



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/C/G-131/2012/182

Dated 08/04/2013

Shri Mir Habibullah,
 #108, Subash Nagar,
 Bangalore-Mysore Road,
 MYSORE-570001

**(Represented by Sri B.S.Nagaraj, Advocate -
 Authorised Representative)**

.. Appellant

Vs

1. Assistant Executive Engineer,
 O & M Sub Division,
 Chamundeshwari Electricity Supply Corpn.Ltd.,
 V.V.Mohalla,
 Mysore
(Represented by Shri H.V.Devaraj, Advocate)

2. Consumer Grievances Redressal Forum (C.G.R.F)
 #1633, Annapoorneshwari Complex,
 1st Cross, Anikethana Road, (North),
 P & T Block, Kuvempunagar,
Mysore-570023

.. Respondents

1. This is an appeal under clause 21.02 of the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum CESC Mysore (herein after referred to as the 2nd Respondent) vide No. ಮು.ಇಂ(ವಿ)ಮೈವ/ಆಕಾ/11-12/642-47 ದಿನಾಂಕ

07.2.12 in respect of the Appellant's grievance relating to the back billing charges raised by the Assistant Executive Engineer, CESC, V.V.Mohalla Sub-division, Mysore (hereinafter referred to as the 1st Respondent) for Rs.3,74,012/- on grounds of theft of power and also refusal of the 2nd Respondent to grant any relief against the demand raised by the 1st Respondent. Aggrieved by the orders passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is a registered electricity consumer of M/s.Chamundeshwari Electricity Supply Corporation Limited (CESC, for short) and installation bearing No. R.R 4-NP-112 stands in the name of the Appellant. The Appellant is running an Ice Factory at Mysore. The Vigilance Squad of CESC inspected the Appellant's installation on 22.04.1997 and found the seal affixed to the meter box tampered, the seal wires cut and the seals replaced and, hence, a criminal case was filed against the Appellant under Section 379 of IPC and Section 39 & 44 of The Indian Electricity Act, 1910. The case was conducted by the 1st Additional Sessions Judge, Mysore. The 1st Respondent, based on the Vigilance report, backbilled for Rs.3,74,012/-. Aggrieved by the back billing, the Appellant filed a Writ Petition before the Hon'ble High Court in W.P No 12397/97 and the Hon'ble High Court initially passed an interim order dated 22.05.1997 directing the Appellant to deposit 40% of the disputed amount for reconnection. The Hon'ble High Court passed final orders on 09.02.1998 granting liberty to the Appellant to file his objections before the 1st Respondent in the light of the submission made by the Counsel for the 1st Respondent that the 1st Respondent had issued notice calling upon the Appellant to pay the amount or to file his objections, if any, within 15 days and, since the 1st Respondent had not passed final orders yet, the Appellant could file his objections before the 1st Respondent. As per the directions of the Hon'ble High Court, the Appellant filed his objections before the 1st Respondent and the 1st Respondent, after considering the objections filed by the Appellant, confirmed the demand. During the pendency of the case before the 1st Respondent, the Appellant filed an appeal before the Appellate Authority on 27.06.1997 vide R.A No 449/1997. This appeal was dismissed on 08.10.1998. Not happy with the order passed by the

Appellate Authority, the Appellant filed a Writ Petition before the Hon'ble High Court vide W.P No 31195/1998. The Hon'ble High Court, while disposing the Writ Petition, directed the Appellant to approach the Second Appellate Authority after depositing Rs 1.25 lakhs with the concerned Authorities. In pursuance of the Hon. High Court directions, the Appellant filed a second appeal before the Second Appellate Authority. When the appeal was pending before the Second Appellate Authority, KEB Supply Regulations, 1988 came to be repealed and in its place came the Electricity Supply & Distribution Code 2000-01. Though the Appellant filed the second appeal in 2001, the Second Appellate Authority did not pass any orders till the Electricity Act, 2003 came into force. Under the Electricity Act, 2003, any person aggrieved by the final orders made under Section 126 can prefer an appeal before the Prescribed Appellate authority and under Section 127 any order passed by such Appellate Authority becomes final. Due to this legal anomaly, the appeal pending before the second appellate authority stood abated.

3. Further, the Additional District and Sessions Court on 26.06.2008 passed orders acquitting the Appellant of theft charges. Following this judgement, the Appellant sought refund of Rs.1,49,605 + Rs. 1,25,000 from the 1st Respondent. The 1st Respondent recommended for refund of the amount and, finally, CESC, citing the Vigilance Circular vide No.AAMANI:JAGRADALA:554/06-07 dated 18.07.2006, communicated that the amount could not be refunded. The Appellant challenged the endorsement issued by the 1st Respondent before the Hon'ble High Court by way of Writ Petition vide No..35581/2010 and the Hon'ble High Court, after hearing the parties, dismissed the appeal as not maintainable as the Appellant had not exhausted the alternative legal remedies available under the Act and, hence, advised the Appellant to approach the 2nd Respondent. In pursuance of the Court directions, the Appellant approached the 2nd Respondent and the 2nd Respondent, after hearing the parties, passed order rejecting the contentions of the Appellant. The Appellant, aggrieved by the order passed by the 2nd Respondent, filed a Writ Petition vide No. W.P.8365/2012(GM-Res) before the Hon'ble High Court and the Hon'ble High Court, after hearing the W.P, passed orders granting liberty to the Writ Petitioner to

approach the Ombudsman as per Regulation 9.3 of the KERC (CGRF and Ombudsman) Regulations, 2004 and also directed the Ombudsman to dispose the case within 30 days from the date of passing that order, if such a representation is made by the Writ petitioner.

4. In pursuance of the Hon. High Court's order, the Appellant filed Form No-B before this authority on 09.05.2012. Comments of the 1st Respondent were called. The 1st Respondent, in his comments, submitted that the Additional Sessions Court had not recorded that the criminal case filed was false and, hence, the question of refunding the amount did not arise. Further, the 2nd Respondent, while confirming the order passed by the 1st Respondent vide ಸಕಾನಿಇಂ/ಸಲೆ/ವಿವಿಮೊ/256 dated 22.04.2010 held that the Petitioner, though acquitted of power theft charges on 26.06.2008 in special criminal case No 19/2004, he was not entitled for refund of the amount and, justifiably, dismissed the complaint.

5. The case was taken up for hearing on 18.2.2013 and, on behalf of the Appellant, Advocate Shri Nagaraj appeared and put forth his arguments and, on behalf of the 1st Respondent, Shri H.V.Devaraj, Advocate appeared and advanced his arguments and the arguments got concluded on 27.03.2013.

6. Both the Advocate for the Appellant and the Advocate for the 1st Respondent, during the hearing, reiterated the submissions made in the complaint and the comments respectively.

7. Both parties were informed vide letter No.OMB/C/G-131/2012/153 dated 31.01.2013 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.

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

a) When the Hon'ble High Court has advised the Appellant to approach the Second Appellate Authority for relief under the Indian electricity Act, 1910 and during the pendency of the appeal, by virtue of new enactment, if the Second Appellate Authority is done away with, whether the Appellant, without bringing this anomaly to the notice of the High Court, can approach the 1st Respondent for refund of the amount?

b) Whether the parties before the Hon'ble High Court have brought to the notice of the Hon. High Court that the issue relating to theft of power does not come under the jurisdiction of either the Forum or the Ombudsman?

c) Whether the Consumer Grievance Redressal Forum has got powers to sit in judgement over issues relating to theft of power and whether the Forum is right in passing the impugned order?

9. In order to answer the first question, we will have to refer to the Hon'ble High Court orders in W.P No 31195/1998 dated 27.10.1998. Extracts of the Hon. High Court's order is reproduced below:

"The petitioner preferred an appeal before the first appellate authority, challenging the back billing charges after depositing a sum of Rs.1,49,605. Ultimately the first appeal was dismissed. As against that there is a remedy of second appeal to the second appellate authority"

"The case of the petitioner is that in order to maintain a second appeal, the petitioner is required to deposit the entire amount as determined by the first appellate authority after adjusting the amount already paid which according to him is not possible because of certain difficulties"

"I direct the petitioner to deposit a sum of Rs 1,25,000/ within four weeks from today and thereafter to file a second appeal before the second appellate authority within 15 days. In the event, the amount is deposited

and appeal is filed as stated above, the second appellate authority shall consider the appeal on merits and dispose of the same in accordance with law.”

10. Though the Hon'ble High Court granted liberty to the Appellant to approach the Second Appellate Authority by depositing Rs.1,25,000/-, and though the Appellant had filed second appeal before the Second Appellate Authority, on account of repealing of the Indian Electricity Act,1910, the Appellant could not pursue the case as the new Electricity Act, 2003 did not provide for the second appeal. The Electricity Act, 2003 provides for only one Appellate Authority and the orders passed by such Authority becomes final and there is no provision for appeal against the orders of such Authority. In such an anomalous situation, the Appellant could have filed a review petition before the Hon'ble High Court seeking legal remedy. Instead, the Appellant has approached the 1st Respondent seeking refund of the amount based on the Sessions Court order acquitting the Appellant of theft charges, which is not correct and even the 1st Respondent failed to inform the Appellant that during the pendency of the appeal before the Appellate Authority, the request of the Appellant could not be considered. Instead, the 1st Respondent has issued some endorsement citing Vigilance Circular and the Appellant challenged the endorsement issued by the 1st Respondent in the Hon'ble High Court. It appears that the parties have failed to bring to the notice of the Hon'ble High Court that the Consumer Grievance Redressal Forum lacked jurisdiction to deal with matters relating to theft of power under Regulation (1) (2) (3) of 2(g) of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004. Even though CGRF lacked jurisdiction and, without reference to the said Regulations, it is found to have admitted the complaint of the Appellant and passed the impugned order. In its order, the 2nd Respondent said that though the Appellant was acquitted of theft charges, Court had not taken cognisance of the theft in the premises of the Appellant in the said order and though the consumer Shri Mir Habibulla had not committed any theft of power in his individual capacity, but from the available records it was confirmed that theft of power had taken place in the premises of the

Appellant and, hence, the Appellant was liable to pay the back billing charges. This order clearly shows that though the 2nd Respondent had no jurisdiction to deal with cases relating to theft of power, it is found to have passed the impugned order which is not in conformity with Regulation 2(g) (1),(2) & (3) of KERC (CGRF and Ombudsman) Regulations, 2004.

11. Third question relates to the jurisdiction of the Ombudsman in matters of theft of power. The parties before the Hon'ble High Court in Writ Petition No. 8365/2012 dated 17.04.2012 appear to have not brought to the notice of the Hon'ble High Court that the Ombudsman has no jurisdiction to deal with matters detailed under Regulation 2(g)(1)(2)(3) of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004. This has resulted in multiplicity of litigation at various levels.

12. In view of the above discussion, it is found necessary to advise the Appellant in the present case to approach the Hon'ble High Court by way of filing Review or Writ Petition and bring to the notice of the Hon'ble High Court regarding the non-availability of legal mechanism to seek legal remedy as directed by the Hon. High Court in view of doing away with the second appeal in the Electricity Act, 2003.

ORDER

13. For the foregoing reasons, the Appellant is here by directed to approach the Hon'ble High Court and bring to its notice regarding the non-availability of second appeal in the Electricity Act, 2003 and seek further relief in the matter.


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Shri Mir Habibulla, #108, Subash Nagar, Bangalore-Mysore Road, Mysore-570001

(represented by Sri Sri B.S.Nagaraj, Advocate, #121/1& 2, Om Complex, Cubbonpet Main Road, Bangalore-560 002)

2. Assistant Executive Engineer, O & M Sub Division, CESC, V.V.Mohalla, Mysore (represented by Shri H.V.Devaraj, Advocate).

3. Consumer Grievance Redressal Forum, CESC, #1633, Annapoorneshwari Complex, 1st Cross, Anikethana Road, (North), P & T Block, Kuvempunagar, Mysore-570023

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

9. OCA