

**Before the Ombudsman
Karnataka Electricity Regulatory Commission
Bangalore**

**Present: S.D.Ukkali
Ombudsman
Case No.OMB/B/G-77/10/8261
Dated 20.05.2010**

Shri Shankarappa,
Survey No.59,
Hanumantegoudana Palya,
Srinivasapura, Nelamangala Tq.,
Bangalore Rural District.
(Represented by Sri M.A.Dalvi,
Legal Counsel)

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Complainant

Vs

1. Bangalore Electricity Supply Company (BESCOM)
Represented by its
Asst.Executive Engineer(Ele)
BESCOM
Nelamangala Sub Division,
Bangalore Rural District

2. The Consumer Grievance Redressal Forum (CGRF)
BESCOM
Central Stores Premises,
Near ESI Hospital,
Rajajinagar,
BANGALORE-560010

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Respondents

I. This is a representation filed by the above named Complainant under the provisions of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 directed against the Order dated 31.10.2009 passed by the 2nd Respondent in its file No.CGRF/22/2009/523-528.

II. The brief facts of the case are as follows:

This is an appeal complaint filed by Sri Shankarappa residing at No.59, Srinivasapura, Nelamangala Taluk, Bangalore Rural District who has availed electrical connection bearing RR. NP 3167 with a sanctioned load of 10 HP. It was serviced on 10.10.2007 for lifting water for commercial purposes. The installation was provided with a high precision meter. The meter was tested by the staff of M.T. division on 21.11.2007 i.e. within 40 days of servicing of the installation and M.T. division staff have reported that the meter was found recording slow by 65.36%. The meter testing was without any supporting mahazar and without any reason for slow recording.

It is contended that the Complainant was totally unaware of these developments and that he came to know of this only after 10 to 11 months when the 1st Respondent demanded a sum of Rs.66,835/- towards the alleged slow recording and demanded the said amount to be paid within 15 days. It is alleged that its act was in total disregard of regulation 29.03 and 27.03 of the Conditions of Supply of Electricity. The Complainant raised objections before the 1st Respondent on 6.10.2008 against this claim but the 1st Respondent did not act upon these objections.

Not satisfied with this indifferent attitude of the 1st Respondent, the Complainant filed a petition before the 2nd Respondent. After conducting the hearing, the 2nd Respondent passed an order on 31.10.2009 in its file No.CGRF/22/2009/523-528.

Aggrieved by the order passed by the 2nd Respondent, the Complainant has filed the present appeal complaint with this Authority with the following prayer:

III.

P R A Y E R

- a) Declare the Notice dated 26.09.2008 in No.2794 to be against Regulation 29.03 of the conditions of supply of electricity and hence not enforceable.
- b) Declare the Meter Test carried out on 18.02.09 behind the back of the complainant and thirty party as illegal and not binding.

- c) Set aside the revised bill based upon the Meter Test report dated 21.11.07 as not binding as the same is against the provisions of regulation 27.03 of the "Conditions of supply of Electricity."
- d) Impose exemplary damages upon the respondent for having caused material losses and mental agony for no fault on his part.
- e) The amount already paid towards this claim may kindly be ordered to be adjusted towards future claims.
- f) To grant such other relief/reliefs as deemed justified under the circumstances of the case in the interest of justice.

IV. Settlement By Agreement

Both the parties were informed to explore the possibilities of settlement by conciliation and mediation by this office letter No.OMB/B/G-77/2010/7829 dated 06.04.2010. The 1st Respondent, Sri H.R.Rajakumar and the representative for the Complainant, Sri M.A.Dalvi appeared and they were heard on 13.05.2010. During the hearing also, efforts were made to reach an agreement by conciliation and mediation. However, no accord could be reached and, therefore, it was decided to pass an award after hearing.

V. Discussion and Analysis

A. The 1st Respondent contends as follows:

- 1) The Complainant had availed electricity connection of 10 HP on 18.10.2007 with RR No.NP 3167 and this installation was inspected by the staff of the meter testing division on 21.11.2007. They have given a report stating that the meter was recording slow to the extend of 65.36%. He further submitted that based on this report by the

meter testing division, his predecessor had prepared a bill for Rs.66,835/- out of which the Complainant had already paid an amount of Rs.28,968 and he was asked to pay the balance back bill of Rs.37,869/-. He stated that the complainant requested on 4.9.2008 to conduct a test by a neutral agency but as per the records available in his office, there is no information for having conducted the 3rd party test by his predecessor.

2) Aggrieved by this, the Complainant filed a complaint before the 2nd Respondent on 10.10.2008 and the 2nd Respondent conducted the hearings and also directed the 1st Respondent to test the meter in the presence of 3rd party observers.

3) The meter was tested by MT Laboratory and the report No.2903 was sent on 18.2.2009. The report was signed by the AE(E) & AEE(E) of MT Laboratory and was counter-signed by the EE(E), MT Division, BESCO, Bangalore which confirmed that the meter was slow by 66.66%.

4) **The 1st Respondent during his deposition stated that he is not aware of the reasons as to why the meter was not tested by his predecessor in the presence of 3rd party observers.** He further stated that since they have their own competent laboratory and the test is conducted by 3 officers, their report that the meter was recording slow by 66.66% is in order and also the order passed by the 2nd Respondent upholding the back billing of Rs.37,869/- is in order. He further stated that subsequently a termination notice was also issued for non-payment of arrears and that, in the meanwhile, the Complainant has filed the present appeal complaint before this Authority. He contended that as the 2nd Respondent has upheld the back billing, the Complainant has to pay the back billing charges and that this Authority should reject his request.

B. Per contra, the representative of the Complainant alleges that:

1. No mahazar was drawn on the day of testing and no knowledge about the testing itself.

2. Back billing notice issued after a lapse of 11 months.
3. The objections were not considered by the 1st Respondent.
4. After filing before the 2nd Respondent, the case was heard by the 2nd Respondent on 30.12.2008, which directed the 1st Respondent to get the meter tested by a 3rd party. Unfortunately, in utter disregard of the above directions by the 2nd Respondent, the 1st Respondent took the meter to its own meter testing division and got the same tested in the absence of the Complainant or any other 3rd party neutral observer.
5. It is alleged that this was only to get confirmation of the earlier tests carried out on 21.11.2007 and that the subsequent test report carried out on 18.2.2009 is part of the documents filed before this Authority.
6. Immediately on receipt of the same, the Complainant filed a protest representation before the 2nd Respondent wherein it was requested to initiate action against these officials who have sabotaged the process of law. It is alleged that the 1st Respondent office failed to replace the meter to the installation and restore service despite there being a clear direction by the 2nd Respondent. It is stated that this failure on the part of the 1st Respondent has resulted in huge monetary loss and inconvenience to the Complainant resulting in stoppage of his work. It is further alleged that the 2nd Respondent has passed a non-speaking order dated 31.10.2009 upholding the short claim arising out of a defective inspection. It is contended that this order makes a passing remark against the concerned officials and directs the 1st Respondent to initiate action for their lapses in their legitimate duties.
7. It is claimed by the Complainant that although the 2nd Respondent in its order states that **"the Forum finds the Respondent at fault on several counts which includes flouting the order of the CGRF and also the illegal re-testing of the meter without calling for a 3rd party inspection, the 2nd Respondent very strangely upholds the claims preferred by the 1st Respondent."** It has erred in

passing a different order and requests this Authority to pass the order granting the prayers made

VI. Findings:

1. The M.T. staff has conducted the testing on 21.11.2007 without drawing a mahazar. It is carried out at the back of the Complainant without his knowledge and allegedly recorded the meter to be slow.
2. After a lapse of nearly one year the back billing is claimed misplacing the M.T.Report and the 2nd Respondent has also noted it as a serious lapse at para 8 of its order.
3. At para "8" the 2nd Respondent also has expressed its views that the mahazar should have been conducted with a couple of independent witnesses. It is remarked as a failure on the part of M T division staff.
4. It is contended by the 2nd Respondent that the consumer has filed a complaint before the 2nd Respondent on 10.10.2008. The 2nd Respondent had directed to test the meter in the presence of 3rd party. But, the reason as to why the meter was got tested at the laboratory without the 3rd party presence by his predecessor, is unknown to him.
5. The 2nd Respondent even though it ordered for testing the meter in presence of 3rd party, erred in accepting the report from M.T. staff dated 18.2.2009 (No.2903) for having tested the meter on 17.2.2009 without 3rd party presence.
6. The Complainant's view that the meter on 17.2.2009 was tested without the 3rd party presence just to establish their earlier stand of meter being slow is true.

The above mentioned points indicate that the Respondent Licensee has failed to establish the slowness of the meter and hence the back bill claimed needs to be set aside.

Having regard to the facts of the case, the following order is passed:

VII.

ORDER

1. The order of the 2nd Respondent is set aside.
2. It is held that the testing carried out by the M.T. staff on 21.11.2007 is not valid and notice No.2794 dated 26.6.2008 demanding the back billing is set aside.
3. The 1st Respondent is directed to refund the back billing by way of adjustment against the future bills of this installation bearing RR No. NP 3167.

(S.D.Ukkali)
Ombudsman

1. Shri Shankarappa, Survey No.59, Hanmantegoudana Palya, Srinivasapura, Nelamangala Taluk, Bangalore Rural District.
2. The Consumer Grievance Redressal Forum, BESCO, Central Stores Premises, near ESI Hospital, Rajajinagar, Bangalore-560010
3. The Asst.Executive Engineer (Ele), Nelamangala Sub Division, BESCO, Bangalore Rural District.
4. The Managing Director, BESCO Corporate Office, K.R.Circle, Bangalore-560001.
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. Director (Tariff)
10. Deputy Director(Legal)
11. O.C.A.

