

Before the Ombudsman, K.E.R.C., Bangalore

Present: S.D.Ukkali

Ombudsman

Case No.OMB/B/G-54/09/6982

Dated 19.08.2009

Dr.A.Sunil Kumar,
No.106, 16th "B" Cross,
4th Block,
Koramangala,

BANGALORE

(Represented by Sri Tanveer Ahmed
Shariff, Advocate)

.. Complainant

Vs

1. Bangalore Electricity Supply Company Ltd.,
represented by its
Asst. Executive Engineer (Ele),
S-4 Sub Division, BDA Complex,
Koramangala

BANGALORE-560070

2. The Consumer Grievance Redressal Forum,
BESCOM, Central Stores Premises,
Near ESI Hospital, Rajajinagar,

BANGALORE-560010

.. Respondents

I. This is an appeal complaint filed by the above mentioned Complainant represented by Shri Tanvir Ahmed Shariff, Advocate under provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 09.03.2009 passed by the Consumer Grievance Redressal Forum (CGRF for short), Bangalore Electricity Supply Company (BESCOM for short), Bangalore in file No.CGRF/32/2008/2790 to 2795.

II. The brief facts of the case are as follows:

The installation bearing RR No.4 SEH 6821 was serviced in the name of Shri Farooq Ahmed on 02.12.1991 for domestic purpose with a sanctioned load of 3 kW for his house at No.106, 16th B Cross, 4th Block, Koramangala, Bangalore. It is stated that

the property was purchased from Mr.Farooq Ahmed by the Complainant, Dr.A.Sunil Kumar.

The Vigilance squad during inspection of the said premises on 09.06.2008 found that the premises was being used for PG accommodation and directed the 1st Respondent to back bill the installation for misuse of electricity. The 1st Respondent back billed the installation for a period of 6 months prior to the date of the inspection by the vigilance staff at a penal rate amounting to Rs.32,198/-. It is stated that the Complainant has paid 50% of the back billing charges under protest.

Not satisfied with this claim, the Complainant filed a petition before the 2nd Respondent.

The 2nd Respondent by its order dated 23.01.2009 upheld the action of the 1st Respondent in back billing the installation for misuse of electricity, rejecting the request of the Complainant to set aside the Notice issued by the 1st Respondent.

Aggrieved by the order from the 2nd Respondent, the Complainant has filed the present appeal complaint on 08.04.2009. The parawise comments were called for from the 1st Respondent vide this Office letter dated 13.04.2009 and the 1st Respondent submitted his parawise comments on 21.04.2009.

Both the parties attended the hearing on 22.06.2009 and were orally informed during the hearing and followed it up with a letter No.OMB/B/G-54/09/6200 dated 22.06.2009 from this Authority that there is a provision under 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 between the Licensee and the Complainant and requested them to try for a conciliation to arrive at settlement by agreement. Since the parties showed no inclination towards settlement, they were heard and their statement recorded.

During the deposition, the Counsel for the Complainant has contended that there was an agreement while availing electricity connection and at the time of changing it to LT-3, a notice ought to have been issued by the 1st Respondent. This has not been done and the agreement entered into earlier is still subsisting. He further contended that as per Tariff Schedule LT-2(a), the tariff applicable to the lighting/combined lighting, heating and motive power installations of residential houses and also to such houses where a portion is used by the occupant for (a) Handloom weaving etc. and also used by the paying guest. Therefore, the tariff applicable in this particular case is LT-2(a) and not LT-3. He has further argued that even in the bill dated 06.10.2008, the tariff applicable is rightly mentioned as LT-2 (a) and not LT-3.

He quoted a similar case decided by the Hon'ble High Court where the domestic portion was being used for hostel purposes has been charged tariff only under LT-2(a) and not LT-3 and submitted a copy of the Order. He further contended that as per the statement of the 1st Respondent before this Authority, only 70% of the building premises is being used for PG and not the entire portion. He also stated that the Circular No.CYS-165 dated 06.03.2008 issued by BESCO is not valid since it is only instruction issued by the Executive which requires an amendment to the tariff which is in force and that only KERC can do it and not the Licensee.

THE PRAYER

The Complainant has prayed to (a) set aside the Order passed by the 2nd Respondent (b) restore the tariff LT-2 to the premises and (c) not to resort to disconnection for the balance disputed back bill.

Maintainability

1. In terms of the Regulation 21.2 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, the Complainant has to make a representation before the Ombudsman within 30 days from the date of receipt of the order of the Forum 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 within the said period. But as per the Form B prescribed for registering the complaint, it is noted that the prescribed time limit is said to be one year as per provisions of 11.3(a) and (b) of the Ombudsman Regulations. But 11.3(a) and (b) do not exist in the Regulations.

2. The order is passed on 23.01.2009 by the 2nd Respondent and the appeal complaint is filed on 08.04.2009. This appeal, as per the provisions stated above, is maintainable.

Contention of the 1st Respondent:

In his deposition before this Authority, the 1st Respondent has stated that he is aware of the facts of the case and that an amount of Rs.32,198/- is back billed in respect of RR No.4SEH 6821 based on the report of the Vigilance staff. He further stated that as per the request of the Complainant, he visited the premises and found that about 70% of the premises was being used for PG accommodation and the balance for domestic purposes by the Complainant. He further stated that based on the report of the vigilance staff, the tariff was changed from LT-2(a) to LT-3 and the back billing was worked out after deducting the tariff already paid under LT-2(a) category. He has claimed that the back billing charges claimed by his office based on the direction from the vigilance staff under Regulation 42.02 of COS as also as per Circular from General Manager(Tech), BESCO vide No.CYS-165 dated 06.03.2008 is in order and that the Complainant has to remit the balance amount of back billing charges to BESCO and to reject the request of the Complainant.

Subsequently, the 1st Respondent vide his letter dated 30.06.2009, sought time of 3 weeks to discuss with his higher ups as well as with the Complainant to arrive at a decision in the matter of settlement by mutual agreement. After a reminder letter No.OMB/B/G-54/09/6861 dated 23.07.2009 was issued to him, a letter bearing No.AEE/S-4/2803-05 dated 03.08.2009 was received wherein nothing was mentioned about the efforts made by both the parties.

Analysis and Findings:

The letter dated 21.07.2008 issued to the 1st Respondent by the vigilance staff does not indicate as to under what provisions the back billing is to be claimed.

The Notice dated 04.08.2008 issued by the 1st Respondent to the Complainant indicates that the back billing is claimed as per provision of 42.02/42.05 of S & D Code 2001. During his deposition on 22.06.2009, he stated that the back billing is claimed as per provisions of 42.02 of COS and as per the Circular No.CYS-165 dated 06.03.2008.

The 2nd Respondent, after hearing both the parties and after perusing the documents furnished by both the parties, has held that the premises of the Complainant was being used for PG accommodation and has opined that there is no provision in the conditions of power supply or in the tariff order to bill such installation at LT-2(a) tariff and rejected the Complainant's prayer. **The 2nd Respondent has nowhere mentioned the provisions under which it has taken this decision.**

It is to be noted that after the coming into force of the Electricity Act 2003, the Conditions of Supply of Electricity notified on 17.06.2006, came into force and the provisions of Electricity Supply and Distribution Code 2000-2001 were repealed.

In his deposition, the 1st Respondent referred to 20.2 of COS wherein back billing provisions are made for misuse of electricity in pursuance of Section 126 (explanation b(iv) such misuse is also termed as "unauthorized use of electricity" as per the explanation b(iv) of Section 126 of the Electricity Act, 2003.

The 2nd Respondent has erred in entertaining the complaint as the grievances falling within the purview of provisions of unauthorized use of electricity as provided under Section 126 of the Act is excluded from the jurisdiction of the Forum as per definition (g) under Regulation 2 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004.

ORDER

Having regard to the facts of the case and circumstances explained above,

- (a) The order passed by the 2nd Respondent is set aside for lack of jurisdiction.
- (b) The Complainant is at liberty to seek legal remedy available under Section 127 of the Electricity act, 2003 within 30 days from the date of receipt of this Order.

(S.D.Ukkali)
Ombudsman

- 1. Dr.A.Sunil Kumar, No.106, 16th "B" Cross, 4th Block, Koramangala, Bangalore.
- 2. The Asst. Executive Engineer, S-4 Sub Division, BDA Complex, Koramangala, Bangalore.
- 3. The Chairman, CGRF, BESCOM, Central Stores Premises, near ESI Hospital Rajajinagar, Bangalore-560010
- 4. The Managing Director, BESCOM, K.R.Circle, Bangalore
- 5. PS to Hon'ble Chairman / PS to Hon'ble Member(H) / PS to Hon'ble Member(S) / PS to Secretary / Director(Tariff) / Consultant (Legal) / OCA

