



**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/G/G-132/2012/127

DATED 22.11.2012

Shri Mohammed Vilayath Ali,
M/s.Indo Economic Earth,
Plot No.88, II Phase,
Kapnoor Industrial Area,
GULBARGA

**Represented by Sri S.S.Ilyas M.Sarmast,
Authorised Representative)**

.. Appellant

Vs

1. Asst.Executive Engineer,
O & M Rural Sub-Division,
GESCOM,
GULBARGA.

2. Consumer Grievances Redressal Forum (C.G.R.F)
GESCOM Corporate Office,
Opp Hotel Parivar, Main Road,
GULBARGA

.. Respondents

1. This is an appeal under Regulation 21.2 of KERC(Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, GESCOM, Gulbarga (hereinafter referred to as the 2nd Respondent) vide Case No.08/2011 dated 06.03.2012 in relation to the Appellant's grievance relating to the issue of energy bills by the 1st Respondent from November 2006 to July 2007 based on previous three months average consumption

preceding inspection and also non-replacement of defective metre for 9 months in spite of repeated requests and refusal of the 2nd Respondent to issue any directions to the Assistant Executive Engineer(EI), O & M Rural Sub-Division, GESCOM, Gulbarga (hereinafter referred to as the 1st Respondent) to revise the bills taking into account the actual consumption based on the downloaded data and also considering the seasonality of the industry and also that the industry had not functioned to its full capacity due to volatility prevailing in the international market during the disputed period. Aggrieved by the impugned order, the Appellant has submitted his case as under:

2. The Appellant is a registered Electricity Consumer of GESCOM with a sanctioned power of 66 HP under LT-5 tariff bearing RR No KPRP 27362. The installation was serviced on 02.08.2005 and power was used to run a Mineral Processing Unit. In November 2006, the meter got burnt and the meter was not showing the parameters. After the metre got burnt, GESCOM didn't replace the burnt metre till July 2007. From November 2006 to July 2007, GESCOM issued energy bills on the basis of the average energy consumption of the immediately preceding 3 months of the inspection. The Appellant, in between, gave several representations for replacement of burnt meter and there was no response from the 1st Respondent nor they replaced the meter. Further, the 1st Respondent did not allow the Appellant to replace the burnt meter. The Appellant, however, paid the energy bills on the basis of 3 months average consumption preceding the inspection under protest. In between, the 1st Respondent assured the Appellant that it would arrange for downloading the data from the burnt metre and revise the energy bill based on the data. Actually, the meter was not burnt, but it was not showing the parameters. In the light of this, bills issued for 9 months on average basis is wrong and the 1st Respondent ought to have taken the downloaded data from the defective meter and, based on that data, it should have issued energy bills. During the disputed period, the industry was not functioning to its full capacity, but the 2nd Respondent has taken a view that the Appellant's industry is not a seasonal industry, which is incorrect. During the disputed period, the international market witnessed ups and downs and the Appellant did not get sufficient orders and, hence, the

industrial unit could not become fully functional and functioned only 30% of its capacity and, based on actual consumption, the 1st respondent ought to have billed the Appellant and, instead, the 1st Respondent has taken the average consumption of 3 months preceding the inspection for billing purposes which is illegal and, hence, prayed this Authority to set aside the impugned order of the 2nd Respondent and direct the 1st Respondent to bill on the basis of actual consumption.

3. The 1st Respondent's comments were called vide letter No OMB/G/G-132/2012/796 dated 16.05.2012 and the 1st Respondent has furnished his comments vide letter No. AEE/AAO/RSD/GLB/2012-13/1717 dated 15.06.2012.

4. In his comments, the 1st Respondent submitted that after receiving the complaint from the Appellant for replacement of burnt metre, the office had made attempts to replace the burnt metre, but due to non-availability of ETV metres, it had to procure and replace the metre and, during the interregnum, the bills had been issued on average basis taking into account the average consumption of three months preceding the inspection.

5. Further, the Appellant had been issued bills based on the average consumption of three months preceding the inspection and the Appellant had not intimated GESCOM regarding seasonal non-functioning of his industry, however, during MNR period, the power supply had not been disrupted and the industry had not been affected. The released faulty metre had been sent to the Manufacturing Company for downloading the data and the Company found out that the metre had not registered the consumption from 18.10.2006 and conveyed to the Licensee that data could not be given and, hence, bill had not been revised as requested by the Appellant on actual basis.

6. The 1st Respondent submitted that from the date of service, the Appellant had not informed that his industry had been seasonal nor submitted on-season and off-season functioning details and, after the metre had gone out of order, the Appellant claimed it as seasonal industry, which was an after-thought. The metre got burnt during October, 2006 and, as per Regulation 27.04(i) of Conditions of Supply

of Electricity of Distribution Licensees in the State of Karnataka, the bills had been issued on the basis of the average energy consumption of the immediately preceding three billing months. The Appellant had requested for refund of the amount under Regulation 27.04 (i) & (vii), 28.00 (iii) and 29.08 (a) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and his request could not be considered as the cited Regulations were not applicable to the case on hand as 3 months information was available for issuing bills on average basis till the date of replacement or rectification of the metre.

7. The matter was taken up for hearing on 16.10.2012. The Authorised Representative, Shri Ilyas M.Sarmast appeared and put forth his arguments on 20.11.2012 and, on behalf of the 1st Respondent, Shri Rajesh Hipparagi was present and advanced his arguments. Arguments from both sides got concluded on 20.11.2012. Both the Appellant and the 1st Respondent reiterated the submissions made in their appeal memo and the replies respectively.

8. Both parties were informed vide letter No.OMB/G/G-132/2012/118 dated 03.10.2012 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.

9. Having regard to the contending positions of the parties, the issues that emerge for our consideration are:

a) Whether the Licensee is right in issuing the energy bills based on average consumption of three months preceding inspection during the MNR period?

b) Whether the Licensee has caused inordinate delay in replacing the defective meter and if so, whether the 1st Respondent is liable to pay rebate to the Appellant?

10. In order to answer the above questions, we will have to examine the claims of the Appellant. In the instant case, the Appellant complained to the Licensee regarding defective metre on 25.12.2006 and also to replace the energy meter as the meter was not showing parameters and the Licensee did not replace the defective meter for 9 months as the ETV meters were not available and, however, during this period, the Licensee issued bills on average basis taking into account consumption of three months average preceding the inspection and, accordingly, the Licensee fixed 16,322 units as monthly average for billing purposes for the disputed period and issued the bills, but the Appellant has argued that his industry has not run to the full capacity due to fluctuation in the international market and also as he did not get sufficient orders from his principals and, hence, actual consumption should have been taken for billing purposes.

11. The Appellant probably would not have made this argument if the Licensee had made the findings of the Manufacturing Company available to the Appellant and the Appellant probably was under the impression that the meter had functioned during the disputed period and only not showing the parameters and, after downloading of the data by the Manufacturing Company, the Licensee would take the actual consumption for billing purposes which would be advantageous to him. Now, since the Licensee has made available the findings of the Manufacturing Company to this Authority during the hearing, the Appellant cannot press for billing on actual consumption for the disputed period as the findings have revealed that the meter had not been registering consumption from October 2006. The report has clarified that the meter had not registered the consumption and, hence, the assumption that the meter had functioned during the disputed period but not showed the parameters cannot be accepted. Hence, on the basis of the report, it has to be taken that the meter has not recorded the consumption and, thus, it comes under the category of **Meter Not Recording** under Regulation 27.04 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka. In the light of these revelations, the Licensee's billing till the replacement of the metre, based on the averages of three months energy consumption preceding the inspection, is found to be in order and cannot be faulted. The Appellant's argument that his industry is a seasonal

industry and during the disputed period the consumption of power was less as he had not got sufficient orders from his parties on account of fluctuations in the international market cannot be accepted as he has not notified the status of his industry to the Licensee in advance. Further, the Regulations are clear that in a situation where meter has not recorded the consumption, the Licensee has to prepare the bills on the principles of averages till the metre is replaced and, hence, it cannot be said that the Licensee has deviated from the Regulations while billing the installation.

12. The Appellant has complained that the Licensee has failed to replace the defective meter for 9 months in spite of repeated representations. This delay is not disputed by the Licensee and has ascribed the delay due to non-availability of ETV Metre during the relevant period. Since inordinate delay has been caused to replace the metre, the Licensee is liable to pay 5% rebate on the energy bills as provided under Regulation 27.04(vii) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka to the Appellant. In the light of the above, the following order is issued:

ORDER

13. For the foregoing reasons, the appeal is partly allowed in terms of the following:

14(a). The billing made during the disputed period on the basis of average consumption of three months preceding inspection is upheld.

14(b) The Licensee to pay a rebate of 5% on the energy bills from the date of inspection (15 days' grace period allowed) till the metre was replaced under Regulation 27.04(vii) of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka.


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Shri Mohammed Vilayath Alli, M/s.Indo Economic Earth, Plot No.88, II Phase, Kapnoor Industrial Area, Gulbarga (represented by Sri M.Ilyas M.Sarmast, Gulbarga).
2. Assistant Executive Engineer(EI), O & M Rural Sub-Division, GESCOM, Gulbarga.
3. Consumer Grievance Redressal Forum, GESCOM Corporate Office, Opp. Hotel Parivar, Main Road, Gulbarga
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