



**Before the Electricity Ombudsman**  
**9/2, 6<sup>th</sup> Floor, Mahalakshmi Chambers, M.G.Road,**  
**Bangalore**

**Present: B.R.Jayaramaraje Urs, IAS (Retd.)**  
**Electricity Ombudsman**  
**Case No.OMB/B/G-138/2012/156**  
**Dated 05.02.2013**

M/s.Orient Bell Limited,  
 (formerly Bell Ceramics Limited)  
 Chokkahalli Village,  
 Hoskote Taluk,  
 Bangalore Rural District-562114.  
**(Represented by Sri M.G.Prabhakar,**  
**Authorised Representative)**

**.. Appellant**

**Vs**

1. The Asst. Executive Engineer(EI)  
 O & M Sub Division, BESCO,  
**HOSKOTE**  
**(Bangalore Rural District).**

2. The Chairperson,  
 Consumer Grievance Redressal Forum,  
 B.E.S.C.O.M. Corporate Office,  
 K.R.Circle,  
**BANGALORE-560001.**

**.. Respondents**

1. This is an appeal under clause 21.2 of the provisions 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 2<sup>nd</sup> Respondent) Vide No CGRF/100/2011/1175-80 dated 12.07.2012 in respect of the Appellant's grievance relating to non-refunding of Rs 13,54,181/ excess collected from the Appellant from September 2008 to November 2009 during the operation of Special Incentive Scheme introduced by the BESCO and the refusal of the 2<sup>nd</sup> Respondent to issue any directions to the Assistant Executive Engineer(EI), Hoskote Sub-Division, BESCO (hereinafter referred to as the 1<sup>st</sup> Respondent) to refund Rs.13,54,181/- to the Appellant. Aggrieved by the decisions of the 2<sup>nd</sup> Respondent, the Appellant has submitted his case as under:

2. The Appellant is a Public Limited company registered under the Companies Act, 1956. The Company availed 1000 K.V.A H.T power Supply to its installation bearing R.R No HKHT 161 in the year 2006 and it was enhanced to 2500 K.V.A on 23.03.2009.

3. BESCO introduced a Special Incentive Scheme in 2001 with the approval of KERC. Under the Special Incentive Scheme, the Appellant was eligible to get the benefit of the scheme over and above the base consumption. In the case of the Appellant, the base consumption was arrived at 4,37,474 kWh per month; however, only 45,000 units were allotted for the months beginning from September 2008 to December 2008 and subsequently it was further reduced to 21,500 Kwh vide their letter No BESCO/GMT/BC-23/F-1252/08-09/CYS dated 02.01.2009.

4. The Appellant enhanced the contract demand from 1500 K.V.A to 2500 KVA and proportionately the base consumption was to be enhanced to 5,85,474 Kwh as per 2005 Tariff Order. However, BESCO withdrew the scheme unilaterally without the approval of KERC and, later, this matter was brought to the notice of KERC in one of its public hearings and KERC, after examining the issue, disapproved the unilateral decision taken by BESCO discontinuing the scheme without its prior approval and, hence, advised BESCO to refund the excess amounts collected from the consumers for the period of discontinuance of the scheme through adjustments

in future bills of the consumers. Since there was delay in extending the benefits, the Appellant filed a W.P before the Hon'ble High Court and, before the Hon'ble Court, BESCO submitted that it had extended the Special Incentive Scheme to the Appellant for the period starting from June 2009 to November, 2009 and further undertook to refund the excess amount collected during the discontinuance of the scheme. In the light of the memo filed, the matter was disposed by the Hon'ble High Court. Subsequently, a sum of Rs.50,281/- was credited to the Appellant's account. Aggrieved by the partial crediting of the amount, the Appellant filed a representation to the Chief General Manager (F&C), BESCO on 16.06.2011 for refund of eligible amount of Rs.12,69,670/-. Instead of refunding the amount, BESCO referred the matter to CGRF for decision. The 2<sup>nd</sup> Respondent has not granted any relief to the Appellant and, hence, requested this authority to allow the appeal and to set aside the impugned order

5. The 1<sup>st</sup> Respondent's comments were called vide No OMB/B/G-138/2012/99 dated 23.08.2012 and the 1<sup>st</sup> Respondent has furnished his comments vide letter No. AEEE/AAO/SA/2012-13/4298-202 dated 06.09.2012 (addressed to Chief General Manager, BESCO Corporate Office with copy marked to Electricity Ombudsman and received on 02.11.2012)

6. In his comments, the 1<sup>st</sup> Respondent submitted that the Appellant in his letter dated 05.09.2008 had requested for 8 lakh units of power over and above the base units. Under the Special Incentive Scheme, base units were fixed at 4,37,424 units. BESCO initially allotted 45,000 units over and above the base units (September 2008 to December, 2008) and the Appellant had not utilized the allotted units. The average consumption of the Appellant prior to the scheme had been 4,81,890 units and during the scheme, the power consumption of the Appellant had come down to 4,58,974 units (September 2008 to November 2008). The Appellant had represented to BESCO to extend the additional units till September-2009. Since the Appellant had not utilised the allotted units of power, decision had been taken to further reduce the allotment. Reduction in allotment had been made taking into

account the differential consumption that had taken place before and during the implementation of the scheme. The difference had been arrived at 21,500 units and there was no irregularity and, hence, prayed this Authority to confirm the order passed by the 2<sup>nd</sup> Respondent and to dismiss the appeal.

7. The case was taken up for hearing on 07.12.2012 and further three hearings were conducted and arguments got concluded on 30.01.2013. On behalf of the Appellant, the Authorised Representative, Shri M.G.Prabhakar appeared and put forth his arguments. On behalf of the 1<sup>st</sup> Respondent, Law Officer, BESCO, Shri Vinayaka.K appeared and submitted his arguments.

8. Shri M.G.Prabhakar, Authorised Representative of the Appellant, while reiterating the submission made in the appeal memo, argued that BESCO under the Special Incentive Scheme had no powers to fix additional units over and above the base units. The 2<sup>nd</sup> Respondent in its order had wilfully made errors in not framing the issues for its consideration and its observation that BESCO had powers to modify KERC Tariff order is against to the Electricity Act, 2003. In the present case, the base consumption had been arrived at 4,37,474 kWh per month. However, the benefit had not been extended to the Appellant and only 45,000 units had been allotted initially for the months beginning from September to December 2008. Upon the request of the Appellant for extending the scheme up to September 2009 to December 2009, BESCO arbitrarily further reduced the allotment to 21500 units vide their letter No.BESCO/GMT/BC-23/F-1252/08-09/cys-183 dated 02.01.2009.

9. The Authorised Representative of the Appellant added that the Appellant had enhanced the Contract Demand from 1000 KVA to 2500 K.V.A and, proportionately, the base consumption ought to have been enhanced to 5,85,474 units as per 2005 Tariff Order. In the middle of the implementation of the scheme, BESCO suddenly discontinued the scheme unilaterally without the prior approval of KERC. Later, when the issue regarding discontinuance of the scheme had been brought to the notice of KERC, it took serious objection at the discontinuance of the scheme and,

finally, directed BESCO to pay differential amount to the consumers who had participated in the scheme. There was a delay in adjustment of the amount. Hence, the Appellant approached the Hon'ble High Court questioning the delay in adjusting the differential amount and, during the hearing, BESCO undertook to refund the amount to the Appellant and it also admitted that the scheme benefit had been extended to the Appellant. The case before the Hon'ble High Court came to be disposed of in the light of the memo filed by BESCO. However, BESCO, instead of paying Rs.13,54,181/- refunded only Rs.50,281/-. This is contrary to the scheme and also memo filed by BESCO before the Hon'ble High Court. Hence, the Appellant prayed this Authority to direct BESCO to refund Rs.13,54,181/- as per the scheme.

10. Sri Vinayaka.K, Law Officer BESCO submitted that M/s Bell Ceramics Ltd had applied for benefit under the scheme starting from September 2008. The Bell Ceramic Company in their letter dated 05.09.2008 had sought for additional 8 lakh units of power over and above the base units. In response to this letter, BESCO allotted 45,000 units from September 2008 to December 2008 and the scheme is silent regarding fixing of units by BESCO. In the present case, while the Appellant sought for 8 lakh units, BESCO allotted 45,000 units vide their letter dated 10.10.2008 and the Appellant had not filed any objection against the reduced allotment. The Appellant had been allotted 45,000 units initially on the basis of earlier consumption and even this allotment had not been availed by the Appellant. During October 2008, against 45,000 units allotted, the Appellant had availed only 10,246 units and for November 2008, only 2026 units had been utilised by the Appellant.

11. The Law officer, BESCO on the impugned order submitted that the 2<sup>nd</sup> Respondent had come to the conclusion in its order that it had no jurisdiction to deal with the case and also held that the aggrieved person could approach KERC for settlement of its grievance in the matter. The Law Officer, citing the order passed by KERC in respect of M/s.Vishnu Textiles Vs CESC vide No OP 26/11, added that the Commission had held that under the scheme, the beneficiary had to apply for

benefits afresh whenever allotment had expired. The issue before KERC had been whether the allotment made once was valid for an indefinite period or it had to be renewed after the expiry of the allotment. The present case is similar to M/s.Vishnu Textiles and, in the present case, the issue involved is whether the Licensee had the powers to determine the ceiling limits over and above the base units.

12. The Law Officer, BESCO further argued that the issue relating to imposition of ceiling comes under the jurisdiction of KERC as it involved interpretation of Special Incentive Scheme. The Appellant had sought for 8 lakh units and, against this, BESCO had allotted 45,000 units on 10.10.2008 and the Appellant had not approached any authority for a period of 4 years and had now approached CGRF and Ombudsman after a lapse of 4 years and, hence, the appeal suffered from limitation and the principle of estoppels and, hence, prayed this Authority to dismiss the appeal and to confirm the order passed by the 2<sup>nd</sup> Respondent.

13. Both parties were informed vide letter No.OMB/B/G-138/2012/131 dated 27.11.2012 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.

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

***a) Whether the Appellant has participated in the Special Incentive Scheme operated by BESCO?***

***b) Whether the Appellant is eligible for the benefit under the scheme?***

***c) Whether the Special Incentive Scheme had any cap on the allotment of additional units over and above the base units?***

15. In order to answer the above questions, we will have to refer to the memo filed by BESCO before the Hon'ble High Court and also the order passed by the High Court on this memo. The relevant portion of the order extracted reads as follows ***"N.K.Gupta, learned counsel appearing for the second respondent has filed a memo stating that the second respondent in its official memorandum dated 19.11.2010 has extended the HT incentive scheme to the petitioner for the period from June, 2009 to November, 2009 and to refund the excess amounts for the said period through adjustments in future energy bills of the petitioner"***

16. ***"In the light of the memo filed by the learned Counsel for the second respondent, the petitions do not survive for consideration and they are accordingly disposed of as having become infructuous."***

17. The reproduction of the order of the Hon'ble High Court supra relating to the present case makes it clear that the Appellant has undoubtedly participated in the Special Incentive Scheme.

18. Further, as per the memo filed before the Hon'ble High Court, it is amply clear that BESCO has committed to refund the excess amount for the said period through adjustment in future energy bills of the petitioner.

19. Though BESCO, in principle, has committed to refund the excess amount collected for the period of discontinuance of the scheme, when it came to actual refunding, it has refunded only Rs.56,281/-. BESCO, in its letter dated 25.04.2011, has conveyed to the Appellant that the Appellant is eligible for refund of Rs.56281/-. This letter does not give details like (a) the base units fixed, (b) the consumption over and above the base units (c) and the amount to be refunded and, instead, the letter notes the (a) recorded consumption(units), (b) revised bill due to special incentive scheme, (c) actual bill issued and (d) difference to be adjusted.

The details relate to the period from July 09 to December. BESCO, in its letter, has taken 21,500 units as the units fixed over and above the base consumption under the Special Incentive Scheme and that the Appellant was eligible for refund of Rs.5628/-.

20. In the light of this letter, we will have to examine whether the scheme contemplates any cap on the consumption over and above the base units. To answer this question, we will have to refer to 2009 Tariff Order. BESCO during 2009 tariff revision had sent recommendation to KERC for scrapping the Special Incentive Scheme on the grounds of financial un-viability. In the proposals under the caption **"the issues of concern and consideration under the scheme are listed hereunder."** At page 192 chapter 7, it is stated that the first issue of concern is **"there is no cap on the additional units sought by the applicant and to be sanctioned under"**. This proposal shows that the Special Incentive Scheme was implemented without any ceiling over and above the base units till it was scrapped in November 2009. It appears that BESCO has, without powers, resorted to put a cap on consumption over and above the base units which is found to be arbitrary and beyond its powers.

21. In the present case, though the Appellant has sought 8.00 lakh units over and above the base units, BESCO has supplied only 5,18,286 units from September 2008 to November 2009. The Appellant is found to have fulfilled all the conditions under the scheme entitling refund of excess amount collected during the scheme period for supply of 5,18,286 units. In spite of BESCO's own admission that the scheme did not have any ceiling as for allotment of additional units are concerned, the 2<sup>nd</sup> Respondent, in its order, has taken a stand that BESCO had powers to fix the cap on consumption over and above the base units which runs contrary to the submissions made by BESCO in its tariff proposals 2009. The impugned order is totally devoid of merits and, hence, deserves to be set aside.

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



## ***ORDER***

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

23. BESCO to refund the excess amount collected from the Appellant for the period from September 2008 to November 2009 under the Special Incentive Scheme.

24. The Appellant is at liberty to approach BESCO regarding payment of interest and BESCO will examine such request and pass suitable orders in accordance with law within a period of 30 days from the date of passing of this order.



(B.R. Jayaramaraje Urs)  
Electricity Ombudsman

1. M/s. Orient Bell Limited, Chokkahalli Village, Hoskote Taluk, Bangalore Rural District-562114 (represented by his Legal Counsel, Sri M.G. Prabhakar, Authorised Representative).
2. Consumer Grievance Redressal Forum, BESCO Corporate Office, K.R. Circle, Bangalore
3. The Assistant Executive Engineer (Ele), O & M Sub Division, BESCO, Hoskote, Bangalore Rural District.
4. Shri Vinayaka.K., Law Officer, BESCO Corporate Office, K.R. Circle, Bangalore-560001.
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (H), KERC
8. PS to Hon. Member (S), KERC
9. PS to Secretary, KERC
10. OCA