

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

Present: B.R.Jayaramaraje Urs, IAS
Electricity Ombudsman
Case No.OMB/B/G-112/2011/10191
Dated 18.05.2011

Between

M/s.S.M.Apparels Private Limited,
 No.17, BCIE, Old Madras Road,
 Dooravaninagar,
BANGALORE-560016
 (Represented by its Legal Counsel,
 Sri Shridhar Prabhu)

.. **Complainant**

Vs

1. Bangalore Electricity Supply Company Ltd., (BESCOM)
 K.R.Circle,
BANGALORE-560001
2. Assistant Executive Engineer (Ele),
 E-7 Sub Division, Old Madras Road,
 Dooravaninagar,
BANGALORE-560016
3. Consumer Grievance Redressal Forum, (CGRF)
 BESCOM Corporate Office,
 K.R.Circle,
BANGALORE-560001

.. **Respondents**

M/s.S.M.Apparels Private Limited is the Appellant in the present case and a Consumer under LT 5(a) category. The Appellant is supplied electricity by BESCOM – E 7 Sub Division with installation bearing RR No.DP.951 (hereinafter referred to as the 2nd Respondent).

The Appellant has filed this representation on 15.04.2011 against the order dated 02.04.2011 passed by the Consumer Grievance Redressal Forum, Bangalore (In short, the CGRF - hereinafter referred to as 3rd Respondent). The Appellant has, before the CGRF and the Ombudsman, challenged the demand letter issued by the 2nd Respondent dated 17th March 2010 for Rs.8,16,517/- and the subsequent revised demand letter dated 3rd April, 2010 for Rs.7,10,648/-.

Along with the Appeal Memo, the Counsel for the Appellant had prayed for grant of an interim order seeking directions to the 2nd Respondent not to disconnect supplies to the installation till the final order is issued in the matter. Accordingly, after conducting a hearing, the request of the Counsel for the Appellant was considered and the 2nd Respondent was asked not to stop the service to the installation till the case attained finality.

The Appeal Memo states that the installation bearing RR No.DP.951 has a sanctioned load of 40 HP and was serviced on 22.08.1985 initially in the name of Universal Precision Components Private Limited. The installation was subsequently changed in the name of the Appellant based on the lease agreement. The Service Certificate was provided on 13.05.2010. To support his case, the Appellant has obtained the following documents under the Right to Information Act, 2005 from the Respondents and produced before the Ombudsman.

1. 1st Respondent's letter dated 11.05.2010.
2. Application bearing No.IBP 51/9-1985.dated 09.07.1985
3. Sanction letter dated 03.08.1985.
4. Wiring Contractor's completion Test Report dated 16.08.1985.
5. Agreement dated 10.08.1985.
6. Detailed estimate and work order.
7. O.M. dated 04.12.1985 regarding intershifting.

Later the Licensee rated the installation dated 02.02.2010 and the rating details are as below:

1. Installation was last rated on 25th August 2003.
2. Meter was calibrated and recording properly.
3. C.T.Ratio to be changed to 15 from the existing constant of 10.

Subsequently, on 17.3.2010, the 2nd Respondent raised a demand for Rs.8,16,517/-. On this demand, the Appellant sought details of the demand sum. The 2nd Respondent issued a revised demand letter requiring the Appellant to pay Rs.7,10,648/-. In this demand, the 2nd Respondent informed the Appellant that on 19.07.2001, the installation was serviced with additional load and the meter constant had been changed from 10 to 15. The demand comprised 3 components:-

- a) Energy Charges
- b) Fixed Charges
- c) Tax

Further, the Appellant submits that the Licensee has issued a bill for the month of May 2010 with a due date of 16.5.2010, in which also the sanctioned load is shown as 40 H.P. and the amount as Rs.8,31,010/-.

Aggrieved by this demand letter of the 2nd Respondent, the Appellant filed a complaint under Sub Section 5 of Section 42 of the Electricity Act, 2003 before the 3rd Respondent on 14th May 2009. The 3rd Respondent, after hearing the matter, passed an order on 2nd April 2011 vide case No.CGRF/22/2010/1322-1327, The Appellant, not satisfied with the decision of the 3rd Respondent, filed this appeal before the Electricity Ombudsman, Bangalore 15.4.2011. Appeal was registered in the office of the Electricity Ombudsman vide No.OMB/B/G-112/11/0023 and the appeal was taken on file. Notices were issued to the Appellant and the 2nd Respondent to appear before the Ombudsman on 26.4.2011. On that day, Advocate for the Appellant, Sri Shridhar Prabhu and Sri Kanta Reddy, Assistant Executive Engineer, E-7 Sub Division, Old Madras Road, Doorvaninagar, Bangalore-560016, the 2nd Respondent, appeared.

Sri Shridhar Prabhu, Advocate for the Appellant, submitted that as per the Regulation 3.3 of the KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004 (hereinafter referred to as the Regulation), the Member of the 3rd Respondent appointed by the KERC should hold office for a maximum period of three years and the Member is not eligible for re-appointment. Pertinently, Sri M.G.Prabhakar's tenure ended on 23rd January 2011 and he was not eligible to hold the office beyond this term and this being the case, the 3rd Respondent passed an order dated 02.04.2011 in case NO.CGRF/22/2010/1322-1327. Shri M.G.Prabhakar, Member, CGRF, Bangalore, demitted his office on 23.01.2011 and the impugned order is passed on 02.04.2011. Hence, this Member could not have attended the proceedings and since the impugned order bears the signature of Shri M.G.Prabhakar, the proceedings is vitiated and hence is liable to be set aside.

Further, the Advocate for the Appellant contended that the installation bearing RR No.DP.951 was first sanctioned with a load of 40 HP and serviced on 22.08.85 under LT-5 tariff and this is evident from the Work Order issued by the 2nd Respondent, (2) Wiring Contractor's completion test report dated 16.8.85, (3) Power sanction letter for 40 HP dated 3.8.85, (4) Agreement copy dated 10.8.85 and (5) servicing of installation with 40 HP on 22.8.1985 with CT Ratio of 100/5 K = 20. There is no record or finding for change of CTs from 100/5 K = 20 to 50/5 K = 10 and it is not explained by the 2nd Respondent as to why CT ratios were changed when the sanctioned load was only 40 HP and there was no occasion to change the CTs from 100/5 to 50/5 and as such the impugned order of the 3rd Respondent is erroneous on facts and, therefore, has come to erroneous conclusion.

The Advocate for the Appellant submitted that as per the impugned order, the Executive Engineer of M.T.Division wrote a letter dated 20.2.2010 in which he stated that the installation was serviced by changing the CTs on 3.9.2001 and change of CTs is not service of installation and if that were to be so, then each time the CT is changed, the installation should be considered as serviced. In the instant case, the MT Division is reported to have certified the date of servicing. As per the Electricity Act, the MT Division does not have powers to issue certificate of service and such powers are

vested with the jurisdictional AEE of the BESCOM and the MT Division has no powers to prepare short claims and issue provisional bill. All these deviations have vitiated the proceedings. There are also contradictions regarding the date on which additional power is supplied. In the impugned order, the 3rd Respondent in one para says that as per the letter of EE, MT Division dated 20.02.2010, the installation was serviced by changing CTs. However, in the same order, the 3rd Respondent mentions the date of providing additional power as 19th July 2001.

The Advocate for the Appellant maintained that the installation was never serviced with any additional load and this is evident from the documents obtained from Licensee under the RTI Act and as per the documents furnished by the Licensee and particularly the Service Certificate. The latest bill disclosed that the total contract demand is for 40 H.P and not 60 H.P as claimed by the 2nd Respondent.

The Advocate for the Appellant brought to the notice of the Ombudsman that in the rating report dated 2.2.2010 produced at Annexure C-3 the last date on which rating is said to have been done is on 25.08.2003 and, as per the regulations, installations having a load of more than 40 HP has to be rated every year and load below 40 HP has to be rated once in every 2 years. It is highly improbable that every inspection report, rating report, monthly energy bill by the Licensee recorded the demand as 40 HP and meter constant as 10 by mistake. However, the Licensee cannot take advantage of its own wrong doings.

Referring to Section 56 of the Electricity Act 2003 , the Advocate for the Appellant contended that demand for Rs.7,10,648/- is barred by limitation. Further, he argued that the Licensee has not drawn any mahazar and no witness were called as per procedure laid down under the Conditions of Supply of Electricity in Karnataka.

The Advocate for the Appellant in his prayer has sought for setting aside the impugned Order of the 3rd Respondent vide case No.CGRF/22/2011/1322-1327 dated 2nd April 2011 which is annexed as OM-1.

On behalf of the 2nd Respondent, Sri Kanta Reddy, AEE, E-7, Sub Division, Old Madras Road, Dooravaninagar, Bangalore-560016 appeared on 26.04.2011 and sought more time to advance his arguments. Accordingly, time was granted and case was posted to 29.04.2011. On 29.04.2011, Sri Kantha Reddy submitted that he was not competent to make any statement regarding the signature attested by Sri M.G.Prabhkar in the impugned order and further he is not aware of the provision that the proceedings of the CGRF should be transparent and open. However, on verification of relevant documents, it is disclosed that the installation was originally serviced on 22.8.85 for 40 HP with a CT ratio of 100/5. On 20th February, 2010, the Meter Testing Division, conducted inspection of this particular installation and during inspection, the MT Division found the CTs fixed at 75/5 K = 15. Prior to this, the Appellant had applied for additional load of 20 HP dated 18.07.2001. On the same day additional power of 20 HP was sanctioned and the Appellant was advised to pay the deposit. Later the Appellant paid the deposits and executed the agreement on 19.07.2001.

The 2nd Respondent further contended that whenever additional power is sanctioned, fresh servicing is not done but utilities obtain agreement from the consumer. In the instant case, MT Division on 03.09.2001 changed the CTs. Accordingly, CTs were fixed at 75/5 K=15.

Explaining the procedure, the 2nd Respondent submitted that after rating is done by the Metre Testing Division, the concerned jurisdictional AEE will issue an Official Memorandum (hereinafter referred to as O.M.) indicating sanction of additional load. In the present case through the said O.M. the Appellant was communicated regarding sanction of additional load. However, the 2nd Respondent submitted that there is no record for having issued O.M. from his office. However, it is noticed that even after sanction of additional load, the Sub Division continued to bill for 40 HP taking constant as K-10 up to February 2010. Later on 02.02.2010, the MT Division, during periodical inspection, noticed that the billing continued to be issued for 40 HP instead of 60 HP. After noticing this defect, the MT Division sent a report to the jurisdictional AEE to raise the demand and to collect the short claims. On receipt of this report, the Assistant Executive Engineer issued a revised bill for Rs.7,10,648/- and the Appellant after receipt

of this revised bill has not made payment to the 2nd Respondent but approached the 3rd Respondent for relief.

The Advocate for the Appellant by way of replies referred to page 94 of the Appeal Memo to confirm that BESCO has issued bill wherever the sanctioned load is shown as 40 HP and further he referred to page 74 of the Appeal Memo to show that inspection report dated 8th March, 2002 evidences that the sanction load is 40 H.P. only – and Advocate for the Appellant further maintained that the rating should have been done every 6 months and in the instant case, BESCO has not done rating for 7 years and he doubted whether the utility can demand difference at any stage. Drawing attention to para 80 of the Appeal Memo, the Advocate submitted that the M.T.Division in their report mentioned that installation was serviced on 17.7.2001 but the M.T. Division is not the power sanctioning authority and hence cannot send provisional bill to the Assistant Executive Engineer.

The 2nd Respondent concluding his argument claimed that there are apparatus available to check physical supply of power.

Vide this office letter No.OMB/B/G-112/11/10144 dated 11.05.2011, both the parties were informed of the provision of Sub-Regulation-1 of Regulation 20 which provides an opportunity for settlement by agreement through conciliation and mediation. However, the Counsel for the Appellant, vide his letter dated 17th May 2011, has informed that although an effort was made by the Appellant, the same was not reciprocated by the jurisdictional Assistant Executive Engineer and that there is no possibility of a settlement in the matter. He has further requested the Ombudsman to dispose of the case on merits in accordance with the law. Hence, this order.

In the light of the contentions made by the parties, we have to analyse whether the impugned order of CGRF, Bangalore, conforms to the provisions of Conditions of Supply of Electricity in Karnataka. Clause 4.02 prescribes the procedure for availing power supply and additional power supply. Under this clause person/persons requiring power supply has to make application along with relevant information to the Licensee.

In the NOTE under Clause 4.03(b), it is made mandatory that whenever additional power supply is availed, the new agreement shall be for the aggregate power and the earlier agreement shall stand cancelled.

Under Clause 4.03 of the Conditions of Supply of Electricity in Karnataka, the Licensee can sanction power to the consumers after satisfying the feasibility – at this stage, the Licensee will indicate to the consumers the amount towards the expenses in providing any electric line, initial security deposit, meter security deposit and other charges. Under clause 4.03 e(iii) after observance of all the conditions laid down in clause 4.03 (ii) (a) to (e) by the Applicant, the work order shall be issued and action shall be taken by the Licensee to arrange power supply.

Clause 4.06 provides for inspection and testing and clause 4.06 (b)(i) says “upon receipt of the contractor’s completion-cum-test report along with actual wiring diagram and after intimation of the completion of service main work by the Applicant, the Licensee shall intimate to the applicant the time and the day when the Licensee’s Engineer proposed to inspect and test the installation. On due compliance thereon by the Applicant, the Engineer shall complete the inspection of applicant’s installation.

Clause 4.06 b(ii) stipulates that no power connection shall be made until the Applicant’s installation has been inspected and tested by the Licensee and found satisfactory.

Clause 4.08 explains when the supply of power commences

(i) “Where power sanction letter is issued by the Distribution Licensee on receipt of application for supply of electricity and after execution of the required agreement by the Applicant and after approval of the Applicant’s installation, the Engineer shall commence supply of power to the Applicant under intimation to him.”

(ii) which reads "If the installation satisfies the conditions specified above, the Engineer concerned shall service the installation, seal the meter and load limiters, meter housing box/cubicle/panel etc.

Clause 4.08 (iii) requires "The consumer or his representative and the Supervisor of the Licensee to be present at the time of servicing of the installation."

Clause 4.08(v) stipulates "immediately after the installation is serviced, an R.R. Number shall be assigned to the installation and this number shall be painted on the meter board.

In the Impugned order, the 2nd Respondent in his deposition before the 3rd Respondent states at page 4 "the Complainant has sought for additional load to an extent of 20 KW and the same has been sanctioned and a communication has been sent to him for payment of necessary deposits. The Complainant has paid additional 3 MMD of Rs.49,870/- and Rs.46000/- towards infrastructure development charges on 19.7.2001." On the same day, he has executed a fresh agreement. In order to withstand additional load of 20 KW, a suitable capacity of current transformer was fixed to the installation on 03.09.2000. The installation was inspected by the AE, O&M, on 08.11.2002 and furnished the report as K-10. The Assistant Executive Engineer, M.T.Division has inspected the premises on 25.08.2003 and clearly mentioned the CT Ratio as 75/5 K=15, CT make is Kalpa S1 14229, 13847 and 14263. In this M.T. Report, it has been clearly mentioned that higher capacity of the CT was fixed on 03.09.2000.

The same installation was once again inspected by AEE, M.T.Division, BESCO, Bangalore on 2.2.10 and noticed the CT Ratio as 15, Kalpa make S1 14229, 13847 and 14263. Based on the above details, the Sub Divisional officer has revised the energy bill from the period 1.8.2001 to January 2010 and intimated the Complainant for payment of the same.

The impugned order unfortunately does not discuss as to when the installation was additionally serviced after the completion of formalities viz., (1) application for supply of additional power supply (2) execution of agreement (3) payment of deposit etc. It is the contention of the 2nd Respondent that earlier the Appellant had availed 40 H.P. and when additional power was sanctioned, an agreement was done for 20 H.P. As per the NOTE under Clause 4.03(b), it is mandatory that whenever additional power is availed, the new agreement shall be for aggregate power and the earlier agreement shall stand cancelled. This agreement does not comply with Clause 4.03(b) under caption NOTE. Even if it is presumed that such an agreement has been executed between the parties, it will be a flawed agreement as the purported agreement is not for aggregate power i.e. 60 H.P. In the present case, the earlier agreement continued to be in operation i.e. 40 H.P. and not cancelled. As per the NOTE under Clause 4.03(b), such agreement cannot continue and the earlier agreement will stand cancelled. This has not happened in the instant case. The impugned order repeatedly discusses about the inspection of the installation and CT findings by the MT Division and nowhere it discusses whether after completion of all the formalities including fixing of CTs whether the installation was additionally serviced. For proof of actual servicing, "the Engineer of the Licensee servicing the installation shall give a Service Certificate to the consumer for having serviced the installation specifying the following. This is as per Clause 4.08 (vi) of the Supply Conditions:

- a) Name & address of the consumer
- b) R.R.No.
- c) Date of Service
- d) Sanctioned load
- e) Commencement load
- f) Meter details such as CT/PT ratio (Multiplying Constant)/meter reading at the time of service etc.
- g) Conditions of seal/seal No., if any
- h) Size of service main cable
- i) Fuse rating

- j) ISD and MSD collected with details of receipt No.
- k) Name and address of the LEC and valid Licence No.

In the present case, the 2nd Respondent has made a submission during his argument before this Authority that after rating was done by M.T. Division, the concerned jurisdictional Assistant Executive Engineer will issue an O.M. indicating sanction of additional load. Through this O.M., the Appellant was communicated the additional load sanctioned. However, he submitted that there is no record for having issued the O.M.

Further the 2nd Respondent has not produced any proof for having serviced the installation for additional power supply nor any proof for providing service certificate to the consumer.

As per Clause 4.08(vii) "the Consumer or his representative is required to sign in the sealing register, and on the completion report that his installation has been serviced and the meter, load limiter, meter housing box etc. are sealed"

The 2nd Respondent during his argument has not submitted any evidence to show that the consumer/the Appellant has signed in the sealing register, and on the completion report in proof of additional servicing of the installation.

From the above, it is clear that the 2nd Respondent has failed to produce any proof for additionally servicing the installation. In spite of lack of proof, the 2nd Respondent based on the M.T.Division report fixing CTs has justified raising the demand for Rs.7,10,648 which is against to Clause 4.08 of the Conditions of Supply of Electricity in Karnataka.

In the light of this, without going into the merits of the contention of the Advocate for the Appellant regarding the eligibility of Shri M.G.Prabhakar to participate in the proceedings, I hereby pass the following order based on the records made available and on the basis of the arguments put forth by the contending parties:

ORDER

1. The impugned order passed by the 3rd Respondent in Case No.CGRF/22/2010/1322-1327 dated 2.4.2011 is set aside.
2. The demands raised by the 2nd Respondent seeking the Appellant to pay Rs.8,16,517/- vide demand letter dated 17.03.2010 and subsequently revised to Rs.7,10,648/- vide demand letter dated 03.04.2010, are also set aside.
3. No order as to cost.

(B.R.Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.S.M.Apparels, 17, BCIE, Old Madras Road, Dooravaninagar, Bangalore-560016
2. Consumer Grievance Redressal Forum, BESCOM Corporate Office, K.R.Circle, Bangalore.
3. The Asst.Executive Engineer(Ele),BESCOM, E-7 Sub Division, Old Madras Road, Dooravaninagar, Bangalore-560016
4. The Managing Director, BESCOM Corporate Office, K.R.Circle, Bangalore.
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

