



**Before the Electricity Ombudsman
9/2, 6th Floor, Mahalakshmi Chambers,
M.G.Road,
Bangalore-560001
Present: B.R.Jayaramaraje Urs, IAS (Retd.)
Electricity Ombudsman
Case No.OMB/B/G-164/2013/286
Dated 18.09.2013**

Shri Imtiaz Ahmed Siddique,
No.974, 80 Ft Road, S.T.Bed Layout,
Koramangala 4th Stage,
BANGALORE

.. Appellant

Vs

1. The Asst. Executive Engineer(EI)
O & M S-4 Sub Division,
BESCOM,
Koramangala,
BANGALORE

2. The Chairperson,
Consumer Grievance Redressal Forum,
West Circle Office,
B.E.S.C.O.M.
1st Block, Rajajinagar,
BANGALORE-560010

.. Respondents

1. This is an appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, BESCO, Bangalore (hereinafter referred to as the 2nd Respondent) vide No CGRF/185/2012/2488-93 dated 19.6.2013 in respect of the Appellant's grievance relating to short claims raised by the Assistant Executive Engineer(EI), O & M S-4 Sub-Division, BESCO, Bangalore (hereinafter referred to as the 1st Respondent) against the Appellant for Rs.40,560/. The 2nd Respondent has declined to interfere in the order passed by the 1st Respondent. Aggrieved by the 2nd Respondent's order, the Appellant has submitted his case as under:

2. The Appellant is a registered electricity consumer of BESCO. The installation bearing R.R. No 4SEH 8996 stands in the name of the Appellant. The installation was serviced on 30.03.1993. Initially 3 kW and subsequently 21 kW power was sanctioned. Totally 24 kW power was sanctioned to the installation. Dispute arose when the Appellant surrendered the installation for demolition of his existing old building and reconstruction. This request was made on 06.12.2010. The Appellant was asked to pay Rs.6,246/- which was paid on 06.01.2011. The Appellant paid regular monthly bills up to 25.12.2010 and the Appellant paid the last bill for Rs.6,366/-. Later, in October 2010, the Appellant sought permission for demolition of the building. Following this, the M.T Rating Division conducted de-commissioning test on 06.12.2010. From the date of service of the installation till October 2010, the Appellant received regular monthly bills. At no point of time any arrears has been shown in the bill. Surprisingly, after all these formalities had been observed, the 1st Respondent, by a letter dated 07.02.2011, informed the Appellant that he was due of Rs.40,560/- by way of regular monthly bill. The Appellant filed objections to the 1st Respondent regarding short claims on 26.02.2011. Against this claim, the Appellant filed a Writ Petition before the Hon'ble High court vide W.P No 22958/2012. The Hon'ble High Court, after hearing the writ petition, advised the

Appellant to exhaust the legal remedies available under the law. In pursuance to this direction, the Appellant approached the 2nd Respondent. The 2nd Respondent, although satisfied with regard to the legal position of the matter that it is not enforceable against the consumer, yet chose to dismiss the complaint by its order dated 19.06.2013. The legal position is very clear that arrears under reference cannot be enforced against the consumer by virtue of Clause 29.08 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and also under Clause 4.13 of KERC Electricity Supply Code, 2004. The 1st Respondent has issued bills and, nowhere in the bills, the amount has been shown as arrears. Further, the 1st Respondent, through his letter dated 07.02.2011 and, subsequently on 07.03.2011 made short claims for Rs.40,560/-. As per Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and Electricity Supply Code-2004, BESCO cannot recover any arrears after a period of 2 years from the date when such sum became first due unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied and, hence, the Appellant is not liable to pay the short claims.

3. The 1st respondent's comments were called vide letter No OMB/B/G-164/2013/252 dated 01.08.2013. In his comments, the 1st Respondent, vide letter AEE(E) S4/AAO/SA/1744-45 dated 13.08.2013, submitted that the Appellant applied for surrender of the installation on 23.10.2010 and the installation had been rated by the MT Rating Division on 06.12.2010. The MT Rating Division found the meter functioning properly and recorded the meter reading which showed 37485.02 units. Before preferring the final bill, the entire ledger from December 2003 to October 2010 had been verified and noticed that that there had been a short claim of Rs.40,560/-. The total bill for the said period had been assessed for Rs.3,17,650/- and had been found that against this, a payment of Rs.2,77,090/- had been received and the Appellant still had to pay Rs.40,560/-. This discrepancy had been noticed in October, 2010 while finalising the bill. Immediately, BESCO advised the Appellant to pay the short claims of Rs.40,560/- plus final reading bill amount of Rs.6,246/-

plus three months' Fixed Charges of Rs.2,095/-. The Appellant, so far, had paid only Rs.6,246/- leaving a balance of Rs.2,095/- plus short claims of Rs.40,560/-, totalling to Rs.42,745/-. This amount is yet to be paid by the consumer. The 1st Respondent further clarified in his statement of objections that this was not an arrears but a short claim which had been noticed during the finalisation of the final bill. As per the agreement, the consumer was liable to pay arrears, if any. Hence, prayed this Authority to confirm the order passed by the 2nd Respondent and to dismiss the appeal.

4. The matter was taken up for hearing on 12.09.2013. Both parties advanced and concluded their respective arguments on the same day.

5. Both the Advocate for the Appellant and the 1st Respondent reiterated the submissions made in the appeal memo and statement of objections respectively.

6. Both parties were informed vide letter No.OMB/B/G-164/2013/270 dated 30.08.2013 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 parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

7. Having regard to the contending positions of the parties, the issue that arises for our consideration is:

a) While making the supplemental claims, whether the 1st Respondent has followed the procedure laid down under Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of

Karnataka and whether failure to follow the procedure renders the claim invalid?

8. In order to answer this question, we will have to see whether the 1st Respondent has followed the procedure laid down under Clause 29.03 Of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka which states ***"for preferring the supplemental claims, the licensee shall serve provisional assessment order within 15 days' notice to the consumer to file his objections if any, against the provisional assessment order on account of faulty meter or short claims caused due to erroneous billing and obtain his reply. After considering the objections of the consumer, the Licensee shall issue the final order. The consumer shall be intimated to make the payments within 15days of the intimation of the date of intimation, failing which, the power supply to the installation shall be disconnected and such amount shall be deemed to be arrears of electricity charges. The Licensee shall indicate in the final order, the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations.2004"***. When seen from this back ground, the 1st Respondent appears to have sent two letters dated 07.02.2011 & 07.03.2011 demanding payment for Rs.40,560/- and, in none of these bills/letters, the 1st Respondent appears to have called for the objections from the Appellant, obtained his replies and passed final orders as laid down under Clause 29.03 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. During the hearing, the 1st Respondent admitted that he has not followed the procedure laid down under Clause 29.03 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka before making supplementary claims. Hence, It is proved beyond reasonable doubt that the 1st Respondent has not followed the required procedure before making the supplementary claims and rendered the demand irregular.

9. In the light of the above, the following order is passed:

ORDER

10. For the foregoing reasons, the impugned order passed by the 2nd Respondent is set aside and the short claim made by the 1st Respondent for Rs.40,560/ is quashed. The case is remanded to the 1st Respondent to afford opportunity to the Appellant to file objections, if any, against the provisional Assessment Order on account of short claims caused due to erroneous billing, obtain Appellant's reply, consider the Appellant's reply and pass final orders on merit.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. Shri Imtiaz Ahmed Siddique, No.974, 80 Ft Road, S.T.Bed Layout, Koramangala 4th Stage, Bangalore (Represented by Shri M.A.Delvi, Advocate – Authorised Representative)
2. Consumer Grievance Redressal Forum, West Circle Office, BESCO, 1st Block, Rajajinagar, Bangalore-560010.
3. The Asst.Executive Engineer (Ele), O & M S-4 Sub Division, BESCO, Koramangala, Bangalore.
4. Managing Directors of all 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