

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

Present: S.D.Ukkali

Ombudsman

Case No.OMB/B/G-53/09/6939

Dated 10.08.2009

Smt.Banukrishnamurthy Dixit,  
320, Dixit House, Dixit Street,  
KB Extension, C.T.S.-357,  
**DAVANGERE-577002**  
(Represented by Sri Sanjay K.Dixit,  
Advocate)

.. Complainant

**Vs**

1. Bangalore Electricity Supply Company Ltd.,  
represented by its  
Asst.Executive Engineer (Ele),  
CSD-1, BESCO,  
Ambedkar Circle, Hadadi Road,  
**DAVANGERE-577002**

2. The Consumer Grievance Redressal Forum,  
BESCO, 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 Sanjay K.Dixit, Advocate, Davangere under provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 23.01.2009 passed by the Consumer Grievance Redressal Forum (CGRF for short), Bangalore Electricity Supply Company (BESCO for short), Bangalore in file No.CGFR/35/2008/2796.

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

The Complainant is the wife of Late Shri Krishnamurthy S.Dixit, S/o Late Shri Sripad Dixit residing at Davangere. An AEH connection came to be extended to the residence of the late Shri Sripad Dixit (father-in-law of the Complainant) situated at

320, Dixit House, Dixit Street, K.B.Extension, City Survey No.357, Davangere-577002 assigning RR No.AEH 279.

The Complainant's elder Son, Shri Sanjay K.Dixit, the Advocate representing her in this case, sought for information under RTI Act 2005 from BESCO authorities, Davangere on 25.3.2008 and received information by a letter No.2539-40 dated 08.07.2008 from the 1<sup>st</sup> Respondent. It was found that in the records of RR No.AEH 279 the name of Sri Hanumantappa, S/o Doddaramajja of Gopnalla Gramah appeared by changing the name of the registered consumer. This name remained in the records continuously from 11.08.1981 until 11.08.2008. During this period, the bills, receipts, relevant records and supporting documents retained by the BESCO authority were alleged to be fabricated. It is further alleged that this person, Sri Hanumantappa, S/o Doddaramajja of Gopnalla Gramah was found to be a fictitious person and the change of name was a deliberate act by the BESCO authorities, Davangere.

The Complainant further claims that as per Section 33 explanation I under Indian Easement Act 1882, the BESCO authorities are liable to compensate for 28 years of substantial damage sustained by the Complainant.

**III.** The learned Counsel for the Complainant has produced various documents including copies of RTI application and other documents and has quoted grounds and references where alleged violations were made and has sought for redressal of the grievances of the Complainant.

**IV.** The Complainant has sought directions to the 1<sup>st</sup> Respondent to:

- i) Pay the relief of Rs.2 Lakhs (Rupee Two Lakhs) being the amount as compensation for substantial damages sustained by her for severe 28 years (twenty eight years) disturbance of easement u/s 33 of explanation I under Indian Easement Act 1882.***
- ii) Correct the R.R.Number AEH 279, Consumer name as Sripad S.Dixit instead of Sripala Dixitha.***

***iii) Change the name of registered consumer of RR No.AEH 279 to Smt.Banu Krishnamurthy Dixit, the Complainant who is in lawful possession of the said house and ancestral property.***

## **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 23.1.2009 by the 2<sup>nd</sup> Respondent and the appeal complaint is filed on 18.3.2009. This appeal as per the provisions stated above is maintainable.

**VI.** Copy of the complaint and other documents were made available to the 1<sup>st</sup> Respondent who, in turn, furnished parawise comments vide letter No. P&EA(«):1J,ir-1:zÁ:71-73 3<sup>rd</sup> April 2009.

Both the parties were summoned on 22.05.2009 and were informed 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 Complainant and requested them to try for a conciliation to arrive at settlement by agreement. Since they were not keen on settlement, they were heard and their statement were recorded. Subsequently, one more opportunity was extended by addressing letter No.OMB/B/G-53/09/6777 dated 07.07.2009 giving them 10 days time for a settlement, if possible.

The Counsel for the Complainant replied on 10.07.09 requesting to pass the order by adhering to principles of natural justice, fair play of the Constitution of India and the 1<sup>st</sup> Respondent by a letter dated 16<sup>th</sup> July 2009 clarified that the request of the Complainant for change of name of the registered consumer of this RR No.AEH 279 in her name has been carried out. He also made it clear that the Counsel for the Complainant expressed unwillingness to settle the matter by mutual agreement.

The 1<sup>st</sup> Respondent further stated that the installation bearing R.R.NO.AEH 279 was serviced on 31.12.69 in the name of Sri Sripad Dixit with a sanctioned load of 2.8 kW. On 17.7.1981, Sri Hanumantappa, S/o Doddaramajja of Gopanal Grama had requested his office to transfer the installation bearing R.R. No.AEH 279 in his name by producing the sale deed copy as proof for having purchased the property and the installation was transferred to his name. This was later found to be a mistake on the part of the BESCO, when the learned Counsel for the Complainant filed for information under RTI Act and obtained the details. The RTI ordered for the restoration of the original name of the Owner of this installation.

He states that it has not affected any original documents maintained in his office. The Complainant is residing in her father in law's house. During this period, there was no change in the Ownership of the premises. In no way, the Complainant had incurred any financial loss nor any damages arising out of actions of BESCO. Hence the relief of Rs.2.00 lakhs as compensation claimed by the Complainant is not justifiable and the request be rejected.

The Counsel for the Complainant reiterated the points raised by him in his Complaint and stated that BESCO authorities of Davangere had damaged his clients reputation in the society, curbed Consumer's morale and diminished the value of said scheduled property and prayed to grant a relief of Rs.2 Lakhs being the amount for the damages caused to his client for 28 years, as per Section 33 of Explanation I under Indian Easement Act, 1882.

The 2<sup>nd</sup> Respondent passed orders that the request of the Complainant does not come under their purview and disposed off the complaint.

## **VII. The Analysis and Findings:**

a) There was a negligence on the part of the BESCO staff of Davangere in effecting the change of name of the registered consumer of RR No.AEH 279 in the records as Sri Hanumantappa without verifying the records properly.

b) Soon after, the mistake was brought to the notice of the 1<sup>st</sup> Respondent and the directions were issued by the State Information Commissioner by an order dated 9.9.2008, the 1<sup>st</sup> Respondent restored the earlier name in the records of AEH 279 and there was a slight mistake in spelling the name as Sripal instead of Sripada, that also was set right and subsequently the Complainant's name is now entered in all the records of R.R.No.AEH 279, thereby the two of her grievances as prayed mentioned at para IV at serial Nos.2 and 3 above have been settled.

c) Aa regards the prayer for relief of Rs.2.00 lakhs by way of compensation sought for substantial damage sustained for disturbance of easement under Explanation I of Section 33 of **"The Indian Easements Act, 1882"**, the following is the analysis and the Order.

Section 33 reads thus:

***"The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto."***

The CGRF and the Ombudsman are constituted as per the provisions of the KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 and they discharge their duties as per these Regulations. Under the provisions of these Regulations, neither the CGRF nor the Ombudsman are the authorities to entertain such suit for awarding compensation for the disturbance of easement.

The view of the 2<sup>nd</sup> Respondent that ***"The Forum is of the view that the relief of Rs.2 lakhs claimed by the Complainant for the substantial damage caused to her will not come under the purview of this Forum"*** is in order.

### **ORDER**

Having regard to the facts and the circumstances stated above, the relief of Rs.2.00 lakhs as compensation sought by the Complainant **is not awarded.**

(S.D.Ukkali)  
Ombudsman

1. Smt.Banukrishnamurthy Dixit, 320, Dixit House, Dixit Street, KB Extension, C.T.S-357 Davangere-577002.
2. The Asst. Executive Engineer (Ele), CSD-1, BESCOM, Ambedkar Circle, Hadadi Road, Davangere-577002/
3. The Chairman, CGRF, BESCOM, Central Stores Premises, near ESI Hospital Rajajinaga, Bangalore-560010
4. The Managing Director, BESCOM, K.R.Circle, Bangalore
5. PS to Hon.Chairman/PS to Hon.Member(H)/PS to Hon.Member(S)/ PS to Secretary / Director(Tariff)/ Consultant (Legal) / OCA







