

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

Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-47/2008/6018
Dated 13.05.2009

The Chairman,
Institute of Chartered Accountants of India,
Bangalore Branch, ICAI Bhavan,
16, Millers Tank Bed Area,
BANGALORE-560052

.. **Complainant**

Vs

1. The Asst.Exe.Engineer,
E-2 Sub Division, BESCOM,
Queen's Road,
BANGALORE-560052

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

.. **Respondents**

This is an appeal complaint filed by the above mentioned Complainant under the provisions of Karnataka Electricity Regulatory Commission's (KERC) (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the Order dated 30.04.2008 passed in file No.CGRF/2/2008/2741 by the Consumer Grievance Redressal Forum (CGRF), Bangalore Electricity Supply Company (BESCOM), Bangalore partly allowing the Petition, setting aside the back billing charges of Rs.1,40,859/- in the first part and back billing for 6 months in the second part of the Order.

The complainant, aggrieved by the second part of the Order, filed this appeal complaint through his counsel, Sri Shridhar Prabhu. The submissions made by the Complainant in brief are as follows:

- 1) He is the registered consumer of electricity with HT connection bearing RR No.Eh 763 situated at jurisdiction of E2 Sub Division of BESCO in Bangalore.
- 2) The testing staff of the Licensee visited the premises and tested the installation of the Complainant on 16.10.2007 and generated a report.
- 3) The 1st Respondent wrote a letter No.AEE/E2/AAO/SAIII/2057 dated 30.10.2007 stating among other things that CT has been boosted and found R Phase CT failed as per the M.T.Report dated 16.10.2007 and back billed the installation on an average basis for 389 days claiming an amount of R.1,40,859/-.
- 4) The Complainant was asked to pay the back billing charges within 30 days from the date of receipt of the said letter, failing which the installation was liable to be disconnected without further notice.
- 5) The letter of the 1st Respondent did not clearly elucidate as to what was meant by i) CT boosted and R Phase CT failed, (ii) what was the rationale and justification for back billing for 389 days and (iii) what was the percentage error of the meter.
- 6) Bringing out the above points and seeking clarification therein the Complainant wrote a letter dated 16.11.2007 to the 1st Respondent and received a reply by a letter dated 06.12.2007 enclosing the calculation sheet. This calculation sheet did not contain the vital issues that were raised by the Complainant.
- 7) The Complainant sent another representation to the 1st Respondent on 18.01.2008 inviting attention to the relevant provisions contained in the Conditions of Supply of Electricity (COS) of the Distribution Licensees in the State of Karnataka and requested clarification as to why average billing for 14 months

was resorted to instead of not more than six months billing as per provision 27.04 of COS.

8) Without giving clarification, the 1st Respondent sent the bill for Rs.1,91,146/- to be paid for the month of December 2007, which included an amount of Rs.1,40,859/- towards back billing charges.

(9) The Complainant requested the 1st Respondent to allow him to pay only the tariff amount of Rs.35,287.34 for the month of December 2007 in the absence of clarification from the 1st Respondent on the issue of back billing charges.

10) In response to this letter, the 1st Respondent replied on 21.01.2008 requesting the Complainant to refer to para 4.13 of the COS and pay the back billing claimed.

Having regard to the fact that the 1st Respondent did not clarify the above stated issue satisfactorily and there was a threat of disconnection of this installation due to non-payment of the Back billing charges, the Complainant had no other option but to file a complaint on 11.04.2008 before the 2nd Respondent.

On 19.04.2008, the 2nd Respondent directed the 1st Respondent to submit parawise remarks to the complainant's representation. The 1st Respondent might have filed the paraswise comments before the 2nd Respondent but the copy of the same was not made available to the Complainant.

On 22.04.2008, the Complainant filed detailed legal submissions before the 2nd Respondent followed by additional submissions on 28.05.2008.

After the hearing on 30th April 2008, there was no response from the 2nd Respondent for a very long time. However, on 07th November, 2008, after lapse

of about 6 months, the Complainant received a letter from the 2nd Respondent enclosing therein the order dated 30th April, 2008 passing the following orders:

- a) The petition is partly allowed. The back billing of Rs.1,40,869/- preferred by the Respondent for 389 days vide Letter No.AEE/E2/AAO/SAIII/2057 dated 30th October, 2007 is set aside.
- b) The installation shall be back billed for 6 months as per clause 27.3(1) of Conditions of Supply.

Insofar as the 1st part of the Order is concerned setting aside the back billing charges for 389 days, the Complainant is satisfied but not with the 2nd portion of the Order wherein it is ordered that six months back billing is to be paid by the Complainant.

Aggrieved by the 2nd portion of the Order, this appeal complaint is filed before this Authority on the following grounds:

GROUND S URGED FOR APPEAL

- a) Licensee has not complied with the applicable law on the electrical installations namely the Electricity Act, 2003, KERC promulgated conditions of supply and the CEA regulations and the provision contained in the Conditions of Supply (COS) in arriving at and imposing back billing charges.
- b) There is nothing indicating in the Mahazar Report or any other correspondence of the licensee about the meter recording slow; fast and meter not reading.
- c) Licensee has not paid any due regard to the conditions of working and occupancy as mandated in the COS.

- d) Licensee has not indicated whether there is an error if so what is the precise error expressed in terms of the percentage.
- e) Findings of Forum are:
 - i) On a preliminary glance of the report it is observed that it is made behind the back of the consumer without specifying any error component with precision in percentile terms thus denying natural justice and fair opportunity.
 - ii) Mahazar that is not witnessed by any independent witness is bad in law.
 - iii) Non-provision of all the above including the reports, despite clear direction from the CGRF itself goes to prove that there was no error in the meter.
- f) Even after such unequivocal grounds and clear findings the CGRF goes on to levy six months back billing charges without any justification, rhyme or reason.
- g) The CGRF grossly overlooked this aspect that if the meter reading is disputed the Licensee would have referred the matter to third party testing agency.
- h) The above said Complaint of the Petitioner is squarely covered by a number of judgements of the Hon'ble Supreme Court in the case of AIR 1988 SC 71, air 1974 sc 329 and other cases of AIR 1972 MAD 313 and 1992 (1) Crimes 688, 691. None of the cases have been either looked into, leave apart distinguishing them

- i) While on the one hand the Order of the CGRF very rightly sets aside the entire order of the licensee for the entire 389 days of back billing. This order is the consummation of inspection report, meter testing report and all incidental findings and communications. Once this order in entirety is set aside, on the ground of illegality, none of the reports records survive for any consideration. In order to make a back billing, a Mahazar, an inspection report, meter testing report, third party validation if the records are disputed by the licensee of the consumer are to be in place legally. As a consummation or penultimate culmination of these records the demand notice is drawn. Once the very demand notice is set aside, there is no question of back billing merely by way of an order of CGRF.
- j) No evidence was produced, no evidence was allowed, cross examination was allowed. IN fact, the Complainant after the hearing on 30th April 2008 was under the bona fide belief that in view of the non-production of any of the material documents in support of its contention, the matter may be posted for the evidence of the Licensee. However, the CGRF did not bother to summon any evidence leave apart allowing this Complainant to confront or cross-examine the licensee. Leave apart the evidence, even the para wise comments were not provided to the Complainant. This being the case, it is highly illegal for allowing a levy of 6 months, citing some inapplicable provisions.

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) does not exist in the Regulations.

2. If the Order passed by the 2nd Respondent is considered as 30.4.2008, then there is a delay of 209 days in filing the appeal complaint. However, the Complainant in his submission has stated that he received the Order of the 2nd Respondent on 07.11.2008 after a lapse of about 6 months and the Complainant has immediately filed the appeal complaint on 25.11.2008. Under the circumstances explained, it is held that the appeal complaint filed by the Complainant is on time and the appeal complaint is admitted.

PRAYER

1. Call for the entire records from the CGRF.
2. Provide for an opportunity of hearing.
3. Uphold the Order of the CGRF in so far as it sets aside the order of the licensee dated 30th October, 2007.
4. Set aside the second aspect of the order of CGRF directing the back billing for 6 months.
5. Pass any other order/s to do justice in the matter.

NECESSITY FOR AN INTERIM ORDER

The Complainant also prayed for an interim order not to disconnect the electricity citing non-payment of back billing charges.

On receipt of the complaint, the 1st Respondent was orally instructed not to disconnect the installation till a final order is passed by this Authority.

The KERC(Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2004 sub-regulation 1 of Regulation 20 provides an opportunity for settlement by agreement through conciliation and mediation between the

licensee and Complainant or by passing an award in accordance with these Regulations.

During the hearing on 12.2.2009, both the parties were advised to cooperate to explore the possibility of an agreement through conciliation and mediation. Both the Counsel for the Complainant and the 1st Respondent agreed to cooperate for a settlement. Aggrieved by the threat of disconnection by the notice of disconnection dated 9.2.2009, the Complainant has filed another application on 25.2.2009 praying for an interim order not to disconnect the installation (citing non-payment of 6 months back billing) till the final order is passed by this Authority. In terms of Regulation 22.4 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, it was felt that in the interest of justice, issue of an interim order was necessitated and an interim order dated 27.02.2009 was passed, restraining the 1st Respondent from disconnecting the installation, simultaneously granting opportunity for settlement through conciliation and mediation.

Both the parties were heard on 12.02.2009 and 23.03.2009. The Complainant representative once again stressed on the grounds and the prayer made in the complaint adding some more points to the complaint.

The 1st Respondent during the deposition on 23.3.2009 stated that the Licensee has complied with all the applicable law on the operation and installation of the meter and that the Complainant is liable pay the back billing charges as per the Orders of the 2nd Respondent.

Shri Saleem, AEE, HT Rating, East Division, BESCO, Anand Rao Circle, Bangalore stated that when the current transformer has failed, the exact percentage of slow reading of the metering cannot be immediately indicated in the rating report and that it depends on the power factor of the installation during the recording period of the month. He further stated that the only way of

back billing in such cases is by way of comparing the details of energy consumption of the previous months.

DISCUSSION AND ANALYSIS

On a perusal of the submissions made by both the parties and the findings of the 2nd Respondent, it is observed that

- (i) Though the Complainant requested the 1st Respondent asking him to clarify as to why back billing charges are claimed for 389 days when the provision is only for six months, the 1st Respondent has not properly clarified.
- (ii) The Clarification by the 1st Respondent that the back billing is demanded based on the provision 4.13 of COS is incorrect. There is no such provision in the current COS.
- (iii) The absence of any such proper clarification forced the Complainant not to pay the back billing charges.
- (iv) In the absence of any prayer by the Complainant before the 2nd Respondent to reduce the back billing charges to six months instead of 389 days or a request by the 1st Respondent regarding 6 months back billing, the 2nd Respondent has erred in passing the 2nd portion of the Order asking the Licensee to collect back billing charges for only six months.
- (v) The Order passed by the 2nd Respondent is not in conformity with its findings.
- (vi) The 2nd Respondent has passed an order on 30.4.2008 signed by the Chairman and one of its Members and the Member has signed the

Order on 10.10.2008. Therefore, the Order passed by the 2nd Respondent should have a date of the passing the Order on or after 10th of October 2008, instead of 30.04.2008. Hence, there is an ambiguity about the date of passing of the Order.

- vii) The 1st Respondent has claimed the back billing charges of Rs.63,789/- based on the average consumption of June 2006 to August 2006 as per the orders of the 2nd Respondent under the provision of 27.03(1) of COS. But the claim is not in conformity with provision of 27.03(1) of COS.

Having regard to the facts of the case, it is felt that the 2nd Respondent has erred in not considering the facts of the case as brought out by the Complainant under the grounds for appeal at paras e, f, g, h, i and J mentioned above. Especially at Para J, it is alleged that proper opportunity was not given, no evidence was allowed, cross examination was allowed, no proper documents or parawise comments were provided and further alleged that the 2nd Respondent did not bother to summon any evidence to allow to confront or cross examine the Licensee.

All the relevant issues raised by the Complainant ought to have been looked into by the 2nd Respondent before passing the impugned order. The Regulation 22.4 provides that this Authority shall be guided by such factors which in the opinion of this Authority are necessary in the interest of justice.

This Authority, in its opinion, feels that it is a fit case needing to be remanded back to the 2nd Respondent for fresh consideration, keeping all the contentions open.

There is a delay of nearly 3 months in passing this Order as sufficient opportunity to both parties was extended and efforts were made to settle the case by conciliation and mediation. The conciliation was not possible.

This Authority, without going into the merits of the case, passes the following Order:

ORDER

- 1) The impugned Order passed by the 2nd Respondent is hereby set aside;
- 2) The 2nd Respondent is directed to hear both the parties afresh, considering fresh submissions apart from the existing submissions and pass suitable Orders as early as possible but not later than 60 days from the date of receipt of this Order;
- 3) The interim Order of this Authority shall be in force till a fresh Order is passed by the 2nd Respondent or the expiry of 60 days time whichever is earlier.

(S.D.UKKALI)
Ombudsman

To:

1. The Chairman, Institute of Chartered Accountants of India, Bangalore Branch, ICAI Bhavan, 16, Millers Tank Bed Area, Bangalore-560052
2. The Chairman, CGRF, BESCO, Bangalore for information and needful action.
3. The AEE, BESCO, E-2 Sub Division, Queen's Road, Bangalore-560052
4. The Managing Director, BESCO, K.R.Circle, Bangalore
5. PS to Hon.Chairman/PS to Hon.Member(H)/PS to Hon.Member(S)/ PS to Secretary / 7. OCA / 8. Chairpersons of all CGRF
9. Advisory Committee Members & Members of CGRF nominated by the Commission

