

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

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

**Case No.OMB/B/G-73/10/8238
Dated 18.05.2010**

Shri G.D.Dinesh,
No.K.432, 1st Main, 2nd Cross,
Nagavara Ring Road,
BANGALORE
(Represented by Sri M.A.Dalvi,
Legal Counsel)

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Complainant

Vs

1. Bangalore Electricity Supply Company (BESCOM)
Represented by its
Asst.Executive Engineer(Ele)
E-8 Sub Division, BESCOM
1st Extension, Kalyana Nagar,
BANGALORE-560043

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

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Respondents

I. This is a representation filed by the above named Complainant under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 22.12.2009 passed by the 2nd Respondent in its file No.CGRF/30/2009/568-573.

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

1. The Complainant has availed electricity connections bearing RR Nos.8EEH31292, 8EDLG 43335, 8EDLG 43334, 8EDLG 43332, 8EDLG 43333 and 8EDLG 31291 for domestic purpose located in tenement having ground and two floors. **The Complainant also resides in the ground floor.** The Complainant has alleged that the Vigilance staff of the Respondent have carried out an inspection on 5.3.2009 in the absence of the Complainant or any of his representative and have generated a report and sent to the 1st Respondent mentioning at Serial No.7 as 'pg'. He, in turn, back billed the installations by way of a demand notice dated 16.04.2009. Further, it is alleged that these notices were not served upon the Complainant and came to know only when the Respondent Licensee included these claims in the regular monthly bills for the month of July 2009 and that the sub division when approached provided copies of the demand notices to the Complainant. **In the demand notice, it is stated that the installations are back billed under 42.01(iii) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka (COS) which refers to excess load and there was no case of any excess load and later the complainant came to know that the back bill is claimed for misuse of electricity.**

2. The Complainant filed his objections to the back billing on 29.07.2009 calling upon the Respondent Licensee to conduct proper inspection of the premises and vehemently denied that the tenements had been used for purposes other than domestic use by producing agreements. There was no response from the Respondent Licensee.

3. Aggrieved by the incorrect and faulty inspection by the Vigilance staff and inaction on the part of the Respondent Licensee, the Complainant filed a petition before the 2nd Respondent for intervention and redressal of his grievance. The 2nd Respondent directed the Respondent to inspect the premises and file his observations. It is alleged by the Complainant that, in the meantime, all the tenants because of back billing and re-

classification vacated the premises and that on the date of his visit although the houses were vacant, the Respondent Licensee did not respond to the objection.

4. It is alleged that the 2nd Respondent, without looking into the pleas made by the Complainant, chose to uphold the back bill and that it has not made its own assessment or evaluation of the evidences putforth by the Complainant. He has further alleged that the order passed by the CGRF suffers with non evaluation of evidence, proper reading of the provisions of law and legal infirmities. **Aggrieved by this order, the Complainant has filed this appeal complaint before this Authority praying for the following:**

III. PRAYER

1. To set aside the order of the CGRF.
2. To refund the back billing already paid against each RR No.
3. To declare the premises is not a P.G.Accommodation.
4. To declare the RR Nos. 8EEH31292, 8EDLG 43335, 8EDLG 43334, 8EDLG 43332, 8EDLG 43333 and 8EDLG 31291 are domestic installations.

IV. SETTLEMENT BY AGREEMENT

Both the parties were informed to explore the possibilities of settlement by conciliation and mediation by this office letter No.OMB/B/G-73/2010/7828 dated 18.02.2010. An hearing was fixed on 05.04.2010 and the official of the Licesnee requested for adjournment due to some problem of transfer etc. The parties were heard on 6.5.2010 and 13.05.2010. During the hearing also, efforts were made to reach an agreement by conciliation and mediation. However, no accord could be reached and, therefore, it was decided to pass an award after hearing.

V. Discussions and Analysis:

A. Contention of the 1st Respondent:

The 1st Respondent submits that:

1. The installations bearing RR Nos.8EEH31292, 8EEH31291, 3EDLG43332, 8EDLG43333, 8EDLG43334 and 8EDLG 43335 were serviced on 1.2.2008 for domestic purpose.
2. The installations were inspected by the Vigilance staff on 5.3.2009 and reported that the energy was being used for commercial purposes (P.G.Accommodation). Hence the installations were back billed for six months at commercial rate.
3. Demand notices were sent by letter Nos. 335, 344, 351, 349, 350 dated 16.4.2009. On the request of the consumer, again demand notice photocopies were issued.

B. It is relevant to note that the 2nd Respondent, not satisfied with the inspection by Vigilance authorities, BESCO, Bangalore has directed for re-inspection by the 1st Respondent. He visited and inspected the premises and the following are his conclusions:

1. During his visit to the premises, the 1st Respondent found that the ground floor was having 2 portions and the front portion bearing RR No.8EEH 31292 was being used for residential purpose. The back portion with RR No.8EDLG 43335 was being used for PG hostel. He seems to have ascertained from 2-3 persons that they were staying there on rental basis and paying the rent individually, but failed to produce any proof or receipts.
2. The 1st floor of the building has 2 portions, the front and rear. The front portion with RR No.8EDLG 43334 was having kitchen, one room and hall and all were provided with partitions and beds. At the time of his visit, they were vacant. **Since there were partitions with many beds, he concluded that it was also rented out for PG accommodation.** The rear portion with RR NO.8EDLG 43332 was having one dining table, one TV kitchen with many chairs and sofa set. According to the 1st Respondent, this was being used for common purpose like cooking and general recreation for the people staying on PG accommodation.

3. The 2nd floor has only front portion with RR No.8EDLG 43333 and was found to be similar to the front portion of the 1st floor and rooms were vacant. There is one more RR No.8EEH 31291 which is used for lifting the water for the entire building. All the meters are situated in the ground floor.
4. Based on his conclusions **without any proof**, he gave a report to the CGRF that except the front portion of the ground floor building, all other installations were being used for PG accommodation based on the partitions made in the building and also alleged board display in front of the building. **He has not taken any photos of this accommodation or the board displayed there.** He has also not conducted any mahazar and has not received any mahazar details from the Vigilance authorities.
5. He further contends that for all these connections, tariff LT-2(a) was made applicable initially. **Under this tariff schedule, if a portion of the house is used by the occupant for PG also, it is permitted.** But here LT-3 tariff is made applicable because the entire portion of the back portion of the 1st floor, entire front portion, entire back portion and 2nd floor front portion is used for PG accommodation.

A report was submitted to the 2nd Respondent by the 1st Respondent and after hearing the plea of both the parties, the 2nd respondent has passed an order upholding the decision of the 1st Respondent.

He contends that the order passed by the 2nd Respondent is correct and prayed to dismiss the complaint.

C. Per contra, the counter argument of the Complainant is that

1. The Vigilance authorities have neither conducted mahazar nor the inspection is witnessed by any independent witness.

2. In remarks column, there is only mention as PG and not supported by any evidence.
3. The 1st Respondent issued demand notices for back billing without applying its mind.
4. On a direction by the 2nd Respondent, the 1st Respondent conducted re-inspection of all the portions which were vacated by the tenants. Even then, he has reported that the premises was used for P.G.Accommodation without any proof.
5. The tenements had been rented out for domestic purpose under valid agreements.

VI. Findings:

A.

1. In the light of the 1st Respondent's contentions, it is necessary to discuss the provisions of Tariff Order 2005 and compare with Tariff Order 2009.

The provisions of the applicable tariff order are as detailed below for LT-2(a) and LT-3 categories.

2. LT-2(a)

As per Tariff Order 2005, which was prevalent on the day of inspection:

"Applicable to lighting/combined lighting, heating and motive power installations of residential houses and also to such houses where a portion is used by the occupant for (a) Handloom weaving (b) Silk rearing and reeling and artisans using motors up to 200 watts (c) Consultancy in (i) Engineering (ii) Architecture (iii) Medicine (iv) Astrology (v) Legal matters (vi) income tax (vii) Chartered Accountants (d) Job typing (e) Tailoring (f) Post Office (g) Gold smithy.

(h) Chawki rearing (i) **Paying guests** (j) Personal Computers (k) Dhobis (l) Hand operated printing press (m) Beauty Parlours (n) Water Supply installations, Lift which is independently serviced for bonafide use of residential complex/residence (o) Farm Houses and yard lighting limiting to 120 watts etc. etc.”

3. Lt-3

As per Tariff Order 2005, which was prevalent on the day of inspection:

“Applicable to Commercial Lighting, Heating and Motive Power installations of Nursing Homes, Private Nursing Homes, Private Hospitals, Clinics, Diagnostic Centres, X Ray units, Shops, Stores, Hotels/Restaurants/Boarding and Lodging Homes, bars, Private guest Houses, Mess, Clubs, Kalyan Mantaps etc. etc.”

It is worthwhile to note here that under this tariff, PG accommodation does not find a place at all. Hence, the question of charging these installations under LT-3 does not arise.

4. As per the Tariff Order 2009 effective from 1.12.2009, the following is added to LT-3 tariff.

“ Private Hostels not covered under LT-2(a), Paying guests accommodation provided in an independent / exclusive premises.”

Obviously, the premises was not independent / exclusive premises. Hence, even today, LT-3 is not applicable but LT-2 (a) only is applicable and hence, there is no misuse of electricity.

B. Further, It is not established that the premises was used for PG accommodation on the following important points:

1. The Vigilance staff, BESCO, during their inspection have casually noted as "pg" at serial No.7 of the report against the remarks without establishing that the premises was used for PG accommodation with mahazar or other relevant documents.

2. The 2nd Respondent, not satisfied with the report from the Vigilance, have arranged for re-inspection by the 1st Respondent. The 2nd Respondent ought to have taken decision based on the inspection by Vigilance authorities only. It has erred in directing the 1st Respondent to inspect again and give a report. When a complaint is pending against 1st Respondent himself, how can one expect an impartial report from him. He has simply tried to substantiate the report of Vigilance authorities without proof.

3. The 1st Respondent has given a report that he came to the conclusion that some portion of the building was used for PG accommodation based on some enquiry without proof or mahazar.

"Even if it is presumed that a certain portion is used for PG accommodation in the premises where one portion is used for residential purposes, only tariff LT-2(a) is applicable as per provisions of Tariff Order 2005 which was applicable on the day of inspection. Even as per the provisions of Tariff Order 2009, the LT-3 tariff is not applicable"

Looked from any angle, there is no case of misuse and there is no scope for charging some of these installations under LT-3 tariff. All these installations to be charged under LT-2(a) only.

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

VII.

ORDER

1. The order dated 22.12.2009 in file No.CGRF/30/2009/568-573 passed by the 2nd Respondent is set aside.

2. It is declared that R.R. Nos.8EEH 31292, 8EDLG 43335, 8EDLG 43334, 8EDLG 43332, 8EDLG 43333 and 8EDLG 31291 are domestic installations and they shall be billed as such.
3. The back bill demand notice 335, 344, 351, 349 and 350 dated 16.04.2009 issued under 42.01(iii) of COS are set aside.
4. The back bill amount already paid against each installation be held as surplus paid and adjusted in future bills of each of these installations.

(S.D.Ukkali)
Ombudsman

1. Shri G.D.Dinesh, No.K432, 1st Main, 2nd Cross, Nagavara Ring Road, Bangalore.
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer (Ele), E-8 Sub Division, BESCO, 1st Extension, Kalyananagar, Banaswadi, Bangalore=560043
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.

