

**Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore**

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B /G-89/10/8441
Dated 17.06.2010**

Shri Alfred Mathew,
C/o APCO Concrete Block & Allied Products,
No.805, 14th Cross, First Phase,
J.P.Nagar,
BANGALORE-560078
(Represented by Sri B.S.Shashi, Authorised
Representative of the Complainant)

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Complainant

Vs

1. Bangalore Electricity Supply Company (BESCOM)
Represented by its
Asst.Executive Engineer(E)
BESCOM
S-12 Sub Division, 1ST "A" Cross,
Gauravanagar,
Next to Brigade Gardenia Apartments,
Bangalore-560078

2. The Consumer Grievance Redressal Forum (CGRF)
BESCOM
Central Stores Premises,
Near ESI Hospital,
Rajajinagar,
BANGALORE-560010

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Respondents

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

1. The installation bearing R.R. NO.BGP 130 running in the name of Sri Alfred Mathew, M/s.Orion Precast(P) Ltd., at No.56, K.G.Gollara Palya, B.R.Road with a sanctioned load of 66 HP for industrial purpose. The installation was serviced on

31.7.1993. The meter fixed to the installation was L & T make Sl.No.018285 ETV of capacity with a multiplication constant of 10. The installation was rated by M.T. Division staff on 30.11.2004 and replaced the existing CTs from 50/5 to 75/5 thereby the constant was changed from K10 to K15 with effect from 30.11.2004. The Petitioner stated that the Section Officer was also present at the time of rating of the installation. **The change of Ratio was also painted on the tamper proof meter box. The Section Officer who is supposed to take reading every month has not noticed the change of CT Ratio.**

2. The rating report of the installation was not received in revenue section till July 2007. Subsequently billing has been carried out based on the existing meter constant for the period from 30.11.04 to 01.06.07.

3. Consequent to receipt of Xerox copy of M.T.Report regarding change of CT Ratio, the difference in consumption from 30.11.04 to 01.6.2007 has been worked out as Rs.2,65,793/- and intimated to the Consumer Vide letter NO.1018 dated 13.7.2007 for making payment.

4. Upon a representation of the Petitioner dated 31.8.07 the Respondent sent a revised bill for Rs.1,95,274/- for the period 01.07.05 to 01.06.07 for 24 months.

5. Aggrieved that his grievance was not settled, the Consumer filed a complaint to the consumer Grievance Redressal Forum through his representative Sri Shashi on 31.10.2007.

6. After conducting hearing, the 2nd Respondent passed an order rejecting the request of the consumer.

7. Not satisfied with the order of the 2nd Respondent, the Complainant filed a petition before this Authority praying for the following:

II.

PRAYER

1. Set aside the order passed by the 2nd Respondent in its file No.CGRF/47/2007/2539 to 2544 dated 20.2.2008
2. Set aside the demand notice AEE(ele)/M-1018 dated 13.07.2007 for short claim and refund this amount already paid under protest.

After hearing both the parties, an order came to be passed in file No.OMB/B/G-44/2008/4783 dated 22.08.2008 wherein it was held that as per the provisions of Clause 4.13 of KERC (Electricity Supply) Code 2004, no demand for the period exceeding 2 years could be collected and the 1st Respondent was directed to adhere to the revised demand of Rs.1,95,274 calculated for a period of 2 years and to refund the amount collected over and above this amount by way of adjustment in future bills.

Not satisfied with this order, the 1st Respondent filed a Writ Petition No.12764 of 2008 before the Hon'ble High Court of Karnataka to quash the order of this Authority. The Hon'ble High Court passed the following order:

1. Writ Petition is hereby allowed.
2. The impugned order dated 22.08.2008 passed by the 2nd Respondent is hereby quashed.
3. The matter is remitted to the second respondent for fresh disposal in accordance with law, keeping in view the law laid down by this Court in the decisions referred to above.

This information was brought to the notice of this Authority by the 1st Respondent but he failed to submit the copy of the Hon. High Court's order. Soon after the receipt of the Hon. High Court's order, the matter was taken up.

III. Settlement By Agreement

As per para 3 of the Order, now the matter stands remitted to this Authority for fresh disposal. Accordingly the matter was heard again by this Authority on 08.06.2010 and 16.06.2010 wherein the possibility of conciliation and mediation through negotiation was tried. However, no accord could be reached and, therefore, it was decided to pass an award after hearing.

IV. Discussion and Analysis

A. The 1st Respondent contends as follows:

There was a request for an additional power supply raising the connected load from 55 HP to 66 HP, the connected CT ratio of this installation was 50/5 while connecting additional 11 HP the MT staff of BESCO rated the installation and CT ratio was raised to 75/5 and also the demand based tariff was granted. While claiming the bills after the rating, the MD charges were collected as per the demand based tariff but the meter constant was continued at 10 instead of 15.

During the routine visit by the JE of the area on 10.07.2007 he observed that the multiplication constant should be taken as 15 instead of 10 and he reported to the 1st Respondent. A short claim was preferred from 01.12.2004 to 01.06.2007 amounting to Rs.2,65,793.00/-.

The Complainant remitted the above amount under protest since his request for waiving off the arrears as per KERC Supply Code 2004 was not considered. Not satisfied with the decision of the 1st Respondent, he filed a complaint with the 2nd Respondent. After hearing both the parties, the 2nd Respondent has passed an order upholding the decision of the 1st Respondent.

Aggrieved by this impugned order, the Complainant then filed a complaint with this Authority and an order came to be passed on 22.8.2008 limiting the claim to 2 years

and directing the 1st Respondent to adjust the balance amount in future bills of the installation.

Challenging this order, the 1st Respondent filed a writ petition before the Hon High Court of Karnataka to quash this impugned order. The Hon. High Court of Karnataka allowed the Writ Petition, quashed the impugned order dated 22.8.2008 and remitted the matter back to this Authority for fresh disposal in accordance with law keeping in view the law laid down by the Hon. High Court of Karnataka in the decision in case of Banhatti Cooperative Spinning Mill Ltd. Vs KEB (ILR 1990 KAR 3518) and WP 17225/2007 disposed on 5.11.2008.

B. The Authorised representative of the Complainant argues as follows:

1) His client has availed an electrical connection bearing RR No.BGP-130 for the purpose of manufacturing hollow bricks.

2) All of a sudden, a demand notice No.AEEE/S-10/M(F&C)/1018 dated 13.07.2007 was received demanding payment of an audit short claim of Rs.2,69,793 for the period from 1.12.2004 to 1.6.2007. The Complainant protested and gave a letter to the AEE, S-10 Sub Division quoting the provisions of KERC (Electricity Supply Code 2004 notified in the Karnataka Gazette dated 2.12.2004. Provision 4.13 says that

"The Licensee shall not recover any arrears after a period of 2 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."

3) The AEE of S-10 sub division limited the amount to 2 years and reduced the amount from Rs.2,65,793 to Rs.1,95,274/- vide letter No.AEEE/2-10MFC 2113 dated 03.08.2008 and gave 15 days time to remit this amount. Not satisfied by this decision of the S-10 Sub division, a complaint was filed with the 2nd Respondent to settle the grievance by waiving of the short claim in full.

After hearing of both the parties, the 2nd Respondent passed an order upholding the claim of Rs.2,65,793/- (Rupees Two Lakhs Sixty Five thousand Seven Hundred and Ninety Three). After passing of this order, the AEE S-10 sub division, threatened with disconnection of the installation if the amount was not paid.

4) Fearing disconnection of the installation and inconvenience to the Complainant, he remitted the amount under protest with interest and filed an appeal before this Authority.

An order dated 22.8.2008 was passed limiting the claim for 2 years and reduced the short claim from Rs.2,65,793 to Rs.1,95,274/- and directed the jurisdictional AEE to adjust the balance amount against the future bills of this installation.

5) After filing of the Writ Petition by the 1st Respondent, the Hon. High Court of Karnataka quashed the impugned order of this Authority dated 22.8.2004 and remitted the matter back to this Authority again for fresh disposal in accordance with law keeping in view the law laid down by the Hon. High Court of Karnataka.

6) It is brought to the notice of this Authority that the case of Banhatti Cooperative Spinning Mill Ltd. Vs KEB (ILR 1990 KAR 3518) and WP 17225/2007 disposed on 5.11.2008 was governed by the earlier Electricity Acts and Rules prevailing at that time and the Electricity Act 2003 was not in force at that time. Therefore, there was no limitation for collection of short claim or arrears. But after coming into force of the Electricity Act 2003 from 10.06.2003, the rules and regulations have been changed and as per the KERC (Electricity Supply Code) 2004 and its amendments notified in Karnataka Gazette on 2.12.2004. Clause IV deals with the billing procedure and it is brought to the notice of this Authority that in terms of provisions of 4.13, the Licensee shall not recover any arrears after a period of 2 years. Therefore, he humbly requested to waive off completely the audit short claim of Rs.2,65,793 as demanded by the AEE, S-10 sub division. As per clause 4.14 of this Code, **"After payment of the bills, if it is established that the Licensee has over charged the Consumer, the excess amount shall be repaid by the Licensee within two months with interest at**

bank rate.” He requested this Authority to kindly direct the Respondent Licensee to refund the amount of Rs.2,65,793/-(Rupees Two Lakhs Sixty Five Thousand Seven Hundred and Ninety Three) within 2 months with interest at bank rate.

V. Findings

1. The matter is remitted back to this Authority by the Hon. High Court of Karnataka for fresh hearing and disposal, keeping in view the law laid down by the Hon. High Court of Karnataka in decisions of Banahatti Cooperative Spinning Mill Ltd. Vs. Karnataka Electricity Board (ILR 1990 KAR 3518) and WP 17225/2007 disposed on 5.11.2008.
2. **The law laid down by the Hon. High Court is that the period of two years referred to in Section 56 (2) is not referable to period prior to determination.**
3. The short claim under dispute amounting to Rs.2,65,793/- was determined 1st time by issuing a notice No.AEE(e)/M-1018 dated 13.07.2007 by the 1ST respondent to the Complainant and as per Law laid down, the limitation of 2 years starts from this date (13.7.2007) of determination and is not applicable to this case.
4. The conclusion arrived at by this Authority while passing the impugned order dated 22.8.2008 was not conducive with the position of law at para V (2) and (3) above and the conclusion arrived at by the 2nd Respondent in its order No.2539 to 2544 dated 23.4.2008 are reasonable and, hence, this order needs to be upheld and the Petition needs to be rejected.

Having regard to the facts and circumstances of the case, the following order is passed.

VI.**ORDER**

1. The Order No.CGRF/47/2007/2539-2544 dated 20.2.2008 passed by the 2nd Respondent is upheld and the Complainant's appeal petition is dismissed.

(S.D.Ukkali)
Ombudsman

1. Shri Alfred Mathew, C/o APCO Concrete Block & Allied Products, No.805, 14th Cross, 1st Phase, J.P.Nagar, Bangalore-560078.
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer (Ele), S-12 Sub Division, BESCO, 1st A Cross, Gauravanagar, Next to Brigade Gardenia Apartments, Bangalore-560078.
4. The Managing Director, BESCO Corporate Office, K.R.Circle, Bangalore-560001.
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. Director (Tariff)
10. Deputy Director(Legal)
11. O.C.A.

