

Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore

Present: B.R.Jayaramaraje Urs, IAS

Electricity Ombudsman

Case No.OMB/M/G-95/2010/10289

Dated 03.06.2011

Between

Airports Authority of India,
Mangalore Airport,
Bajpe,

Mangalore

(Represented by Sri M.R.Vasudeva,
Airport Director)

.. **Complainant**

Vs

1. Assistant Executive Engineer (Ele),
O & M Sub Division,
MESCOM
Kavoor, Mangalore
Dakshina Kannada District

2. Consumer Grievance Redressal Forum, (CGRF)
MESCOM Corporate Office,
Padadigm Plaza, A.B.Shetty Circle
Mangalore

.. **Respondents**

The Airports Authority of India, Mangalore Airport. Bajpe has filed this appeal on 29th, November 2010 and the same is registered at No OMB/M/G-95/2010/. The appeal arises out of the Consumer Grievances Redressal Forum (in short, the Forum - 2nd Respondent) Mangalore's order No. 11/04/10-11 dated 27.10.2010 in respect of the Appellant's grievance relating to levying of penalty, interest and back billing by MESCOM. The Forum declined to issue directions to MESCOM (herein after referred to as the 1st Respondent) to waive the penalty and the interest charges. Being aggrieved with the Forum's order (the impugned order), the Appellant filed this appeal. The Appellant's case is as under:

(a) The Appellant (Airports Authority of India, Mangalore Airport, Bajpe) is a consumer of electricity, (b) Appellant's Installation bearing No R.R H.T.79 is serviced by Assistant Executive Engineer, No 2 Sub- Division, Kavoor, Mangalore Taluk and (c) MESCOM issued a bill dated 13.08.2009 asking the Appellant to pay Rs.1,42,045/- by way of Penalty + Rs.12,884/- + interest.

The Appellant represented by its Director, Sri M.R.Vasudeva, filed the representation in Form B before the Electricity Ombudsman wherein he has stated that he filed the appeal aggrieved by the unreasonable levying of penalty and interest by MESCOM, based on technically flawed data which is violative of clauses 27.03 & 27.04 of ES&D Code.

Further he observed that MESCOM with no reason levied penalty and interest for a period of more than 07 billing months (from December 2008 to September 2009). Again on 23.11.09, MESCOM amended the dues statement from December 2008 to September 2009 totalling to 10 Months as against 6 billings months preceding the date of inspection, violating K.E.R.C (ES&D) 2000-2001, clauses 27.01, 27.03 and 27.04. Hence, seeking direction to 1st Respondent to waive the penalty and interest.

On this Representation, parawise remarks were called from the 1st Respondent. He furnished parawise remarks stating that H.T rating sub-division conducted inspection of this installation on 17.06.2009 and 14.07.2009 and found a difference between billed maximum demand to the actual recorded maximum demand for the previous 7 months. Findings of the inspection was communicated to the jurisdictional Asst. Executive Engineer vide letter No A.E.E/H.T.R/M.N.G/ 09-10/1025-28 dated 23.07.2009. The Asst. Executive Engineer, Kavoor issued a letter to the Appellant asking to pay Rs1,42,045/ by way of penalty vide letter No.A.E.E2/K.V.R/2472-75/2009-10 dated 13.08.2009. The Appellants in response to this letter, conveyed their objection to levying of penalty and interest vide letter No.A.A.I/M.L/E.N.G.G(E)12/09/333-335/1625 dated 24.08.2009. The Assistant Executive Engineer included the penalty amount of Rs.1,42,045/- in the August, 2009 monthly bill and requested the Appellant to pay this amount. The Appellant, however, citing their previous letter and also since they had not received any clarification, again requested MESCOM to issue a revised bill for the relevant month excluding the penal amount and interest vide letter dated 10.09.2009. Further, in their letter dated 14.09.2009, AAI

informed MESCOM of their having paid the monthly bill relating to September 2009 excluding the penalty and the interest.

Further, the Asst Executive Engineer, in his letter No A.E.E 2/A.E.T/K.V.R/9149-51 dated 28.10.2009 reiterating the earlier demand, requested the Appellant to pay the penal amount of Rs.1,42,045/-. The Appellant, in turn, wrote back that downloaded data from MESCOM meter reading instrument from the meter showed dues which related to 2005. Utilisation of power for the months of August and September 2009 was within the maximum demand and, hence, they were not convinced that they have exceeded the maximum demand. Further, the M.D., MESCOM, through a letter conveyed to the Appellant that they have levied penalty from December 2008 to June 2009 on account of Appellant exceeding the maximum demand.

In response to M.D's letter, the Appellant replied that in relation to their installation only in one month during the previous year they exceeded the maximum demand. During subsequent months the utilization against the maximum demand was only 80% and, hence, the penalty and interest levied should be waived. Further conveyed that they received the bills which showed amounts due for 2005 and months from December to June and since no dues relating to 2005 were pending for payment, MESCOM should clarify and issue correct bill. In spite of repeated reminders, the A.E.E did not send the correct bill showing for which year such amounts were due.

Further, the Asst Executive Engineer stated that he clarified that the downloaded data from the Meter Reading Instrument from the meter recorded the year as 2005 instead of 2009 and this is because of technical snag and failure of the meter to record the year correctly and excepting this, the meter has correctly recorded the months as December 2008 - June 2009. This was conveyed to the Appellant and further a bill for Rs.25,138/- being the difference between the maximum demand and the maximum demand as per the downloaded data from the M.R.I for the months of August 2009 and September 2009 and the earlier penalty and interest amount totalling to Rs1,67,183/- was issued. However, the Appellant refused to pay this amount on the ground that the demand pertained to 2005. After prolonged correspondence, when MESCOM threatened to disconnect power supply, the Appellant paid the penalty amount under protest. Aggrieved by this, the Appellant approached the 2nd Respondent for relief and the Forum passed orders waiving the interest.

Not satisfied with the orders of C.G.R.F, the Appellant filed this representation before the Electricity Ombudsman.

Notices were sent to the parties to appear before the Ombudsman and, after several hearings, the case was posted for final hearing on 9th May 2011. On that day, the Appellant and the Asst Executive Engineer, No 2 Sub-Division, MESCOM, Kavour were present and advanced their arguments and hearing got concluded on the same day.

Sri M.R.Vasudeva Director, Mangalore Airport submitted that Airport Authority is having R.R No H.T 79.and that the Mangalore Airport has two terminals. MESCOM 's H.T Rating Sub-Division conducted tests on 17.06.2009 and 14.07.2009 and, based on this report, the O.&M Division sent a bill dated 13.08.2009 asking the Appellant to pay Rs.1,42,045/- being the penalty for exceeding the maximum demand from December 2008 to June 2009. In May 2009, the Mangalore Airport received a letter from MESCOM advising to pay penalty and interest. In view of issuing wrong bills, the Appellant requested MESCOM to subject the meter for testing. Instead of subjecting the meter to test, MESCOM threatened to disconnect the service lines. Fearing disconnection, the Appellant remitted the demanded amount under protest.

Further continuing his argument, Sri M.R.Vasudeva contended that as per Clause 29.08 of Conditions of Supply in Karnataka "the Licensee shall not recover any arrears after a period of two 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 instant case, the MESCOM issued a notice to Airport Authority of India, Mangalore to pay penal charges of Rs.1.42 lakhs. In that letter, the MESCOM intimated that these claims related to 2008 and 2009. However, the data furnished in the bill pertained to 2005. The Airports Authority of India, Mangalore sought clarification regarding the veracity of the data. So far, MESCOM has not clarified on these aspects. Later, the Chief Engineer(electrical) convened a meeting on 23.04.2010, but the meeting notice reached Mangalore Airport on 26.04.2010. *Since the meeting notice was received after the meeting was over, the MESCOM was requested to fix up a meeting again. But the meeting was not convened subsequently. Highly aggrieved by these turn of events, the A.A.I. Mangalore decided to file a representation before the Consumer Grievances Redressal Forum, Mangalore. Before filing the Representation, the AAI Mangalore paid the penalty and interest under protest. Since MESCOM threatened to disconnect power supplies, the*

A.A.I, Mangalore was forced to pay the penalty and interest. As MESCOM failed to provide any relief to the A.A.I., Mangalore, it was forced to file a representation before the 2nd Respondent. Since the Forum also failed to redress the grievances, the A.A.I. Mangalore was forced to approach the Electricity Ombudsman.

Further, Sri M.R.Vasudeva clarified that the A.A.I. Mangalore is ready to pay the penalty and interest if MESCOM furnished information. Though Regulation 29.08 (b) provides for furnishing such details to the consumer, the MESCOM, in spite of repeated requests, failed to furnish information and failed to give the reasons in writing for such wrong billing.

Sri M.R.Vasudeva prayed for waiving of penalty and interest by setting aside the impugned orders of the Forum. Concluding his arguments, Mr Vasudeva urged that if Electricity Ombudsman upholds the 2nd Respondent's order, then MESCOM should be directed to provide 5% rebate on monthly energy Bills till the date of meter replacement as per clause 27.04 (vii) of Conditions of Supply of Electricity in Karnataka. Secondly, if the appeal succeeds, then MESCOM should be directed to pay interest on the penalty till the passing of this order.

The 1st Respondent, Asst Executive Engineer, Kavoor submitted that he reiterated the submission made in parawise remarks.

Both the parties were informed vide letter No.OMB/M/G-95/2010/10145 dated 11.05.2011 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 the parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

From the above contentions, two issues emerge for our decision.

- 1) Whether MESCOM is justified in levying penalty and interest on the Appellant for alleged utilisation of power exceeding maximum demand ?
- 2) Whether MESCOM's demand is based on fool proof data?

To answer the first question, we will have to first see the report of H.T Rating Sub-Division vide No A.E.E/H.T.R/M.N.G/09-10/2075-76 dated 11.11.2009 addressed to the Asst. Executive Engineer, O & M Sub-Division, Kavour. In this report, the Asst Executive Engineer, H.T Rating Sub-Division reports that, "the print out of meter data is enclosed with this letter for your further needful. In these meter data, time of reading is mentioned as 28.10.2005 even though, it is collected on 28.10.2009. It is due to the non-updating of year register in this metre. However, all other parameters i.e. recording, updating and storing in this are accurate."

Based on the above report, the Asst Executive Engineer, Kavour Sub-Division issued a letter to the Airport Authority vide No A.E.E2/K.V.R/2472-75/2009-10 dated 13.08.09 stating that as per the report of H.T Rating Sub-Division "there is a difference between the billed M.D to the actual recorded M.D for the last 7 months. Since June 2009, we started to take reading through meter reading instrument. Before June 2009, the reading were taken manually and there was some difference in the reading pertaining to maximum demand."

The A.A.I. Mangalore, in response to MESCOM's demand dated 24.08.09, pointed out that there was a difference in M.D billed and actual recorded for the previous 7 months from 14.07.09, whereas the supporting documents enclosed showed the period as June 2005 & July 2005 and requested MESCOM to clarify on these discrepancies. Subsequent to this, the A.A.I., Mangalore has corresponded with MESCOM several times and MESCOM informed that they had sent demand based on H.T Rating Sub-Division's report. This correspondence continued till MESCOM threatened to disconnect the supply lines if the Appellant failed to remit the amount immediately. The Appellant fearing disconnection paid the penalty and interest.

Meter Reading Instrument from which H.T Rating Sub-Division downloaded the data noticed meter not recording the year and showing the year as 2005 when it took the reading on 28.10.2009. It looks as though meter failed to record year parameter after 2005. Such being the case, H.T. Rating Sub-Division have reported to O & M Division meter having recorded the month and the date correctly, but not recording the year correctly. When H.T Rating Division noticed that meter was not correctly recording the year, how they correlated month and date with the year is not explained. They have reported to O & M Sub-Division that the Appellant has exceeded maximum demand from December 2008 to June 2009. When the meter was not recording the year beyond 2005,

how the H.T Rating Sub-Division came to the conclusion that the Appellant exceeded the maximum demand from December 2008 to June 2009 is not clear. This excess utilization could be related to any year, not necessarily to the years 2008 and 2009.

Secondly, when the Appellant disputed the demand, the O & M Division or the senior officials in the MESCOM could have referred the matter for third party inspection. Under Clause 27.00 of the Conditions of Supply of Electricity in Karnataka "in the event the consumer disputes the accuracy of the meter, he shall give notice to the Licensee. The Licensee shall refer the metre for inspection/ testing of the meter to a "Third Party Agency" approved by the Commission under information to the consumer. The consumer shall pay the specified testing fee directly to such Agency. The Agency shall test the accuracy of the meter using an electronic type testing equipment with facility of a printer attached to it which shall provide an automatic printout of test readings, percentage error with date/time/R.R No., etc. The Agency shall provide printout of test readings, percentage error with date/time/R.R No ., to the consumer under a copy to the Licensee.

Under Note of Clause 27.00 of the Conditions of Supply of Electricity in Karnataka "Arrangement for inspection / testing of the meter by a Third Party Agency" will be put in place by the Karnataka Electricity Regulatory Commission as per National Electricity policy dated 12.02.2005.

Though the Code provides for meter testing and though the Appellant expressed doubts regarding functioning of the meter, the MESCOM appears to have brushed aside the repeated requests of the Appellant for third party testing of the meter. Instead, the MESCOM threatened the Appellant with disconnection and, in fact, in this case, the Appellant paid the penalty and interest imposed by MESCOM fearing disconnection. This act of MESCOM almost amounted to coercion. At least, when the matter reached the Chief Engineer and the M.D MESCOM, authorities could have referred the matter to the third party agency for testing which could have cleared the doubts lurking in the mind of the Appellant.

In the circumstances discussed above, it is clear that MESCOM has erred in not referring the matter to the third party agency for meter testing even when the consumer expressed doubts regarding the functioning of the meter and the data emanated from such meter. Now, since it is clear that meter requires testing from a third party agency, MESCOM is advised to refer the meter for third party agency for testing. The parties will be bound by the outcome of the findings of the third party agency and the parties after receipt of the

findings will conform themselves to Clause 27.01 which reads as "in the event of meter being incorrect beyond the limits of accuracy prescribed under relevant Regulation framed by the Central Electricity Authority/ relevant I.S., the amount of the bill shall be adjusted by the Licensee in accordance with the result of test with respect to meter reading of the 6 billing months prior to the month in which the consumer has disputed the accuracy of the metre and up to the date of testing, due regard being paid to the condition of working, occupancy, etc, during the said 6 months. In such cases, the prescribed fee paid for testing the meter shall be refunded to the consumer. In the present case, the Appellant has disputed the bills issued from December 2008 to June 2009. Hence the following order.

ORDER

For the forgoing reasons, the MESCOM is directed to refer the meter in question for third party agency for testing as specified by the Karnataka Electricity Regulatory Commission and parties are hereby directed to abide by the outcome of the results of such testing and further follow the procedure laid down under para three of Clause 27.00 of Conditions of Supply of Electricity in Karnataka. In the result, the appeal filed by the Appellant is partly allowed.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s. Airports Authority of India, Mangalore Airport, Bajpe, Dakshina Kannada District.
2. Assistant Executive Engineer, O & M Sub Division, MESCOM, Kavour, Dakshina Kannada District.
3. Consumer Grievance Redressal Forum, MESCOM Corporate, Paradigm Plaza, A.B.Shetty Circle, Mangalore.
4. Managing Director, MESCOM Corporate Office, Paradigm Plaza, A.B.Shetty Circle, Mangalore.
5. PS to Hon.Chairman, KERC
6. PS to Hon.Member(H), KERC
7. PS to Hon.Member(S), KERC
8. PS to Secretary, KERC
9. OCA

