



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/B/G-125/2011/100
Dated 27.08.2012

M/s.Shakeel Pasha Granite,
 KSIDC Industrial Estate,
 Kyalnur,
Kolar District
(Represented by Sri M.A.Delvi, Advocate -
Authorised Representative)

.. Appellant

Vs

1. The Asst. Executive Engineer(EI)
 Rural Sub Division,
 BESCOM,
 M.B.Road,
KOLAR

2. The Chairperson,
 Consumer Grievance Redressal Forum,
 BESCOM. Corporate Office,
 K.R.Circle,
BANGALORE-560001

.. Respondents

01. This is an appeal under the provisions of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 against the order passed by the Consumer Grievance Redressal Forum, BESCOM, Bangalore (hereinafter referred to as the 2nd Respondent) vide No. CGRF/61/2011/438-43 dated 21.11.2011 in respect

of the Appellant's grievance relating to short claims raised by the 1st Respondent for Rs.3,95,990/- on account of erroneous reading of the TOD (Time of Day) Meter and refusal of the 2nd Respondent to issue any directions to the 1st Respondent not to collect the short claims. Aggrieved by the 2nd Respondent's order, the Appellant has submitted his case as under:

02. The Appellant is an Electricity Consumer of BESCO under H.T.2(a) Category. The installation was serviced on 17.11.2008 with a sanctioned load of 100 K.V.A. The installation was assigned R.R No. KRRHT-46 and, at the time of service, the 1st Respondent fixed a T.O.D Meter (Time Of Day) which has 5 Time Zones designated as To, T1, T2, T3, T4 and the Appellant was paying the bills regularly. Suddenly, the 1st Respondent, on 26.02.2010, raised a short claim for Rs.3,95,990/- against the Appellant on the ground of wrong reading of the meter. The TOD meter provides for different time zones and each zone carried different tariff. Aggrieved by this decision, the Appellant approached the 2nd Respondent and the 2nd Respondent did not redress his grievance and, hence, the Appellant prayed this Authority to issue direction to the 2nd Respondent to consider the down loaded data of time zone by treating the installation as **"Deemed Opted."**

03. The 1st Respondent's comments were called vide letter No OMB/B/G-125/2011/11488 Dated 29.12.2011 and the 1st Respondent has furnished his comments vide Letter No AEE/AAO/RSDKLR/1617-18/2011-12 dated 07.01.2012.

04. In his comments, the 1st Respondent submitted that the subject installation has a TOD Meter having 5 time zones, namely T0, T1, T2, T3, T4 and the then Asst.Executive Engineer (E) had taken the reading wrongly and, instead of taking consumption under all time zones, he had taken only one time zone of 8 hours duration, leaving the other 4 time zones unread. Thus, the Appellant had been billed for only 1 time zone and, hence, the short claim.

05. The matter was taken up for hearing on 31.07.2012 and, on behalf of the Appellant, his Authorised Representative, Shri M.V.Delvi appeared and advanced his

arguments and, on behalf of the 1st Respondent, Shri Vinayaka.K, Assistant Law Officer, BESCO appeared and advanced his arguments and the arguments from both sides got concluded on 22.08.2012.

06. Shri Delvi, arguing for the Appellant, submitted that the subject installation had been serviced under H.T.2(a) category on 17.11.2008 and the service had been given after due inspection and pre-commission test by the M.T Division. On 26.2.2010, the 1st Respondent claimed a sum of Rs.3,95,990/- on the grounds of wrong reading of the meter previously. In spite of repeated requests, the office failed to furnish information as to the reason for the short claims. Hence, the Appellant had approached the Hon'ble High Court and also the 2nd Respondent seeking justice. At this juncture, the Appellant had come to know that the meter provided to the subject installation was a TOD meter and the 1st Respondent failed to take the reading as per the time zone provided in the meter. The Appellant had urged before the 2nd Respondent to treat the installation as deemed service as per the time zone as TOD Meter had been fixed to the installation. During the pendency of the complaint before the 2nd Respondent, an application had been filed before the 1st Respondent opting for billing in accordance with the time zones. The Asst.Executive Engineer did not respond to the request and the Appellant approached the Managing Director, BESCO with a representation. This representation had again been forwarded to the Asst.Executive Engineer and nothing had come out of it and, hence, approached the 2nd Respondent. The 2nd Respondent did not pass appropriate orders and, hence, approached this Authority. He prayed this Authority to set aside the impugned order and grant relief as prayed in the appeal memo.

07. Sri Vinayaka.K, the Assistant Law officer, BESCO, arguing for the 1st Respondent submitted that the subject installation had been serviced on 17.11.2008 and TOD Meter had been fixed to the installation at the time of the service and the Appellant had not exercised the option of using TOD facilities. As per KERC Tariff orders, option had been provided to the consumer to use the facilities of TOD. The TOD Meter had been new to the BESCO Engineers and the Asst.Executive

Engineer(E), instead of taking 5 time zones reading and billing, had billed only for one time zone viz., COKWH. This covered only 8 hours consumption. After a lapse of time, the officer in succession noticed there had been some flaw in the meter reading. Hence, requested the M.T. Rating Division to inspect the installation and to report for further action. The M.T Rating Division conducted inspection on 01.05.2010. Inspection revealed that the then AEE while taking the reading had not read all the five time zones and read only one time zone viz., COKWH which covered only 8 hours time of the day and billed only for 8 hours time zone. This necessitated raising of short claim. Short claim was made under Clause 29.08 of Conditions of Supply of Electricity of Distribution Licensees in the State of Karnataka and short claim can be made under this Clause without any limitation of time.

08. The Assistant Law Officer, BESCOM, further added that the Appellant, in his appeal memo, had prayed this Authority to direct the 1st Respondent to revise the claim in accordance with the consumption recorded in the time zone by treating the installation as "**Deemed Opted**". This clearly showed that the Appellant had not availed the TOD facility initially and exercised this option much later. In the instant case, BESCOM had not levied any interest on the short claim and also granted instalments to the Appellant to clear the dues and, hence, prayed this Authority to uphold the order passed by the 2nd Respondent and to dismiss the appeal.

09. Both parties were informed vide letter No.OMB/B/G-125/2011 dated 09.07.2012 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.

10. Having regard to the contending position of the parties, the issue that emerges for our consideration is:

Can the consumer claim TOD Tariff without exercising the option in writing and whether the short claim demand made by the 1st Respondent for the period of not exercising the TOD option is as per the Tariff Order?

11. In order to answer this question, we will have to see the Tariff Order issued by KERC during the relevant years. This issue relates to the years 2008-2010 and KERC in its Electric Power Tariff 2009 provides for separate TOD under the heading ***"T.O.D Tariff applicable to HT 2(a)(i) & (ii) category at the option of the Consumer."*** Under this category, the consumer had the option either to use the TOD facility or continue with the old meter and, in case the consumer wanted TOD facility, he was required to give the option in writing to the Authorities so as to make available the TOD facility. In the present case, as pointed out by the Assistant Law Officer, BESCO, the Appellant had not exercised this option in writing at any point of time and this is evident from the prayer made in the appeal memo before this Authority which states ***"Direct the Respondent to revise the claim in accordance with the consumption recorded in the time zone by treating the installation as "Deemed Opted"***. Further, the KERC tariff order 2009 provided option to the consumers regarding use of TOD facility. Consumers who exercised the option were considered for TOD benefit. Using of TOD was not mandatory at that time. Consumers who failed to exercise the option in writing were obviously not considered for the TOD benefit and, hence, the Appellant's argument of ***"Deemed opted"*** cannot be accepted in the absence of not exercising the option in writing.

12. Further, the 1st Respondent's Counsel has clarified that the then Asst.Executive Engineer, instead of taking the reading of all the 5 time zones, took the reading of only one time zone, namely, COKWH. This one time zone covered only 8 hours TOD. The Asst.Executive Engineer, thus, left the consumption of the remaining 4 times zones unread which led to the raising of short claim for Rs.3,95,990/-. It is submitted that this partial reading of the meter was noticed subsequently and the Asst. Executive Engineer, after noticing the flaw, took the opinion of M.T. Division and the M.T Division, after conducting inspection, confirmed the flaw in the meter reading.

13. From the above, it is clear that the 1st Respondent has made a valid claim and the arguments of the Appellant to treat this as **Deemed Opted** cannot be accepted as KERC Tariff Order provided a separate category under the caption **"TOD tariff applicable to HT 2(a)(i) & (ii) category at the option of the Consumer."** In the present case, the Appellant does not fall under the said category as he has not exercised the option and, hence, cannot claim TOD tariff retrospectively. Hence, short claim made by the 1st Respondent has to be held as valid.

14. In the light of the above discussion, I proceed to pass the following order:

ORDER

15. For the foregoing reasons, the **appeal of the Appellant is dismissed**



(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. M/s.Shakeel Pasha Granites, KSIDC Industrial Estate, Kyalnur, Kolar (represented by Shri M.A.Delvi, Advocate, Authorised Representative)
2. Consumer Grievance Redressal Forum, BESCO Corporate Office, K.R.Circle, Bangalore.
3. The Asst.Executive Engineer (Ele), Rural Sub Division, BESCO, M.B.Road, Kolar.
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