

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-96/2010/10225
Dated 26.05.2011

Between

M/s. Bombay Saw Mills,
Kotekar
Mangalore Taluk,
Dakshina Kannada District
(Represented by its Legal Counsel,
Sri Sarat Chandra Bijai)

.. **Complainant**

Vs

1. Mangalore Electricity Supply Company Limited,
Corporate Plaza, Paradigm Plaza,
3rd Floor, A.B.Shetty Circle,
Pandeshwar, Mangalore-575001

2. Assistant Executive Engineer (Ele),
O & M Sub Division,
MESCOM
Ullal, Mangalore Taluk,
Dakshina Kannada District.

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

.. **Respondents**

This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004. This appeal is directed against the order passed by the 3rd Respondent vide No.CGRF/3/10-11 dated 09.11.2010.

This appeal arises out of the order passed by the Consumer Grievance Redressal Forum (in short Forum – 3rd Respondent) Mangalore dated 09.11.2010 in respect of the Appellant's grievance relating to levying of Fixed Charges after the termination of the agreement. The Forum declined to issue directions to MESCOM (Mangalore Electricity Supply Company - hereinafter referred to as the 1st Respondent) to refund the Fixed Charges collected from the Appellant by the 2nd Respondent.

M/s Bombay Saw Mills is an electricity consumer and electric installation bearing R.R No K.T P.R-4 stands in their name. This installation is situated at Kotekar Mangalore (hereinafter referred to as the Appellant).

The Appellant filed this appeal on 09.12.2010. The Appellant in his appeal memo has maintained that the Asst Executive Engineer (Ele) O & M Sub Division, Ullal, Mangalore Taluk, Dakshina Kannada District (hereinafter called as the 2nd Respondent) rejected the claim of the Appellant that he is not liable to pay the Fixed Charges by order dated 07.01.2006 in No So/16/1098 (copy of which is annexed herewith).

Further in the appeal memo, the Appellant has stated that the Appeal, filed by the Appellant dated 31.08.2006 against the said order dated 07.01.2006 of the Respondent 2 by the Memorandum of appeal dated 31.8.2006 (and thereafter followed by the Additional statement dated 29.01.2007 and further Additional statement dated 16.04.2009 in support of the said Memorandum of appeal) was rejected by MESCOM through its letter vide MESCOM/F.A/C.A(R&L)/D.CA(R)/L-4/5002-04 dated 23.09.2009 (Copy of the communication is appended as Annexure "C")

Relief sought

The Appellant, for the foregoing reasons, has sought to declare the complainant as not being liable to pay any Line Minimum charges/Fixed charges in respect of the above said electrical installation for the period from 4.11.1998 to 6.2.2004 and, accordingly, to set aside all the demands made by the K.E.B/MESCOM from 1998 onwards and till date and further direct the Licensee/Respondent No.1 and so also the concerned Authorities including Respondent No 2 to refund all the amounts received from the Complainant by the K.E.B/MESCOM by way of fixed charges and by way of

deposits and Bank Guarantee (made by the Complainant) in pursuance of various orders issued by the Hon'ble High Court along with the interest at the rate of 2% per month from the respective dates on which the said sum had been paid/deposited and further also order to pay a compensation of Rs.5,00,000/- to the Appellant for the inconvenience, hardship caused in the interest of justice.

Grounds for relief.

The Appellant observed that the K.E.B/MESCOM had peremptorily terminated the agreement dtd 28.8.1970, as per the law as it then existed (also as it exists now) as per Regulation 33.07 of the K.E.B/K.P.T.C.L Electricity Supply Regulation 1988 which reads as under:

33.07 "If an installation is under disconnection for non payment of dues for a continuous period of not less than three months, the Board may serve a three months notice to the consumer to get the installation reconnected after payment of dues failing which the power supply agreement shall be deemed to have been duly terminated on the date of expiry of the said notice, without prejudice to the right of the Board to recover forthwith all dues in terms of the agreement and these Regulations."

Hence, upon the service of the said notice dated 05.05.1999 wherein it was specifically stated that the termination would come into effect peremptory upon the expiry of 3 months from the service of said notice, and the K.E.B/MESCOM could not in law contend for any reason whatsoever either that there was no termination of agreement or that the termination had not been given effect to.

The K.E.B/MESCOM had neither withdrawn in writing the termination notice dated 05.05.1999 nor was the termination been kept under suspension. Hence MESCOM/K.E.B cannot claim that despite the termination in accordance with law it has not acted upon the termination for whatsoever reasons including the alleged reason of the pendency of the litigations, etc,

The Appellant Firm is not liable to pay any fixed charges in respect of the installation for the period from 04.11.1998 to 06.02.2004 when there was the termination of the agreement dated 28.08.1970 by MESCOM/K.E.B by the notice/letter

dated 05.05.1999 issued by Respondent No.2 when admittedly there was disconnection of the supply and further more fresh supply was given to the Appellant Firm only upon the Appellant Firm entering into a fresh agreement with MESCOM on 06.02.2004. The fresh agreement had been entered into at the instance of K.E.B/MESCOM and, hence, the 1st Respondent cannot now wriggle out by saying that insistence of such an agreement was only a formality.

The so-called fixed charges is not debited to the account of the Appellant which is evident from the statements of accounts maintained by the MESCOM. The alleged fact of non-dismantling of the installation of the Appellant and the installation being assigned the old R.R.No. cannot negate termination of agreement dated 05.05.1999 which comes into effect immediately upon the expiry of 3 months notice period as per regulation 33.07 of the said regulation of 1988. Once notice has been given, unless officially withdrawn, the legal consequences flow in as much as the termination is peremptorily comes into effect after the expiry of 3 months irrespective of any other alleged facts averred by Respondents.

It is a fact that as per the Termination Notice, agreement will get terminated after the expiry of 3 months and the contention that there was no dismantling of the installation and hence termination is not effected cannot be accepted. Apparently, the said reason advanced by Respondents is an after thought to justify its illegal act in having demanded and collected fixed charges. In this regard, the Respondent's claim that for effecting such dismantling, they had been to the place of installation along with the police and no complaint whatsoever having been filed against the Appellant, is a proof positive that the said allegation is palpable falsehood. The Respondents were not prevented in any manner when they could have dismantled the installation after the termination. In fact, the Authorities had dismantled the installation.

The mere fact that the R.R number assigned after the fresh agreement was the same as the earlier one and on this basis the MESCOM, in the absence of any law, rules or Regulations in the said regard, cannot claim that the latter fresh agreement was in continuation of the earlier agreement and thus obliquely contend that the termination notice was not given effect to. Having entered into a new agreement as demanded by

the KEB/MESCOM, it cannot claim that the new agreement was not in accordance with Rules/Law and this is only an after thought.

The factum of termination in accordance with law as per notice dated 05.05.1999 having been given effect to is very much apparent from the records of KEB/MESCOM i.e the statement of accounts relating to the Complainant wherein after the 3 months period from the date of the notice i.e from May 1999 to January 2004 when no fixed charges are debited, the K.E.B/MESCOM cannot still persist that termination was not given effect to on the basis of certain other alleged insignificant facts like non dismantling of the installation etc. Subsequent to the termination, the consumer is not liable to pay any such charges. Hence the K.E.B/MESCOM's claim is wholly untenable and cannot be countenanced in law. K.E.B/MESCOM on its own has waived the arrears due and the Appellant accepted this under protest.

Commenting on the decision of the C.G.R.F, the Appellant averred that the termination of the agreement as having not been given effect to is misconceived, erroneous and not sustainable in law and facts. Further, C.G.R F Mangalore relying on the E.S.D Code of 2000-01, has maintained that the consumer has to pay for the materials relating to the installation and in the instant case the consumer has not borne such expenditure and the new agreement is only a continuation of the old agreement and the earlier agreement is terminated as misconceived in as much as the said Code had not come into effect vide demand notice dated 05.05.1999.

The Appellant has observed that MESCOM without withdrawing the termination notice has made reconnection on the direction of the Hon'ble High court and as such termination notice will have it's own consequences and termination has come into effect as per the time frame provided in the termination notice and hence not liable to pay the fixed charges and pray that the impugned order be set aside and issue directions for refund of the fixed charges already paid by the Appellant.

The 2nd Respondent has furnished parawise remarks and in his reply, he has denied the claims of the Appellant. The case was taken on the file of the Ombudsman on 09.12.2010, and after several hearings, the case was posted for final hearing on 4th

of May 2011 and, on that day, the Advocate for the Appellant, Shri Sarat Chandra Bijai, and for the Respondent Company, Shri Praveen Joshi, A.E.E (Ele) Ullal Sub Division put in their appearance.

The Advocate for the Appellant argued that MESCOM has levied fixed charges from 24.11.1998 to 06.02.2004 which is not in dispute. But there was a termination of agreement in accordance with the then prevailing law. In the present case, MESCOM did the 1st disconnection on 24-11.1998 as per Karnataka Electric Board Electricity Supply Regulation 1988 framed under the Indian Electricity Act 1910, (b) Karnataka Electricity Reforms Act 1999, (c) Karnataka Electricity Manual 2001 and (d) Conditions of Supply of Electricity in Karnataka Clause 33, fixed charges can be collected until the power supply agreement is terminated irrespective of whether the installation is in service or under disconnection. In the instant case MESCOM has demanded fixed charges for the period of disconnection and for the post termination period. Line minimum charges as per the definition " Shall mean the monthly charges payable by the consumers calculated at the rate of 1.5% per month on the entire cost of arranging power supply to the consumer rounded off to the nearest Rupee excluding the cost of- a) transformer and associated structure and switch gear and (b) the portion of the service line chargeable to the consumer.

Further the Advocate held that MESCOM earlier contended that Appellant had to pay fixed charges even if agreement was terminated and in the present case though termination was done, termination was not given effect to and hence the consumer is liable to pay fixed charges for the said period. As per the books of accounts, MESCOM has booked demand up to 1999. This is annexed as Annexure 'R' at page 108. Since the MESCOM has terminated the agreement in the month of April 1999, demand is not booked for subsequent months and the same is evidenced from page 72 of Annexure "K". As per the order of the Hon'ble High Court, the Appellant has paid to the MESCOM and subsequently fresh agreement was entered into on 05.02.2004. The Appellant paid Rs 40,000+ Rs 2.50 lakhs +Bank Guarantee and this is not in dispute. MESCOM records clearly show that the termination was given effect to from 05.05.1999. and hence the Appellant claimed arrears from 05.08.1999 to 06.02.2004.

Continuing his argument, the Advocate for the Appellant maintained that the MESCOM before the Hon'ble High Court admitted having given effect to the termination, but subsequently, the MESCOM changed its stand before the Consumer Grievance Redressal Forum and made a "U" turn and contended that though termination notice had been issued, it was not given effect to and hence the Appellant had to pay the arrears by way of fixed charges. Now before the Ombudsman, MESCOM contends that because of pendency of this case before various Courts, it could not give effect to the termination. The contention of MESCOM that the Appellant has obstructed termination is not correct and there is no connection between termination and installation and, as such, it is not true that the Appellant has come in the way of dismantling the installation. The Advocate for the Appellant submitted that the stand of MESCOM that in the fresh agreement old R.R No is being continued and no fresh deposit is collected goes to show that agreement is continued, is untenable.

The Advocate for the Appellant maintained that 50% interest waiver extended to the Appellant does not mean that he has agreed to pay the arrears i.e Fixed charges. Law Of Estoppel prevents MESCOM from making such claims.

For the foregoing reasons, the Advocate for the Appellant prayed that the Appellate Authority should direct the MESCOM to refund fixed charges to the Appellant as such charges cannot be collected as per KERC Regulations.

On behalf of Respondent Company, the Asst Executive Engineer (Ele) Ullal Sub-Division, Dakshina Kannada appeared and advanced his arguments. He reiterated MESCOM's submission made in his parawise remarks. He argued that under clause 32.07 of Conditions of Supply of Electricity in Karnataka "If an installation is under disconnection for non-payment of dues for a continuous period of not less than three months, the Licensee shall serve a three months' notice to the consumer to get the installation reconnected after payment of dues failing which the power supply agreement shall be deemed to have been duly terminated on the date of expiry of the said notice, without prejudice to the right of the Licensee to recover forthwith all dues in terms of the agreement and these conditions." In the present case 1st disconnection was done on 24.11 1998. After the disconnection, the Appellant in his letter dated 19.01.2000 informed MESCOM that he was issuing a cheque for Rs 4491/ vide No

396984 drawn on State Bank of Patiala, Mangalore and MESCOM should grant re-connection to his installation immediately. In reply to this, MESCOM issued a Notice on 5.5.1999 stating that the installation of the Appellant was in disconnection for more than 5 months from 24.11 1998 and there was an arrears of Rs.27070/- outstanding and Rs.16005/- being the Monthly Minimum charges. The Appellant was further informed in the Notice that the agreement entered into by the Appellant stood terminated after the expiry of 3 months from the date of issue of that notice. After the issue of this notice MESCOM filed a caveat before the Civil Court and also forwarded a copy to the Appellant. Later on 28.6.1999, through its letter, MESCOM clarified that the disconnection was done not for non-payment of Rs.9365/- and that disconnection was done for non-payment of Rs4491/- as the Appellant failed to pay the amount. Further, MESCOM attempted to dismantle the installation and because of hurdles created by the Appellant, it could not dismantle the supply lines. Again, in response to the letter of the Appellant, MESCOM informed that the installation would be reconnected only after the payment of Rs,96,110/-.

Clarifying on the fresh agreement, MESCOM Representative argued that because in the existing agreement signature of the Appellant was not tallying, fresh agreement was sought and it was not because of purported termination of agreement. He further submitted that on the demand notice issued by MESCOM for payment of Rs. 96,110/-, the Appellant approached the Hon'ble High Court vide W.P No24620/2001. The Hon'ble High Court directed MESCOM to supply power subject to Appellant paying Rs. 40,000/-. The MESCOM on 05.02.2004 through a letter demanded payment of Rs 6,78,850/- as fixed charges. After depositing Rs 40,000/-, the Appellant again approached the Hon'ble High Court vide W.P.No17329/2004 (GM-KEB) seeking relief. The Hon'ble High Court this time directed the Appellant to deposit Rs 3,50,000/-. This order was challenged before the Division Bench of the Hon'ble High Court and the Division Bench directed the Appellant to pay Rs 1,50,000/- by way of Demand draft and Rs 2,00,000/- by way of Bank Guarantee. However, MESCOM insisted on payment of fixed charges i.e Rs 1,93,259/-. Hence, the Appellant again approached the Hon'ble High Court challenging the demand issued by MESCOM for Rs 2,69,070/- vide W.P No 10971/2007. Later the Appellant sought permission of the Hon'ble High Court to withdraw the Writ Petition and the Hon'ble High court permitted the Appellant to withdraw the Writ Petition with liberty to challenge the same in the appeal filed by the Appellant. The Appellant after

withdrawing the Writ Petition again approached MESCOM for concession. However, MESCOM insisted on payment of Rs.269070/- as 'Fixed charges'. Unhappy with this, the Appellant challenged the decision in the Hon'ble High Court vide Writ Petition No. 30618/2009 and this Writ Petition was dismissed reserving liberty to the Appellant to file the complaint before the Consumer Grievances Redressal Forum, MESCOM, Mangalore. The Appellant approached the 3rd Respondent and the 3rd Respondent rejected the complaint and, hence, the Appellant has filed this appeal before the Electricity Ombudsman.

The Assistant Executive Engineer, Ullal Sub Division prayed to uphold the impugned order passed by the CGRF, MESCOM, Mangalore.

Both the parties were informed vide letter No.OMB/M/G-96/2010/10146 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.

In the light of the above contentions, we have to analyse whether the decision of the Consumers Grievances Redressal Forum is tenable in the eyes of law.

From the above, two important legal issues arise for our consideration viz., 1) The implication of termination of the agreement and 2) Validity of the fresh agreement.

Under Clause 32.07 of Conditions of Supply Of Electricity In Karnataka "If an installation is under disconnection for non payment of dues for a continuous period of not less than three months, the Licensee shall serve a three months' notice to the consumer to get the installation reconnected after payment of dues failing which the power supply agreement shall be deemed to have been duly terminated on the date of expiry of the said notice, without prejudice to the right of the Licensee to recover forthwith all dues in terms of the Agreement."

Under Clause 32.08 "soon after termination of the supply agreement the supply lines shall be dismantled by the Licensee and action initiated for recovery of dues"

If we examine the issues in the light of the above, we see evidence pointing to issue of termination notice by MESCOM vide No so/UI/P1/6-88/5.5.99. As per the above regulation, termination has a deemed effect after the expiry of three months from the date of issue of that notice. It is also a fact that the Appellant has not paid the dues. Since the Appellant has failed to pay the dues, termination should have a deemed effect. Soon after the termination of the supply agreement Under clause 32.08 the Licensee shall dismantle the supply lines. Termination has two stages. In the first stage, termination notice has to be issued and also if the consumer failed to pay the dues, power supply agreement will get terminated and afterwards Licensee has to dismantle the supply lines. Only when two stages are followed termination will have a deemed effect. Clauses 32.07 and 32.08 should be read together. These two clauses run sequentially and will have a combined effect. As far as the second component is concerned, it is evidenced from the letter produced by the 1st Respondent that the Appellant has admitted to have obstructed dismantling of the supply lines on 21-10-2000 on the ground of pendency of this case in various Courts. Again the Appellant in his letter dated 19.01.2000 addressed to the Asst Executive Engineer, Ullal Sub Division informed regarding furnishing of cheque for Rs.4491/- and requesting for grant of reconnection to the installation immediately

From the above cited letter, it is clear that the Appellant has not allowed the MESCOM Authorities to dismantle the supply lines and also that he has not accepted the termination of agreement as he sought reconnection to his installation. Subsequently, the Appellant appeared to have approached the Hon'ble High Court seeking intervention in the matter, but appeared to have not sought for fresh agreement and appeared to have sought for reconnection to his installation. The Honble High Court appeared to have not given directions to MESCOM to execute fresh agreement with the Appellant. From the various High Court orders, it can be seen that nowhere the Appellant has sought direction for fresh agreement and, on the other hand, we can see Court issuing direction to the Respondents to supply power on payment of certain amounts by the Appellant. On all these occasions, if the stand of the Appellant was that the termination had come into effect, then in that case he would have

sought for the fresh agreement in the Hon'ble Court, but it clearly appears that there is not even a whisper about fresh agreement. He always appeared to have sought direction for reconnection and the Respondents always insisting on payment of arrears, including Fixed Charges. The Hon'ble Courts also appeared to have issued direction to MESCOM to supply power subject to Appellant paying certain amounts, which included the Fixed Charges.

From the above discussion, it emerges that termination process has not been allowed to be completed by the Appellant as he has obstructed dismantling of supply lines. However, the Appellant, through following judicial processes, was able to get relief by way of reconnection.

As for as second issue is concerned, it is seen that some kind of agreement appears to have been entered into between the parties relating to supply of power. Two letters issued by the MESCOM marked as 'C' and 'D' disclose that the Appellant has sought for reconnection and in response to this MESCOM appeared to have called for the following documents viz., a) Fresh agreement on a stamped paper of Rs 50/- (b) Application for reconnection (c) completion report, particularly in letter dated 05.02 2004 MESCOM states that the Appellant requested for reconnection to installation No. KPTR 4 and accordingly sought application for reconnection from the Appellant.

There is a separate procedure for entering into fresh agreement under clause 4.01, 4.02, 4.03 of Conditions of supply of Electricity in Karnataka and, in the present case, such a procedure appear to have not been followed. In all fresh agreements, new R.R No. has to be given and, in the purported agreement, no new R R No appears to have been given. From this, it is clear that the Appellant has not sought for fresh agreement and in that case, MESCOM would have given a new R.R No. and this goes to show that the purported agreement is entered into for reconnection.

For the foregoing reasons, the contentions of the Advocate for the Appellant that for the period of disconnection Fixed Charges cannot be levied cannot be accepted and this Authority does not see any reason to interfere with the decision of MESCOM vide No MESCOM /C.G.R.F/03/10-11 dated 09.11.2010 and, hence, proceed to pass the following orders:

Order

The impugned order No.MESCOM/CGRF/03/10-11 dated 09.11.2010 passed by the 3rd Respondent is upheld and consequently the appeal filed by the Appellant fails.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Bombay Saw Mills, Kotekar, Mangalore Taluk, Dakshina Kannada District.
2. Assistant Executive Engineer, O & M Sub Division, MESCOM, Ullal, Mangalore Taluk,
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

