

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

Present: S.D.Ukkali

Ombudsman

Case No.OMB/B/G-45/2008/5781

Dated 31.03.2009

K.S.Sethna,
No.13, Kensington Road,

Bangalore-560042

(Represented by Shri Prem Krishnan)

.. **Complainant**

1. The Asst.Executive Engineer,
BESCOM
Devanahalli, O & M Sub Division
DEVANAHALLI

2. The Asst.Accounts Officer (AAO)
BESCOM O & M Sub Division
DEVANAHALLI

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

.. **Respondents**

This is a complaint filed by Shri K.S.Sethna, 13, Kensington Road, Bangalore-560042, represented by Shri Prem Krishnan, 13, Kensington Road, Ulsoor, Bangalore-560042 under the provisions of Karnataka Electricity Regulatory Commission(KERC) (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 against the Order dated 28.5.2008 passed in file No.CGRF/78/2008/2711 by the Consumer Grievance Redressal Forum (CGRF), Bangalore Electricity Supply Company (BESCOM), Bangalore dismissing the Petition, holding the bills preferred by the 1st and 2nd Respondents in order.

The submission filed by the Complainant, Mr.K.S.Sethna, in brief is as under:

He is the registered consumer of electricity with RR Nos.VDEH278 and VDL 2091 situated at his premises at Survey No.394/A and 394/B, Bagalur village, Jalla Hobli, Devanahalli Taluk. It is alleged by him that the 1st and 2nd Respondents were levying monthly charges on assumed units per month for an indefinite period without any authority of law, without any basis and without proper readings of the two meters with RR Nos. stated above.

Despite several representations to take proper and regular electricity meter readings, the 1st and 2nd Respondents continued to raise erroneous bills without quantifying the commodity consumed based on sound meter readings. He further alleges that It was evident from his personal ledger statements issued by the 1st and 2nd Respondents (produced as documents 6 & 7) that the readings were erratic.

These statements of ledger reveal the incorrectness of readings of the meters. In respect of RR No.VDEH 278, the meter shows reading of 2695 in December 2006 and the same reading continued to be shown in the bill upto May 2007 i.e. for a period of 6 months. The bill issued in the month of June 2007 shows a consumption of 4842 units with a reading of 7537 alleged to be due to misconception and imaginative and beyond average consumption claiming a bill amount of Rs.23168/-. In the subsequent month i.e. July 2007 a consumption of 1608 units, during August 2007, a consumption of 399 units and during the month of September 2007, the consumption of zero were shown.

Similar erroneous readings were entered in the ledger against another RR No.VDL 2091, entering an average consumption of 141 units every month from 19.10.2004 to 19.5.2005 and zero consumption every month from 19.10.2006 to 19.02.2008. He had received a bill stated to be wholly arbitrary, whimsical and abnormal amounting to Rs.4698/- for September, 2007. This irregular, imaginary and arbitrary readings in the bill continued till these meters were replaced on 20.02.2008 by the 1st and 2nd Respondents without adhering to the standard

procedure like taking the final closing reading or without adhering to the procedure of drawing meter change protocol sheet and without delivering it to him at the time of replacement of meters. The 1st and 2nd Respondents continued to raise bills along with arrears and interest without assigning any reason. It is further alleged that he is not at fault especially when he has made regular payments for the earlier dues from time to time under protest and that his representatives were informed that necessary corrective action for the overflow readings of the meters indicated, would be taken. In support of his allegations, he has annexed letters as Documents 2,3,4, 4(a) and 4(b).

He was made to pay an initial amount of Rs.14,000/- in 2 installments under protest against a bill amount of Rs.23,168/- with an understanding that the matter would be looked into and revised bills be drawn and the amount adjusted. But contrary to his undertaking when no remedial action was taken, he stopped making payments and the 1st and 2nd Respondents continued to show arrears and finally disconnected electric supply on 24th January 2008 without giving any notice, causing undue sufferings and loss to him.

Finally, the Complainant left with no alternative filed a complaint before the 3rd Respondent with a prayer to quash the erroneous bills of the above two RR Nos. and to withdraw subsequent arrears and interest shown in the disputed billing on previous carried forward consumption and to re-work out the bills by giving slab benefits and issue revised bill from the date of installation of new meters. A prayer was also made for reconnection of these two installations.

The 3rd Respondent during the first hearing on 28.5.2008 was pleased to order for reconnection of the two installations and to give direction to the 1st and 2nd Respondents to work out the possible solution to assess fair charges for consumption of the electricity and deliver a copy of the same to the Complainant.

However, the 1st and 2nd Respondents reconnected the two installations but did not prepare the bill for fair charges and present it to the Forum.

He was taken aback when he received a copy of the order of the 3rd Respondent (produced as document 9) dismissing the petition, holding that the bills preferred by the 1st Respondent for the recorded consumption was in order, without affording a detailed hearing as assured by the Chairperson and the lone Member on 28.5.2008. The 1st and 2nd Respondents have not even cared to give the copies of their statements in form of letter dated 18.2.2008, nor this appellant petitioner was furnished with the copy of the report of Assistant Executive Engineer of MT Division, BESCO who tested the meters. The Respondents were continuing to raise the bills on arbitrary basis and threatening to disconnect the electricity connection to the premises of the Complaint.

GROUND S URGED FOR APPEAL

The 3rd Respondent

1. failed to consider the grievance of this appellant and lost sight that the grievance pertains to two Meters RR VDEH 278 and VDL 2091, but passed order for only RR No.VDEH 278.
2. failed to consider the documentary evidence placed before it , before coming to a conclusion. Nor this Appellant was provided with any written statement as filed by the respondent on (Vide Letter No.518-59 dated 18.2.2008) not the Copy of the letter No.734 dated 9.6.2008, based on which the Forum passed an order.
3. did not take into consideration or award compensation to the admitted fact that the respondent illegally Disconnected the electricity Supply to the Appellants Premises on 24/1/2008 without Due notice.

4. lost sight of the fact that the meter was removed from the premises on it self and the respondent was not adhering to the standard procedure like taking the final closing reading or meter change protocol sheet drawn at the time of replacing the Meter.

5. was gravely erroneous to conclude that the bill preferred by the Sub Division for recorded Consumption was in order without referring to the testing of meters and the details entered in the ledger statements.

6. has based its opinion on the respondents letter dated 09.06.2008 enclosing the report of MT Division No.AEE/MT/2008-09/20 dated 07.06.2008, whereas the impugned order is dated as 28.5.2008.

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. The appeal complaint is filed on 20.11.2008 after a lapse of 175days, if the date of the impugned order is considered as 28.5.2008 passed by the 3rd Respondent. Under the grounds urged at Para 6 above, it is made out by the Complainant that the order is dated 28.5.2008 whereas the 3rd Respondent has based its opinion on the Respondent's letter dated 09.06.2008, enclosing the report of MT Division No.AEE/MT/2008-09/20 dated 07.06.2008. The following points need consideration:

- a) The benefit of doubt on the prescribed time limit goes to the Complainant.
- b) The date of impugned order of the 3rd Respondent ought to have been on or after 9.6.2008 being the date of the report from MT. Division.

Under the circumstances, it is held that the complaint is filed in time and the appeal complaint is admitted on the grounds urged by the Complainant.

PRAYER

Aggrieved by the Order passed by the 3rd Respondent dated 28.5.2008 passed in file No.CGRF/78/2008/2711, the Complainant has filed this appeal complaint on 20.12.2008 through Shri Prem Krishnan requesting

I.

- (a) To set aside the order passed by the 3rd Respondent
- (b) To quash the erroneous and imaginative electricity bills issued on 19.6.2007, 19.7.2007 and 19.8.2007.
- (c) To withdraw subsequent arrears and interest shown in the disputed billing on carried forward basis.
- (d) To re-work out the bills by giving slab benefits
- (e) To issue revised bill from the date of installation of new meters
- (f) To take strict penal action for the violation of statutory duty and law and to award compensation for illegal disconnection of electricity.
- (g) To award such other and future relief as this Hon'ble Ombudsman deems fit under the facts and circumstances of the matter, in the interest of justice and equity.

II.

- i) The Complainant in his appeal complaint has also prayed for issuance of an interim order directing the 1st and 2nd Respondents not to disconnect the electricity to the premises of the complainant until the disposal of the case.

ii) Pass or grant such other interim relief/order/direction as this Hon'ble Authority may deem fit and proper in the interest of justice.

NECESSITY OF INTERIM ORDER

Shri Prem Krishnan was orally advised to file a letter of nomination nominating him by Shri K.S.Sethna to represent him before this Authority. Since he wanted interim order not to disconnect, he was advised to come up with a proposal to make payment of regular bills as well as a certain payment towards the bills for disputed months before an interim order could be issued by this authority. Accordingly, he filed a nomination and in the Memorandum of prayer for Interim Relief, he stated that the 1st Respondent had already disconnected the installations on 21.10.08 before an interim order could be issued by this Authority, and that he was willing to remit an amount of Rs.8735/- to the 1st and 2nd Respondents and requested for reconnection of the installations. The 1st and 2nd Respondents were summoned on 22.10.08. Both the parties were heard. It was felt that the 1st and 2nd Respondents were entitled to receive the payment of regular bills and a certain amount towards disputed bills from the Complainant before the installations were reconnected. The 1st and 2nd Respondents pressed for payment of full amount against both the installations under dispute, before the reconnection of the two installations.

From a close study of the ledger extracts updated submitted by the 1st and 2nd Respondents, it was observed that the readings of the installations were not consistent and were not brought properly by the concerned meter reader. Therefore, a quick conciliation and settlement was required to satisfy the Complainant as well as the Respondents till a final order was passed by this Authority. As per Regulations 22.4 and 22.5 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 and in the interest of natural justice, it was felt that issue of an interim order was necessitated. Hence, the following Interim Order bearing No.OMB/B/G-45/2008/5033 dated 22.10.2008 was issued.

"1) After hearing the Complainant and the 1st and 2nd Respondents, it is considered a natural justice to reconnect the installation Nos.VDEH 278 and VDL 2091 after remittance of an amount of Rs.8735/- (Rupees Eight Thousand Seven Hundred and Thirty Five only) plus the regular bill for the month of September 2008 of both installations.

2) The Complainant is to continue to pay regular bills without arrears till the case is finally decided by this Authority."

Further, notices for hearing issued to Respondents as well as the Complainant. A report dated 25.11.2008 was received from 1st Respondent on 26.11.2008. The hearing was conducted on 26.11.2008, 27.11.2008, 10.12.2008 and 15.12.2008. Ample opportunities were extended to both the parties to plead before this Authority. The copies of the documents which the Complainant requested, the 3rd Respondent at the time of hearing before it were also handed over to him.

The Complainant filed a Memorandum dated 17.12.2008 requesting for certain documents and seeking a few clarifications on the consumption of 4842 units in a month against RR No.VDEH 278 and maximum possible consumption in a month by the installations with maximum load of 3 Kws and 0.48 Kw.

The documents and clarifications were obtained from the 1st Respondent on 5.1.2009 and handed them over to the Complainant on the same day (5.1.2009) vide letter No.OMB/B/G-45/08/5382 dated 5.1.2009 and advised him to file further statement if he desired to do so within a week's time.

It was followed up by a reminder letter dated 13.1.2009 allowing him a further time limit of upto 19.1.2009.

On 19.1.2009, he requested for granting time upto 27.1.2009 for furnishing final statement. The final statement in the form of written argument was filed on 27.1.2009 by the Complainant.

DISCUSSIONS AND ANALYSIS

From the details of the Petition filed by the Complainant and from the documents produced by the Complainant and the 1st and 2nd Respondents and deposition made by them, the following points emerge:

1. It is not in dispute by both the parties that there was any tampering of the meters. There is no evidence to this effect. It is also not disputed that the meters were not accurate. The 3rd Respondent on its own got the meter of RR No.VDEH 278 tested, but has neither applied its mind on the test results nor taken it in to account while passing the Order. If at all there was any dispute regarding the accuracy of the meters, the procedure laid down at Clause 27 of Conditions of Supply of Distribution Licensees in the State of Karnataka was to be followed. If there was to be any tampering, action as per provisions of Section 135 of Electricity Act 2003 need to be taken. This has not happened. Having regard to the facts stated above, it is to be held that the meters are not tampered and the accuracy of the meters is not disputed.

2. It is the argument of the Complainant that the accurate monthly meter readings were not taken and entered into the ledger accounts of the Complainant. It is also argued that the readings entered were imaginary and whimsical. This fact was also corroborated from the submissions made by the 1st and 2nd Respondents that the monthly readings of these two meters were entrusted to Gram Vidyuth Prathinidhi (GVP), Sri M.Shekhar and not to a regular meter reader of the BESCO and there was possibility of furnishing the imaginary readings without visiting the premises. The GVP left the job of BESCO on 30.04.2006. The meter reading was entrusted to BESCO regular employee Shri Siddalingajah who brought the readings of high consumption of 4842 units during June 2007 pertaining to RR No.VDEH 278. Since accuracy of the meter is not disputed, the reason for higher consumption was due to accumulation for previous months. The statements of ledger produced as documents 6 & 7

reveal that the readings entered in the ledger were inconsistent and imaginary and whimsical as stated by the Complainant above, during the period the readings were brought by GVP.

3. The previous meter reader has shown some constant readings and zero readings during certain months and the meter is allowed to accumulate the units and when correct reading is taken, showing a consumption of 4842 units in a month, definitely there would be more units billed at highest slab of that tariff. These facts have been brought to the notice of the 1st Respondent by the Complainant by way of letters exhibited as documents 4(a) and 4(b) for both the installations. Having regard to the facts, the installations are subjected to higher slab billing instead of correct monthly billing based on average consumption. The details of the energy charges as per applicable tariff LT2 a(ii) are as follows:

| | | |
|---------------------------------|------------------------------|-------------------|
| <u>1. Fixed Charges:</u> | for 1 st kW | Rs.20 |
| | for every additional kW | Rs.30 |
| <u>2. Energy Charges</u> | for 1 st 30 units | : 1.85 paise/unit |
| | for next 70 units | : 2.90 paise/unit |
| | for next 100 units | : 3.60 paise/unit |
| | for next 100 units | : 4.10 paise/unit |
| | for next 100 units | : 4.35 paise/unit |
| | for consumption>400 units | : 4.60 paise/unit |

The energy charges upto 400 units go on increasing for every 100 units and the energy charges would be higher at paise 460 for the balance units above 400 units.

4. The 1st Respondent in his letter dated 18.2.2008 addressed to the 3rd Respondent has argued that the Complainant has made only 10 payments in 37 months against RR No.VDEH 278 and 6 payments in 17 months against RR No.VDL 2091. Hence, not regular in making payments.

The Complainant is also duty bound to look into the details of billing on 19th of every month, being the meter reading date and if he is aggrieved can take up the matter with 1st and 2nd Respondents and make payment of the bill regularly every month. Though he claims that he has written letters and made payments regularly, the records reveal that the payments were not regular monthly payments, but deferred payments. There is a provision also for a self reading of meters, in case the Licensee does not take the readings during any month as per Clause 26.01 of the Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. Whenever he noticed a zero consumption and lesser consumption during any month than the actual reading, he would have furnished a self-read readings to the 1st and 2nd Respondents. This has not happened.

On an analysis of the Order of the 3rd Respondent, it has erred on the following issues:

IMPUGNED ORDER OF CGRF

1. Passed Order on RR No.VDEH 278 only though there was a complaint against both RR Nos.VDEH 278 and VDL 2091.
2. Heard on only one day on 28.5.2008 and passed orders on the same day basing its order on a report dated 9.6.2008 of testing of the meter meaning thereby that though the order is dated 28.5.2008, it is signed on subsequent date on or after 9.6.2008.
3. Opportunity of further hearing and the documents as requested by the Complainant were not granted.

Under the circumstances, based on the above analysis, Order at document 9 needs to be quashed. Further, the erroneous bills issued on

19.6.2007, 19.7.2007 and 19.8.2007 need also to be quashed on the grounds discussed above at paras 1 to 3 of the analysis.

As there was no easy solution to the grievance of the Complainant, it was brought to the notice of both the Complainant and the 1st Respondent vide letter dated 25.2.2009 that KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 prescribes the powers and duties of the Ombudsman. Sub-regulation 1 of Regulation 20 provides for settlement also by agreement through conciliation and mediation between the Licensee and the Complainant and advised them to try for conciliation and settlement.

In response to this proposal during the hearing on 9.3.2009, the Complainant and the 1st Respondent agreed for a settlement provided the financial implications and other details are made known to them.

The updated documents 6 & 7, exhibited the monthly readings, consumptions, payments made etc. from 19.10.2004 upto 19.12.2008, it was felt reasonable to take the readings on 19.10.2004 as initial reading and readings on 19.1.2008 being the date upto which the bills were disputed as final readings; and to

- a) work out the average for 39 months and bill on monthly average consumption basis;
- b) Take into consideration the payments already made:
- c) Make payment as a settlement of the balance amount upto 19.12.2008.

The calculations were prepared and made available to the parties by a letter No.OMB/B/G-45/08/5751 dated 11.3.2009. The balance amount that was to be paid against both the RR Nos. worked out to Rs.791/-. This was later worked out to Rs.422/- by both the parties.

After much persuasion and discussions, both the parties, after consulting their concerned client/higher authorities filed a Joint Memo on 30.3.2009 agreeing to settle the matter by mutual agreement as follows:

“JOINT MEMO

1. Following is the Settlement terms in the matter of dispute about series of erroneous bills raised by the Respondent against the two installations bearing No.RR-VDEH 278 and RR No.VDL 2091 to the Complainant's premises at Devanhalli, during the period from 19.10.2004 to 19.01.2008 under the consideration before this Hon'ble ELECTRICITY OMBUDSMAN.

2. Now the Parties have agreed to settle the above dispute amicably and have arrived at a compromising formula to work out the bill raised for the above disputed period from 19.10.2004 to 19.01.2008 on monthly average basis and also to give the benefit up to 19.12.2008 as per the below agreed terms/formula;

3. In case of RR No.VDEH 278, the reading as on 19.01.2008 was 9722 units and the reading recorded on 19.10.2004 was 1610 units, taking the consumption for the 39 months the total consumption comes to 8112 units and the monthly average consumption works out to 208 units.

4. In case of VDL 2091, the reading as on 19.01.2008 was 6051 units and the reading recorded on 19.10.2004 was 4001 units, taking the consumption for the 39 the total consumption comes to 2050 units and the monthly average consumption works out to 52.56 units.

5. Taking the above monthly average consumption the parties have worked out the dues, after applying the applicable tariff and after deducting the payments made by the Complainant, (also taking into consideration all the demands and payment upto 19.12.2008 for both the installations) which works out to Rs.422/- together for both the installations from 19,04.2004 up to 19.12.2008

and molre fuly stated in the calculation Statement annexed hereto as Annexure "A1" signed by the parties.

6. The parties have accepted above terms of the settlement and the Statement in the Annexure.

WHEREFORE it is respectfully prayed that this Hon'ble ELECTRICITY OMBUDSMAN, that the above understanding may be kindly be recorded and the petition may be kindly disposed off in the terms of the same.

For Appellant/Complainant

For Respondents

Authorised Representative

1. Asst.Executive Engineer(Ele)
BESCOM
Devanahalli Sub-Division
Devanahalli

2. Asst.Asccounts Officer(AAO),
O & M Sub Division
Devanahalli

Date: 30.03.2009

Place: Bangalore”

In terms of Regulation 22.3 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004, this order was to be followed within two months by this Authority. It was not possible due to the reason that sufficient opportunity was to be extended to both the parties and efforts were needed to arrive at a settlement.

The Joint Memo and the Annexure showing the calculation have been signed by the authorized nominee of the Complainant and the 1st and 2nd Respondents. A copy of the Annexure to the Joint Memo is enclosed herewith.

Having regard to the facts of the case and the Joint Memo filed, the case is disposed off as follows:

ORDER

1. The Order of the 3rd Respondent at document 9 is quashed.
2. The bills dated 19.06.2007, 19.07.2007 and 19.08.2007 issued are quashed.
3. The Order in terms of Joint Memo is hereby passed taking care of the prayers made at I (c) to (e).
4. The prayer at I (f) and (g) are not relevant on account of a settlement arrived by mutual agreement by the parties concerned.
5. The balance amount of Rs.422/- be paid by the Complainant to the 1st and 2nd Respondents along with the next bill due on 19.4.2009.

(S.D.UKKALI)
Ombudsman

To

1. K.S.Sethna, No.13, Kensington Road, Bangalore-560042
2. The Chairman, CGRF, BESCO, Bangalore
3. The AEE, BESCO, O & M Sub Division, Devanahalli
4. The AAO, BESCO, O & M Sub Division, Devanahalli
5. The Managing Director, BESCO, K.R.Circle, Bangalore
6. PS to Hon.Chairman/PS to Hon.Member(S)/PS to Hon.Member(H)
7. PS to Secretary
8. OCA
9. Chairpersons of all CGRF
10. Advisory Committee Members & Members of CGRF nominated by Commission

