

BEFORE THE OMBUDSMAN, KARNATAKA ELECTRICITY REGULATORY
COMMISSION
COMPLAINT NO.OMB/93 OF 2010

Date: 19.10.2010

BETWEEN:

01. MR N PURUSHOTHAMComplainant
S/o Late K Narayana Reddy,
Aged 60 years,
Residing at No.83, Osborne Road,
BANGALORE-560 042.

(Shri Sridhar Prabhu, Counsel)

And

02. Bangalore Electricity Supply Company Ltd.,
Bangalore.(Represented by its Assistant
Law Officer) ...Respondent-1.

03. Consumer Grievance Redressal Forum
of BESCO Limited, ...Respondent-2.

The Complainant above named has filed this complaint against the order of the Respondent-2 passed on 6.7.2010 in file No.CGRF 911-19. The case of the complainant is that he is a HT consumer of BESCO bearing R.R.No.S8 HT48 provided to his premises No.614, Vajpayee Nagar, Bommanahalli, Hosure Road, Bangalore-560068. This installation with initial load of 250 kva was serviced on 11.5.2001 under HT2 (b) category and subsequently an additional load of 250 kva was sanctioned. Upon the production of a certificate issued by the Joint Director of Industries and Commerce department, the installation was converted from HT2 (b) to HT2 (a), which has a relatively lower tariff.

The Officers of the BESCO have inspected the installation on 14.12.2009 and have come to the conclusion that the Complainant has been using the Electricity to run a BPO, which is a commercial activity, categorized under HT2 (b) for the purpose of levying tariff. The Respondent-1 thereafter has initiated proceedings against the complainant for unauthorized use of electricity under section 126 of the Electricity Act 2003 read with clause 42.02 of the Conditions of Supply of Electricity. Accordingly, the Assistant Executive Engineer, S8 sub-division of BESCO has back billed the installation at twice the normal rate for a period of 6 months as per clause 42.02 of the conditions of supply and has issued a letter to the complainant on 16.12.2009 calling upon him to pay the back billing charges

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of Rs.66,08,887 within 30 days. The above letter also offered the complainant to file the objections if any, or to seek any clarification in the matter within 15 days from the date of receipt of the letter.

In response to the letter-dated 16.12.2009, the complainant has filed his objections on 31.12.2009. The AEE after considering the objections of the complainant has passed an order on 2.1.2010 confirming the misuse of the electricity and the back billing charges. The ground assigned by AEE for the misuse of electricity is that, as per the company's Memorandum of Association, the company is engaged in a commercial activity, which is categorized as HT2 (b) in the tariff order issued by the Karnataka Electricity Regulatory Commission.

Aggrieved by the orders of the AEE, the complainant had lodged a complaint before the Respondent-2. The Respondent-2 has passed the impugned order on 6.7.2010 rejecting the complaint stating that, the CGRF has no jurisdiction to entertain the complaint relating to unauthorized use of electricity and that the complainant is free to approach the Appellate Authority. In the meanwhile, the Respondent-1 has disconnected the power supply for non-payment of back billing charges. However, the power supply was restored by the Respondent-1 after the complainant has paid 50% of the back-billed amount under protest.

Aggrieved by the order of the Respondent-2, the complainant has filed this complaint before the OMBUDSMAN.

I have heard both the parties. The learned Advocate for the complainant has stated that, the order of the AEE is illegal and in gross violation of Section 56 (1) of the Electricity Act 2003. He has further submitted that, there is absolutely no misuse of Electricity as arbitrarily assumed by the Respondents. The allegation of unauthorized use of electricity made by the Respondent-1 is very serious charge which inflicts stigma on the complainant. The Learned counsel for the complainant has further submitted that, there is no distinction between the Information Technology Industries and the BPOs as the Government in its policy has provided benefits/concessions to the BPOs on par with IT Industries. The AEE has passed the order confirming the back billing charges without providing an opportunity to the complainant to refute the allegations of unauthorized use of electricity. The Respondent-2 according to him has also erred in passing the impugned order, as

the case is not related to unauthorized use of electricity. The counsel has further submitted that, the OMBUDSMAN has allowed the complaint of M/s Velankani Info systems pvt. Ltd., which is identical with the case of the complainant. The Counsel therefore, prays to set aside the orders of the Respondent-2 and also to declare the back billing charges levied by the Respondent-1 as illegal.

The Respondent-1 is represented by the Assistant Law Officer of BESCOM. He has stated that the complainant has misused the Electricity supplied to him. In other words the complainant has use the Electricity to run a BPO which is a commercial activity not categorized under HT2(a) tariff by the KERC. The unauthorized use of Electricity has been established after an inspection of the installations by the Officers of the company. The Assistant Executive Engineer No.S8-Sub-division has rightly initiated the proceedings against the complainant under section 126 of the Electricity Act 2003 read with clause 42.02 of the Conditions of supply. The Assistant Law Officer has further submitted that the impugned order passed by the Respondent-2 is in order, as the case of unauthorized use of Electricity doesn't come within the purview of the CGRF. Hence, the complaint lodged before the OMBUDSMAN also doesn't survive as the OMBUDSMAN cannot entertain the complaint of unauthorized use of Electricity. The complainant has to approach the Appellate Authority under section 127 of the Electricity Act 2003 to seek relief. Further, the Assistant Law officer has submitted that the decision of the OMBUDSMAN on the complaint of M/s Velankani Info Systems Pvt.ltd. cannot be relayed upon as the same has been stayed by the Hon'ble High court of Karnataka in W.P. No.31314/2010. The Law Officer therefore prays to dismiss the complaint in the interest of justice and equity.

I have gone through the records and peruse the written statements placed before me by both the parties. I have also considered the oral submissions made by them. As per the tariff orders of the commission, HT2(a) tariff is applicable to Information Technology Industries engaged in development of hardware and software as certified by I.T. and B.T. department of the Government. The BPO is a commercial activity and not categorized under HT2(a). Further, there is no Govt. Order or a Certificate issued by the IT & BT department of the Govt. to the effect that a BPO is an Industry engaged in the development of hardware or software. Therefore, in the absence of BPO not being specifically categorized under

HT2(a) in the tariff orders of the KERC, it is not possible for the Respondent to bill the installation in question under that category. This is therefore a case of misuse of Electricity and I see no reasons to interfere with the impugned order. The complainant may approach the Appellate Authority, which is the appropriate forum to agitate the matter.

The complaint is therefore rejected.

(SHAIK AHMED)
OMUDSMAN

Copy to:

01. The Complainant
02. The Respondents
03. M.D, Bescom,
04. P.S. to the Chairman, KERC, for information.
05. P.A to Members, KERC, for information.