



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

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/M/G-144/2013/177

Dated 18.03.2013

M/s.Coorg and Mysore Coffee Company Limited,
 Chamundi Curing Works,
 P.B.No.32, Market Road,
 CHIKMAGALUR-577101

(Represented by Sri A.R.Seshadri
Advocate, "Ranjini", M.G.Road,
Chikmagalur-577101)

.. Appellants

Vs

1. The Asst. Executive Engineer(EI)
 O & M Sub Division,
 MESCOM,
CHIKMAGALUR

2. The Chairperson,
 Consumer Grievance Redressal Forum,
 MESCOM Corporate Office,
 Paradigm Plaza, A.B.Shetty Circle,
 MANGALORE

.. Respondents

1. This is an appeal under clause 21.2 of the provisions of KERC(Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, MESCOM, Mangalore (herein

after referred to as the 2nd Respondent) vide No. 09.01.2013 in respect of the Appellant's grievance relating to (a) the back billing charges raised by the 1st Respondent for Rs.31,855/- on the ground that three meters which were removed, after switching over from L.T to H.T, had a slow recording by certain percentage, (b) Rs.1,18,045/- being the interest for the delayed period and (c) refusal of the 2nd Respondent to grant any relief in the matter. Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is running a coffee processing establishment called Chamundi Curing works at Chikamagalur. The Appellant was earlier a Low Tension Consumer and installations bearing R.R Nos. R.R.P 319, R.R.P 320 and RRP 1544 were standing in the name of the Appellant and, later, the Appellant imported certain machines from Brazil, and, hence, L.T installations came to be converted into H.T installations. After switching over from L.T to H.T, the existing three installations were disconnected on 09.05.1990 and these meters which were fixed to the installations were also removed in October 1990. These three meters were kept in the custody of the 1st Respondent. Ten months after the disconnection of these meters, on 30.3.91, the Appellant received a notice from the KEB demanding Rs.40,458/- on the grounds of slow recording of three meters previously. This demand was modified to Rs.31,855/- on 14.08.1991. The Appellant was not notified regarding the calibration and no notice was issued and the Appellant was not even aware which meter had been checked by the Division. If the meters were under recording, then the Competent Authority to check the meters was the Electrical Inspector under the Indian Electricity Act, 1910. This dispute arose in 1990 and, as such, the Indian Electricity Act has to be made applicable to the case. According to Section 26(6) of The Indian Electricity Act, if there is any dispute regarding the meter, the matter has to be decided, upon the application of either party, by an Electrical Inspector. This has been reaffirmed by various High Court judgements which are reported in AIR 1988, S.C at page 71 in case of M.P Electricity Board V/S Basanti Bai and, further, in the case of Sarang Steel Fabrication Vs KEB & others, the Division Bench of

Karnataka High court held that in case of slow recording of meter, the KEB has to refer the meter to the Electrical Inspector.

3. The 1st Respondent initially issued a demand for Rs.40,458/- and later for Rs.1,50,000/-. The Appellant is not liable to pay Rs.1,50,000/- as demanded by the KEB as the dispute has not been referred to the Electrical Inspector nor the assessment made on the basis of the Inspector's finding. Hence, prayed this Authority to set aside the impugned order and also to issue directions to the 1st Respondents not to collect Rs.1,50,000/-.

4. The case was taken up for hearing on 6.3.2013 and the Advocate for the Appellant has reiterated the submissions made in the Appeal Memo.

5. The Assistant Executive Engineer (EI) Urban Sub-Division, Chikamagalur argued that on 09.05.1990, three L.T installations belonging to the Appellant were converted into H.T installations. Before converting L.T to HT, KEB should have subjected the meters to testing. During the relevant period, Shimoga & Chikamagalur Districts together had only one L.T Rating Sub-Division. The Appellant had imported certain machines from abroad and had made a request for immediate conversion of installations from L.T to H.T and, based on Appellant's request, the Board took a decision to convert L.T installations into H.T installations without subjecting the meters to test. At the time of switching over to H.T, existing L.T meters were disconnected and removed but the plastic seals were not removed. The meters were in the custody of the Board. On 30.03.1991, L.T Rating Division conducted calibration of the old meters, which were in the custody of the Assistant Executive Engineer, O&M Sub Division and observed that out of 7 meters (old), three meters viz., R.R Nos. (a) P 319, (b) P 320 and (c) P 1544 had a slow recording by 31.04%, 37.30% and 7.06% respectively. On the basis of these reports, three installations were back billed for a period of 6 months from the date of inspection and notice was issued on 14.08.1991 for payment of Rs.31,855/-. The Appellant was given 30 days time to file objection, if any, regarding the demand, but

the Appellant did not file any objections with regard to the back billing and straightaway approached Civil Court and filed a Civil Suit before J.M.F.C, Chikamagalur on 07.01.1992. After hearing the parties, the Court dismissed the Suit. In pursuance of this judgment, KEB issued a revised bill for Rs.74,607/- on 16.04.1997. This amount was not paid and the Appellant, instead, approached District & Sessions Court, Chikkamagalur. The District & Sessions Court, in its order dated 23.7.2007, advised the Appellant to first exhaust the remedies available under the Act. After the dismissal of the Regular Appeal, the Department revised the assessment for Rs.1,50,557/- on 31.08.2007. As advised by the Court, the Appellant filed an appeal before the Superintending Engineer (EI), Mysore, after depositing $\frac{1}{3}$ of the disputed amount and also appeal fee. The Superintending Engineer(EI), after providing opportunity of being heard to the Appellant, passed an order on 05.11.2011 directing the Appellant to pay the amount as advised by the Assistant Executive Engineer (EI) O&M Sub Division. In pursuance of the Superintending Engineer's order, the Department issued a revised demand for Rs.1,71,301/- on 20.11.2012. Even this amount was not paid by the Appellant. Finally, the Appellant filed a complaint before the 2nd Respondent on 10.12.2012 and the 2nd Respondent passed an order holding that by virtue of Superintending Engineer's order, the matter had already reached finality and, hence, the Appellant had to pay the back billing charges.

6. Having regard to the contending positions of the parties, the following issues emerge for our consideration:

a) Whether the 2nd Respondent is right in rejecting the complaint of the Appellant on the ground that this issue had already been dealt by the Superintending Engineer and, hence, matter reached finality?

b) Whether the 2nd Respondent has got jurisdiction to deal with cases relating to back billing under K.E.R.C (CGRF & Ombudsman) Regulations, 2004?

c) If the answer is yes, whether the 2nd Respondent has failed to exercise its jurisdiction and whether this amounts to abdication of its responsibility?

7. In order to answer the above questions, we will have to refer to the Superintending Engineer(EI)'s order dated 05.11.2012 vide No 7/27-12-2011 R.A. The Superintending Engineer's order upholds the back billing charges claimed by the Assistant Executive Engineer (EI) O&M Sub-Division Chikamagalur relating to installation bearing RR No HTP 28 belonging to the Appellant. The appeal relates to back billing. Clause 2(g) of KERC (CGRF & Ombudsman) Regulations, 2004 defines '**complaint**' **"as any grievance made by a consumer with regard to supply of electricity by the Licensee, provided that grievance falling within the purview of any of the following provisions of the Act are excluded from the jurisdiction of the Forum:**

- (1) Unauthorised use of electricity as provided under section 126 of the Act**
- (2) Offences and penalties as provided under section 135 to 139 of the Act**
- (3) Accident in the distribution, supply or use of electricity as provided under section 161 of the Act."**

8. The above definition outlines the jurisdiction of the Consumer Grievance Redressal Forum (CGRF for short) and also defines that CGRF lacks jurisdiction in matters relating to theft of electricity, misuse of electricity, unauthorised increase in load and accident related matters.

9. Clause 44.01 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka defines the jurisdiction of the Appellate Authority which stated that **"Any person aggrieved by a final order made under the Condition 42.07 may within 30 days of the said order, prefer an appeal in such form as specified by the Commission"**

10. Clause 42.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka deals with ***"Provisional Assessment order on account of prejudicial use of power under Clause 42.01, 42.02 & 42.05."***

11. The Superintending Engineer(EI)'s order deals with the appeal filed by the Appellant against the back billing charges raised by the Assistant Executive Engineer(EI), O&M Sub Division. As per Clause 2(g) of KERC (CGRF & Ombudsman Regulations), 2004, back billing issues come under the purview of CGRF. Further, the Superintending Engineer as an Appellate Authority defined under Clause 44.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka gets jurisdiction to deal with appeals filed against the assessment order passed by the Assistant Executive Engineer(EI) under Clause 42.07 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which deals with prejudicial use of power.

12. In the light of the above discussion, it is clear that the Superintending Engineer(EI) has erroneously admitted the appeal of the Appellant which pertains to back billing on which he has no jurisdiction. Back billing issues come under the jurisdiction of CGRF. However, the Superintending Engineer appears to have acted without jurisdiction.

13. C.G.R.F, in its impugned order citing the order passed by the Superintending Engineer(EI), has come to the conclusion that under Section 127(4) of Electricity Act, the order of the Appellate Authority is final and the matter had reached finality, hence, it had rejected the complaint of the Complainant. This view of CGRF is totally wrong and amounts to non-exercising of its jurisdiction under Clause 2(g) of KERC (CGRF & Ombudsman) Regulations 2004 as the back billing issues directly fall under the purview of CGRF. This clearly shows that CGRF has failed to exercise its jurisdiction in the matter.

14. The subject matter requires adjudication by CGRF as subject matter falls under the purview of CGRF and, hence, the case is required to be remanded to CGRF for passing orders assuming jurisdiction under clause 2(g) of KERC (CGRF & Ombudsman) Regulations, 2004 on merits. Hence, the following orders:

ORDER

15. For the foregoing reasons, the impugned orders passed by CGRF, MESCOM vide No. $\text{P.A./U.A.P.E.}/09/12-13$ 09.01.2013 is set aside and the case is remanded to CGRF, MESCOM to pass fresh order on merits without being influenced by the order passed by the Superintending Engineer vide No 7/27-12-2011 R.A and after duly following the procedure.



(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Coorg and Mysore Coffee Co.Ltd., Chamundi Curing Works, P.B.No.32, Market Road, Chikmagalur-577101 (represented by Sri A.R.Seshadri, Advocate, "Ranjani", M.G.Road, Chikmagalur-577101.
2. Assistant Executive Engineer, O & M Sub Division, MESCOM, Chikmagalur.
3. Consumer Grievance Redressal Forum, MESCOM Corporate Office, Paradigm Plaza, A.B.Shetty Circle, Mangalore.
4. Managing Directors of ESCOMs.
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