was serviced in the year 1993 with a sanctioned load of 40 HP under LT-5 tariff schedule. The Appellant is using power for the purposes of conducting research and development in the name of M/s Kaveri Industrial Complex Bannerghatta Road, Arakere Mico Layout, No.31-36, 1st Main Road, 2nd Stage, Bangalore-76. The Inspectorate Of Factories & Boilers has issued License in favour of the Appellant to run a manufacturing unit. The Department of Industries & Commerce, GOK, has issued Entrepreneurs Memorandum part-1 to the Appellant where in Nature Of Activity is indicated as "Telecom Equipments." From the beginning, the Appellant is using power for manufacturing activity. Such being the case, on 21.01.2013, the MT staff visited the spot for calibration of meter and afterwards sent a report to the 1st Respondent stating that the Appellant had not engaged in manufacturing activity. Based on this report, the 1st Respondent issued a demand notice to the Appellant for Rs.12,13,410/- saying that the Appellant is using power for commercial purposes. This observation of MT Rating is incorrect.

3. Further, Clause 2.32 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka defines 'Factory Premises' as the premises in which laboratories, repair shops, offices, reading rooms, libraries, yards, watch and ward, canteen and first aid centres belonging to the factory are housed, as defined in the Factories Act. In the premises, more than 17 persons are working. 1st and 2nd Floors are being used for manufacture of telecom components. The Appellant is a manufacturer and supplier of telecom components. Invoices raised in favour of the Appellant for having purchased Telecom parts from the Suppliers and also invoices raised by the Appellant against supply of telecom component to buyers are produced before this Authority in evidence of manufacturing telecom components.

4. Furthermore, the Appellant is charged with misuse of power under Section 126 of the Electricity Act, 2003, but the Licensee has not provided any opportunity to the Appellant to furnish his version of the case and the Licensee has not passed final assessment order after the receipt of Appellant's objection. Aggrieved by the back billing notice, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, without verifying the documents, came to the conclusion that the case on hand comes under the category of misuse of power under Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which is incorrect and unacceptable and, hence, the order is liable to be set aside. Similarly, the demand notice issued by the Appellant is liable to be aside as the Licensee has not passed final assessment order before issue of such demand notice.

5. The 1st respondent's comments were called vide letter No OMB/B/G193/2014/412 dated 19.09.2014.

6. The 1st Respondent, in his statement of objections, submitted that the installation had been inspected by the MT Rating Division and it was noticed that the

premises had been used for commercial purposes i.e., office and there was no manufacturing activity going on in the premises. Mahazar had been drawn in the presence of the consumer representative. Based on the mahazar report and MT Rating Division's inspection report, back billing charges for Rs.12,31,410/- had been raised as per Clause 42.02 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Against this order, the Appellant had filed a complaint before the 2nd Respondent and the 2nd Respondent, after hearing the parties had, dismissed the complaint of the Appellant holding that it did not get jurisdiction and, hence, submitted that the instant case falls under Section 126 of the Electricity Act, 2003 i.e. misuse of power and, therefore, the appeal does not come under the jurisdiction of the Electricity Ombudsman, therefore, prayed this Authority to dismiss the appeal.

7. The case was taken up for hearing on 15.02.2014. On behalf of the Appellant, Advocate Shri M.Nagaraju presented the case and, on behalf of the 1st Respondent, Shri Vinayaka.K, Law Officer, BESCO advanced his arguments and arguments from both sides got concluded on 22.12.2014.

8. During the hearing, both parties reiterated the submissions made in the appeal memo and the statement of objections respectively.

9. Both parties were informed vide letter No.OMB/B/G-193/2014/446 dated 02.12.2014 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.

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

- a) ***Whether the Licensee can issue back billing charges without passing final Assessment Order?***
- b) ***Whether the Appellant has been given sufficient opportunity to put forth his case before the Assessment Officer?***
- c) ***Whether the Licensee is right in raising back billing charges based only on the MT Rating Division's report without further application of mind?***

11. In order to answer the first question, we have to refer to notice dated 21.02.2013 issued by the 1st Respondent to the Appellant. In this letter, the 1st Respondent has straightaway called upon the Appellant to pay the back billing charges of Rs.12,31,410/- on the grounds of misuse of power based on MT Rating Division's inspection dated 21.01.2013 which observed that the Appellant who had been sanctioned power under LT-5 tariff schedule had misused it for commercial purposes and, hence, liable to pay back billing charges. The 1st Respondent is found to have not followed the procedure laid down under clause 42.07(1)(2)(3) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka before issue of demand notice which clearly states ***"(1) The Assessing Officer shall serve the order of provisional assessment within 7 days from the date of inspection upon the person in occupation or possession or in charge of the place or premises with a 15 days' notice.***

(2) Any person served with the order of provisional assessment, may accept such assessment and deposit the assessed amount with the Licensee with seven days of service of such provisional assessment order upon him.

(3) The person, on whom the order has been served shall be entitled to file objections, if any, against the provisional assessment before the assessing officer within 15 days, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges payable by such person."

12. From the records made available to this authority, it is seen that the 1st Respondent has issued only one notice calling upon the Appellant to pay the back billing charges for Rs.12,31,410/- based on the MT Rating Division's report and the Appellant appears to have filed his objections in pursuant to this notice and afterwards till today the 1st Respondent seems to have not passed any final Assessment Order. It also appears that he has disconnected power to the Appellant's installation on 10.09.2014 probably because the 2nd Respondent had dismissed the complaint of the Appellant. The 1st Respondent till date appears to have not passed final Assessment Order after considering the objections filed by the Appellant and, hence, the action of the 1st Respondent calling upon the Appellant to pay the back billing charges without passing final Assessment Orders amounts to violation of Clause 42.07(1)(2)(3) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. The 2nd Respondent, before passing the impugned order, has not checked whether there is any valid Assessment Order for the Appellant to be aggrieved and when there is no final Assessment Order passed by the 1st Respondent, the 2nd Respondent should have advised the Appellant to wait till the final order was passed and should have directed the 1st Respondent to pass final Assessment Order following the procedure within a stipulated period. The impugned order of 2nd Respondent upholding the demand notice issued by the 1st Respondent amounts to endorsing the flawed procedure adopted by the 1st Respondent in raising the demand and, based on this order, the 1st Respondent has even resorted to disconnection of power supply to the Appellant's installation. In the instant case the 1st Respondent appears to have issued only one demand notice dated 21.02.2013 calling upon the Appellant to pay the amount and found to have not given any opportunity to the Appellant to furnish his version or objection to the demand notice issued. This action of the 1st Respondent definitely amounts to arbitrariness and short circuiting of the mandatory provisions and does not pass the legal scrutiny and, hence, the demand notice issued by the 1st Respondent is liable to be set aside as the assessment is not final in the eyes of law.

13. Secondly, during the hearing, the Counsel for the Appellant produced invoices for effecting sales and also invoices for having purchased telecom parts from the suppliers for manufacturing telecom components besides challans for having paid the contributory P.F to the EPF organisation and photos in evidence of manufacturing activity going on in the premises. The 1st Respondent, based on the MT Rating Division's report, ought to have called for Appellant's objection, if any, and should have passed final order after considering the objections filed by the Appellant. In the instant case, the Appellant has produced several documents to show that he is engaged in manufacturing activity, but the MT Rating Division's report denied any such activity going on in the premises. In view of these contradictions, it is considered necessary in the interest of justice and equity to remand the case to the 1st Respondent to conduct inspection of the premises of the Appellant and to consider the documentary evidence produced by the Appellant before this Authority in proof of his engaging in manufacturing activity and to hear objections, if any, filed by the Appellant and pass suitable order following procedures laid down under the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Hence, the following order:

ORDER

14. For the foregoing reasons, the impugned order passed by the 2nd Respondent is set aside. The case is remanded to the 1st Respondent for fresh enquiry and pass assessment order. The 1st Respondent is directed to (a) conduct inspection of the premises of the Appellant, (b) appreciate available evidence, (c) provide opportunity to the Appellant to file objections, if any, before passing final Assessment Order and (d) pass final Assessment Order within 30 days from the date of issue of this order.

15. In the result, **the appeal succeeds.**



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Smt.Uma Reddy, M/s.Kavri Industrial Complex, Flat No.31-36, 1st Main Road, 2nd Stage, Arakere MICO Layout, Bannerghatta Road, Bangalore-560076 (represented by Authorised Representative, Sri. M.Nagaraju, Advocate).
2. Chairperson, Consumer Grievance Redressal Forum, Bangalore Urban District, Basaveshwarnagar, Bangalore.
3. The Assistant Executive Engineer (Ele), O & M S-12 Sub Division, BESCO, Gowrav Nagar, Bangalore-560078
4. Shri Vinayaka.K, 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