

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

**Present: S.D.Ukkali  
Ombudsman**

**Case No.OMB/B/G-58/09/7561  
Dated 30.12.2009**

Shri Deepak Mehta,  
Director,  
Ashish Metal Limited,  
A-2, 2<sup>nd</sup> Stage,  
Peenya Industrial Estate, Peenya,  
**BANGALORE-560058**  
(Represented by Sri Tanveer Ahmed  
Shariff, Advocate)

.. Complainant

**Vs**

1. Bangalore Electricity Supply Company Ltd.,  
represented by its  
Asst. Executive Engineer (Ele),  
N-4 Sub Division,  
488, Brindavana 14<sup>th</sup> Cross,  
Peenya 2<sup>nd</sup> Stage,  
**BANGALORE-560058**

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 29.05.2009 passed by the Consumer Grievance Redressal Forum (CGRF for short), Bangalore Electricity Supply Company (BESCOM for short), Bangalore in file No.CGRF/47/2009/213.

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

a) An electrical connection was extended with a sanctioned load of 66 kW on 26.5.1979 assigning RR No.N5P 452 for their Unit-II in the name of Bangalore Metal Products. Subsequently the name of the industry was changed to M/s.Ashish Metals Limited in the year 1982.

**b) This installation was inspected by the then KEB, Bangalore MT Division testing team on 22.8.1986 and found the meter to be recording slow by 70%. This meter was replaced on the same day. Thereafter, the 1<sup>st</sup> Respondent served the regular monthly bill adding an amount of Rs.29,330.30 stated to be difference in the amount due to slow recording of the meter. The Complainant protested in writing against adding of the additional amount.**

c) Due to various reasons including labour problems, the industry was closed. The fact of closure of the industry was brought to the notice of the 1<sup>st</sup> Respondent. Only some time during 1992, the Complainant came forward seeking restoration of service but unfortunately the 1<sup>st</sup> Respondent demanded a huge sum of Rs.3,39,345.80 on an ad hoc basis by claiming the bills on average consumption basis, adding interest etc.. The Complainant approached the Chief Engineer, K.E.B.,Bangalore Zone, Bangalore by way of a representation and was directed to pay 50% of the amount of Rs.3,39,345.88 (Rupees Three lakh Thirty nine thousand three hundred & forty five & paise eighty eight) only i.e.Rs.1,69,673/- (Rupee One lakh sixty nine thousand and six hundred and seventy three) only.

d) Aggrieved by this demand, the Complainant approached the Hon'ble High Court of Karnataka in W.P.35021 and 35022 of 1992. These were disposed off by the Hon'ble High Court of Karnataka on 12.4.1992 directing the Complainant to make a deposit of Rs.50,000/- (Rupees Fifty Thousand) only towards RR No.N5P452 to the Respondent within 8 weeks and to file an appeal before the appropriate Appellate Authority and seek restoration of electricity. Accordingly, a sum of Rs.50000/- was paid on 14.06.1993 and an appeal was filed before the then Chief Engineer, KEB, K.R.Circle, Bangalore on 15.06.1993. The matter was stated to be not decided by the Appellate Authority and

the Complainant was informed that the file was not traceable in BESCO office. The 1<sup>st</sup> Respondent continued serving notices of recovery without any order by the Appellate Authority.

e) Left with no alternative, the Complainant filed a complaint before the CGRF, BESCO, Bangalore. The Forum, after hearing, passed an order as under:

***"Under the circumstances stated above, the complaint is disposed without passing any observations."***

The above order was passed on the plea that :

***"The Forum is of the view that this case pertains to the period of 1986 and the termination of agreement was served to the Complainant long back. Hence the Complaint filed by the Complainant will not come under the jurisdiction of this Forum."***

**III.** Aggrieved by this order the Complainant filed this appeal complaint on the following grounds:

#### **GROUND**

1. The Complainant had questioned the correctness and legality of the bills preferred in respect of the installation bearing RR No.N5P452 between 1986-1998 by filing the relevant documents in support of the case before the 2<sup>nd</sup> Respondent.

**The 1<sup>st</sup> Respondent had filed its arguments and counter arguments before the 2<sup>nd</sup> Respondent. While doing so had scaled down its claim to Rs.1,37,547/- (Rupees One lakh thirty seven thousand five hundred and forty seven) only. It had also admitted that the security deposit held and the deposit of Rs.50,000/- (Rupees Fifty Thousand) only paid were to be deducted.**

2. In spite of placing these facts, the 2<sup>nd</sup> Respondent was wrong from abdicating its responsibility to the consumer at large. It was within its competence to act on

the legal aspect of the claim and to decide to settle the grievance but has failed to act.

#### **IV.**

#### **PRAYER**

On the grounds stated above, it is prayed

- 1) To direct the 1<sup>st</sup> Respondent to revise the claim and to arrange to refund after such deduction the balance in the interest of justice.
- 2). To grant such other relief/ reliefs as deemed justified under the circumstances.

#### **V. 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 29.05.2009 by the 2<sup>nd</sup> Respondent and the appeal complaint is filed on 06.07.2009 within one year. This appeal, as per the time limit prescribed in Form B, is maintainable.

#### **VI. Settlement by Agreement.**

An opportunity by way of this office letter dated 21.08.2009 was extended to both the parties to explore the possibility of settlement by conciliation and agreement.

The 1<sup>st</sup> Respondent during the hearing on 10.11.2009 stated that since the consumer has to pay the amount as per the C Form Notice issued, the settlement was not possible and the consumer has to pay the amount as per the C Form Notice issued.

On 10.11.2009, both the parties were called and further efforts were made to reach an agreement. Since no accord was possible, it was decided to hear the parties and pass an award.

The following issues emerge from the facts mentioned above in respect of installation with R.R.No.N5-P452:

**Issue 1:** Whether the 2<sup>nd</sup> Respondent was right in disposing off the complaint without passing any observation.?

**Issue 2:** Whether this Authority has jurisdiction to settle the grievance of the Complainant?

**Issue 3:** Whether the Complainant's meter was slow-recording at the time of testing on 22.8.1986 and whether the Complainant was liable to pay the back billing charges?

**Issue 4:** Whether the amount claimed is inflated and ad hoc as alleged by the Complainant?

**Issue 5:** Whether the Complainant is entitled to get a refund as prayed?

**VII. Issue 1: The decision has to be in the negative as the 2<sup>nd</sup> Respondent erred in disposing of the complaint without any observation on the reasons detailed below.**

**It is submitted by the Complainant that the 2<sup>nd</sup> Respondent has arrived at conclusions contrary to the facts of the case.** He further states that one of the component of this case happens to be back billing arising out of an inspection by the meter testing staff concluding a slow recording of the meter by 70% and the matter was

before the Hon. High Court of Karnataka in WP cited above. The Hon. High Court of Karnataka directed the Complainant to file appeal before the Chief Engineer(Ele) KEB, Bangalore Zone and accordingly an appeal was filed on 15.06.1993. There was no action by the Appellate Authority till today. The Complainant contends that **the jurisdiction of the Chief Engineer (Ele), K.E.B., Bangalore (the Appellate Authority) with regard to the hearing of the appeal ceased after coming into effect of the Electricity Act 2003 and now it is vested with the jurisdiction of the 2<sup>nd</sup> Respondent and further contended that the order of the 2<sup>nd</sup> Respondent is not consistent with the legal position of the case. Hence, has filed this appeal complaint before this Authority urging this Authority to hear the appeal complaint and pass a judgement as this Authority has got the jurisdiction to do so on the grounds mentioned above.**

The Hon. High Court of Karnataka in Writ Petition No.35021 and 35022/1992 has passed the following orders at para 4 which is reproduced below:

***"When the matter is pending, the petitioner has paid a sum of Rs.30,000/- as per direction of this Court. The counsel appearing for the respondents submits that if the petitioner makes further payment of Rs.50,000/- the appellate authority would reconsider his representation provided he files a regular appeal before the 3<sup>rd</sup> respondent. I am of the view that the petitioner may file an appeal before the 3<sup>rd</sup> respondent and it should be considered by the 3<sup>rd</sup> respondent in accordance with law after giving an opportunity to the petitioner. For the reason stated above, writ petitioners are liable to succeed and the same are allowed. Petitioner is directed to deposit another sum of Rs.50,000/- within 8 weeks from the date of this order and shall make a regular appeal to the 3<sup>rd</sup> respondent. If the amount is deposited and appeal is filed, that has to be entertained and pass an order in accordance with law. Further, the respondents are directed to restore electricity connection to the meter R.R.No.N5-P452 within two weeks from the date of this order. If the petitioner does not deposit Rs.50,000/- within 8 weeks, it is open for the respondents to dis-connect electricity connection."***

Accordingly, the Complainant has remitted Rs.30000/-(Rupees Thirty thousand) only towards another R.R.No.N5-P370 of Unit I and remitted Rs.50,000/- (Rupees Fifty

thousand) only on 14.6.1993 towards this R.R. No.N5-P452 of Unit II and filed appeal with the Chief Engineer (Electricity) Bangalore Zone, K.R.Circle, Karnataka Electricity Board, Bangalore on 15.6.1993. **The Complainant has acted as per the directions of the Hon'ble High Court. But the Respondent Licensee and its Appellate Authority have failed in utilizing the opportunity provided by the Hon'ble High Court by not passing the order from 1993 till today.**

After coming into force of the Electricity Act, 2003, the Appellate Authority was re-constituted and the authority was empowered to pass appropriate order on the appeal filed by the person aggrieved by a final order made under Section 126 of this Act. **This case does not come under the purview of Section 126 and the Appellate Authority automatically lost its jurisdiction. Till today, the fate of the appeal is not known.** Under the circumstances, as per the provision of the law, the Complainant has rightly filed a complaint in terms of Regulation 6.1 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations 2004 framed in exercise of powers conferred on the Commission by Section 181 read with sub-section 5, 6 & 7 of Section 42 of the Electricity Act 2003 to settle his grievance. The 2<sup>nd</sup> Respondent has erred in not settling the grievance of the Complainant and, **as alleged by the Complainant, the 2<sup>nd</sup> Respondent has abdicated in not redressing the grievance.**

**VIII. Issue 2: The decision has to be in the positive, as this Authority has jurisdiction to settle the grievance on the reasons mentioned below:**

Aggrieved by the non-redressal of his grievances by the 2<sup>nd</sup> Respondent, the Complainant, in terms of provisions of Regulation 21.2 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, has rightly filed with this Authority this appeal complaint. This Authority has jurisdiction and proceeds further to settle the grievance of the complainant.

**IX: Issue 3: The decision has to be in the negative. It is not conclusively established that the meter was recording slow and the claim of back billing does not survive on the reasons detailed below:**

a) **The triggering point of dispute is the testing of the meter.** The meter was tested on 22.8.1986 and a report was generated on 1.10.1986 and submitted to the Executive Engineer, North Division, Bangalore by the Executive Engineer, M.T.Division, Bangalore. The remarks on the 2<sup>nd</sup> page of the report reads thus:

*"The power meter was found to be recording 70% slow. The seal bearing No.MTD-13 on MC A.T.C. were suspected to be duplicate hence taken to safe custody. **The seals were examined in the laboratory and found to be original only.** On detailed examination it was found that meter was going in reverse direction only when Y phase was energized due to reversal of Y wiring. This was shown to Sri Sagit.P.Works Manager and Sri S.L.Inamdar, Maintenance Engineer and Sri Sriram, AEE, El, Vigilance who has drawn a Mahazar. **Since CT box seal pertains to O&M, it was suspected that the consumer has tampered the wiring through the box housing sealable cut-outs which was found not sealed.** There is easy access to wiring through the box housing sealable cutouts. Since the existing meter is very old and rusted, meter has been replaced by a good meter. The PL meter was having no load. Load side wire was not existing. Hence removed the meter."*

This report reveals too many doubts. Firstly, it was suspected that the seals were duplicate, but later found to be original at the laboratory. Secondly, it was suspected of reversal of Y phase wiring and it was suspected that the Consumer tampered the wiring. If the testing team suspected tampering of the meter, a criminal case should have been booked. **The Respondent Licensee has failed to establish the slow recording of the meter.**

b) The Complainant sought the intervention of the Chief Engineer concerned to resolve the issue of back billing. When his request was not considered, he filed a Writ Petition before the Hon'ble High Court. The Hon'ble High Court's direction were fulfilled by the Complainant by remitting Rs.50,000/- (Rupees Fifty thousand only) and filing an appeal. **The Appellate Authority failed to pass appropriate orders from 15.6.1993 to 10.6.2003 (the day the Electricity Act 2003 came into force) and even today.** The Respondent Licensee has failed to utilize the opportunity granted by



the Hon'ble High Court of Karnataka to establish the alleged slow recording of the meter.

**On these two grounds mentioned above, the claims of back billing of Rs.29,330.30 (Rupees Twenty nine thousand three hundred and thirty and paise thirty) only does not survive.**

**X) *Issue 4:* The decision has to be in the affirmative as the amount claimed is inflated and ad hoc on the reasons detailed below:**

a) The 1<sup>st</sup> Respondent raised a bill for Rs.43081.42 for the month of October 1986 **adding a back bill charges of Rs.29,330.30 (Rupees Twenty nine thousand three hundred and thirty and paise thirty) only to a normal monthly bill of Rs.13,751.12 (Rupees Thirteen thousand and seven hundred and fifty one and paise twelve) only.** During the testing, the old meter was replaced with a new meter. The reading of this meter during September 1986 was 278 and during October 1986 was 296, and then onwards it has remained 296 and later recorded as "door lock" till April 1992 as per the ledger extract submitted by the 1<sup>st</sup> Respondent.

b) Strangely, there have been no records of the ledger extract from May 1992 to January 1996 and from April 1996 the industry seems to have worked. As per the ledger details, there is a consumption of electricity every month and consumption charges with fixed charges are claimed. Payments also have been made, continuing to show the disputed amount of Rs.3,27,028/- (Rupees Three lakh twenty seven thousand and twenty eight) only as closing balance every month till November 1997. Thereafter during December 1997, it was recorded as meter change. No details are entered for the month of January 1998 and February 1998. But during March 1998, a reading of 237 and the consumption of 3225 units are shown with a minus opening balance of Rs.-605 and closing balance of Rs.18580/- (Rupees Eighteen thousand five hundred and eighty) only. Subsequently, the same reading of 237 continued upto December 1998 mentioning disconnection from May 1998 onwards. The installation remained closed after March 1998.

c) It is argued by the Complainant that the industry was not working on the date of inspection and also on the subsequent dates as reflected month-after-month in the records. But yet bills on an average basis were raised. The industry remained closed and the installation was under disconnection till the year 1992. As per the letter dated 10.9.1992, the 1<sup>st</sup> Respondent informed that the agreement has been terminated on 20.7.1992 itself and threatened to disconnect the other installation of the Complainant bearing RR N5P370 if the amount was not remitted. As stated at para II(d) the Complainant had to file a case before the Hon. High Court of Karnataka and on its direction the Complainant deposited Rs.50000/- and appealed to the Appellate Authority, the then Chief Engineer, Bangalore Zone, KEB, Bangalore. **At that time, for reconnecting the installation, the Complainant was asked to execute a fresh agreement as directed by the 1<sup>st</sup> Respondent vide his letter dated 25.6.1993.** An appeal was filed on 15.6.1993 before the Appellate Authority, KEB and that has remained unresolved. The Complainant by representation dated 29.4.2006 requested the Executive Engineer, Electrical, Additional North and pleaded to consider his plea for revision of the bills and settlement of the issue with regard to back billing arising out of meter testing on 22.8.1986. On failure from the Respondent Licensee to revise the bill, the Complainant filed a complaint with the 2<sup>nd</sup> Respondent and the 2<sup>nd</sup> Respondent passed an order as stated at para II(e) above. The Complainant has put forth lot of efforts to solve the dispute but on the other hand, **the Respondent Licensee has failed in solving the grievance of the Complainant from the year 1986 till today, and they cannot claim the inflated amount of fixed charges for six months after termination of agreement etc. The agreement seems to have been terminated twice and no proper ledger records are available as agreed by the Respondent Licensee himself.**

d) In the reply No.7835 dated 13.2.2009 submitted before the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent has shown the arrears as follows:

Arrears as on July 198... as per the enclosed ledger extract	Rs.1,48,467.20
Fixed charges from Aug 88 to Sep 90	Rs. 14,040.00
Fixed charges from Oct 90 to Aug 92	Rs. 16,560.00
Interest from 5/88 to 8/92 on arrears of Rs.1,48,467.00(148467.00X2%X52M:	Rs.1,54,404.68

Audit short claims	Rs. 5,874.00
Int for 2 Months for Rs.146847.00 for 5/88&6/88	
Total	Rs.3,39,345.88

e) In the same reply letter, on page 3, he has scaled down the amount by revising the amount payable as follows:

Opening balance as on Dec 1986:	Rs. 42,723.70
Fixed charges from Jan 87 to 8/92: Rs.640.00 X 68 M	Rs. 36,720.00
87-12M 88-12M 89-12M Interest on Rs.42723-70x2%x68M	Rs. 58,103.00
90-12M 91-12M 92-8M	
Total	Rs.1,37,546.70

He states in the same letter that "Further the ledgers for the period of disputed claim are not available for verification"

**There is no consistency in the calculations shown and the figures are inflated. There is definitely a failure on the part of the Respondent Licensee in crystallizing the correct amount to be paid as alleged by the Complainant and hence it is held that he is not liable to pay the inflated and ad hoc amount claimed.**

**XI. Issue 5: The decision has to be in the negative as the Complainant is not eligible for any refund but has to pay the balance interest amount of Rs.8026/- (Rupees Eight thousand and twenty six) only as detailed below:**

The calculations of arrears of fixed charges and interest etc. are different in the 2<sup>nd</sup> page of the reply letter No.N4/AEE/AAO/SA/4445 dated 9.11.2009 addressed to this Authority. Based on the details furnished, the balance interest amount payable by the Complainant is worked out as follows:

1) Arrears as on Nov 1986	13393.40
2) Fixed charges	
a) from 12/86 to 7/88(540x20)	10800.00
b) from 8/88 to 9/90 (540x26 months)	14040.00
c) from 10/90 to 9/92 (720x23 months)	16560.00

3)	Total principal amount (1+2)	54793.40
4)	The consumer has paid vide Rt.No.2799 dt.14.6.93 as per Hon.High Court's Order	50000.00
5)	Balance of arrears (3-4)	4793.40
6.	Security deposit held (Rs.2392+Rs.8408) as on 03.09.1981 as per letter No.N4/AEE/AAO/SA/4852 dated 26.11.2009	10800.00
7.	The agreement has been terminated 1 <sup>st</sup> time on 20.7.92. If the arrears were adjusted against the security deposit There would be minus balance (6-5)	- 6006.60
<b>This was not done while terminating the agreement</b>		
<b>8. The reconnection was made on 28.7.1993.</b>		
9.	There are no ledger details from May 1992 to Dec 1995	
10.	The arrears is shown as zero during December 1996 apart from the disputed amount of Rs.327028.	
11.	During December 1997, a minus balance is shown	- 605.00
12.	No Details are shown during January 98 & February 98	
13.	During March 1998 including the fixed charges for Jan 98, Feb 98 & March 98 and the consumption charges and adjusting minus balance of Rs.605, the arrears is shown as :	18580.00
14.	The amount to be paid by the Complainant as on March 1998 would be (13-7).	12573.40
15.	The balance Security Deposit paid from 3.10.1997 to 13.11.97 as per letter cited at 6 above.	23030.00
16.	After adjusting the Security deposit as on March 98 there is a minus balance (15-14)	-10456.60
17.	An interest on Rs.13393.40 from 12/86 to 8/92 13393.40 x 2% x 69 months is stated to be due	18483.00
18.	Balance interest payable (17-16)	<b>8026.40</b>

**Say Rs.8026/- (Rupees Eight Thousand & twenty six) only**

**The Complainant is not entitled for any refund but has to pay the balance interest as calculated above.**

**Having regard to the aforesaid facts and circumstances, the appeal complaint stands ordered as follows:**

**XII**

**O R D E R**

1. It is held that the amount of arrears claimed is inflated and ad hoc and there is no balance principal amount to be paid to the 1<sup>st</sup> Respondent by the Complainant.
2. The Complainant is not entitled for any refund but instead he has to pay the balance interest of Rs.8026/- (Rupees Eight thousand and twenty six) only to the 1<sup>st</sup> Respondent within 30 days from the date of receipt of this order.

(S.D.Ukkali)  
Ombudsman

TO:

1. Shri Deepak Mehta, Director, Ashish Metal Limited, A-2, 2<sup>nd</sup> Stage, Peenya Industrial Estate, Peenya, Bangalore-560058
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer(Ele), N-4 Sub Division, 488, Brindavana 14<sup>th</sup> Cross, Peenya 2<sup>nd</sup> Stage, Bangalore-560058
4. The Managing Director, BESCO Corporate Office, K.R.Circle, Bangalore.
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. OCA



